

Insults in Cyberspace: who is liable?

by Armenuhi Chiflikyan

Unprecedented developments in information technology have made the instantaneous, broad, and potentially, anonymous information dissemination an integral part of our lives. More than 4 billion people (almost 57 percent of the world population) form an interconnected entity of Internet users today ¹. Therefore, IT-related debates are rapidly becoming an integral part of many legal deliberations, bringing with them an urgent need to ensure the protection of dignity and reputation in the information realm.

By making communications more available, the internet reality greatly amplifies the opportunities for an infringement of entities' right to dignity and reputation.

(Easy)) opportunities for violations) = (difficult)) liability issues related to these violations).

If an insult happens in physical space, the liability holder is more definite. But if the same actions happen in cyberspace, for example, when someone comments under someone else's post on Facebook, then we need to clear up *who the right actor of liability will be*. We have four options here.

- 1/ the one who made a comment containing the insult,
- 2/ the one under whose post the comment was written,
- 3/ the one whose wall was used for that post,
- 4/ maybe Facebook's administration itself?

Let's look at the case law of the European Court of Human Rights (ECHR). In the famous case of *Delfi AS v. Estonia*, the Estonian company Delfi AS published in its online news portal an article entitled *SLK Destroyed Planned Ice Road* ². The aforementioned company provided the opportunity to comment on the article. 20 out of a total of 185 comments contained offensive language (hate speech and direct threats to the physical integrity of individual) towards SLK's majority shareholder, who, after six weeks, sent a request to Delfi AS to take down the comments.

The court found that, when there is an obvious humiliation of the honor and dignity of an entity, the person responsible for website shall monitor comments recorded in the space of the website to ensure protection of honor and dignity of entities and to remove derogatory comments even when there is no request about their removal.

At the same time, the way in which such monitoring is carried out has no effect on the reduction of the website owner's liability: the monitoring can take place before a person's comment is posted or afterwards. Although the entities who write comments on the website are responsible for their comments, this does not mean that the owner of the website is absolved from all liability. A few days after the publication of an offensive comment in cyberspace, the protection of the honor of the person may be ineffective, because it will already be widely distributed among thousands of users.

In another case - «Magyar Tartalomszolgáltatók Egyesülete and index.hu Zrt v. Hungary»³, the ECHR stated that regard must be had to the specificities of the style of communication on certain Internet portals. Expressions used in comments can belong to a low register of style and be common in communication on certain Internet portals – this reduces the impact of those expressions. The court also mentioned that national courts of Hungary didn't address the issue of liability of the authors of the comments, and imposed the whole liability on the operator of the Internet portal. In the opinion of the ECHR, it is too heavy a burden for operators of the Internet portals to monitor all comments of third parties without corresponding request for removal.

Therefore, it is important to take into consideration all the circumstances of each case.

But one thing is clear – in cyberspace, the author whose comment contains an insult should be the first actor of liability. Only thereafter should the liability of the owner of the website be discussed.

When there are more actors between the author of the comment and the website owner, we should stipulate some sequence of liability.

For example, on Facebook there can be 4 holders of liability. The liability of the author of the comment comes first. And then come in turn other actors connected with each other (and with the first actor). But they can hold liability only in the case of corresponding removal request.

If we try to create a Venn diagram showing the attribution of liability, it will have the following nested structure:

The chart above describes four different layers of liability attribution. The first layer is the liability of the comment author. The second is the layer of liability of the author, under whose post the comment is written. The third layer signifies the liability of the wall owner. Finally, the fourth layer is the liability of Facebook's administration. This is meant to signify a hierarchy of responsibility when it comes to attributing liability.

¹ <https://www.internetlivestats.com/internet-users/>

² «Delfi AS v. Estonia», app. No. 64569/09, 16 June, 2015

³ «Magyar Tartalomszolgáltatók Egyesülete and index.hu Zrt v. Hungary», app. No.22947/13, 02 of May, 2016

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