

The Boundary and Protection of Internet Expression Right

Meng Qian

Wuhan University of Technology, Wu Han, China

Email: 2813720670@qq.com

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Abstract: Nowadays, the development of the Internet has provided a new, more convenient and free platform for people to express their opinions on the internet. This makes people pay more attention to Internet Expression Right and the broader scope of Internet Expression Right. The first part of this article is about the basic issues of Internet Expression Right, including the definition and characteristics of Internet Expression Right, the status quo and problems of network expression; The second part deals with the boundary of network expression, mainly discussing the limitation of freedom of internet expression and conflicts with other rights; The third part introduces the protection norms of network expression in our country, including the theoretical basis of the legal protection of Internet Expression Right, the protection of the right of expression in our country and the suggestion of perfecting the legal regulation of Internet Expression Right.

1. Introduction

Marx once said that "freedom of expression is the most sacred of all freedom because it is the foundation of everything."^[1] With the popularity of the Internet, more and more people express their views on the Internet, and the expression of the Internet has become a stretch of traditional expression. But does this mean that "is it possible to say on the Internet?" Obviously not, network also needs order, so the definition of network expression and the study of legal regulation have a certain theoretical and practical significance.

2. The basic problem of right of expression in the internet

2.1 Definition and Characteristics of Internet Expression Right

Internet Expression Right means that citizens have the right to express their thoughts, opinions, beliefs, emotions, information and other contents through the internet platform. The right to express, also known as freedom of expression, refers primarily to freedom of speech but extends more freely than "speech" and has multiple forms of expression. For the first time in 1948, the United Nations Declaration of Human Rights declared freedom of expression norms of international law. Its article 19 states: "Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers free." The right to freedom of expression in the 1966 International Covenant on Civil and Political Rights was expanded to include the use of all media. It states: "Everyone has the right to freedom of opinion and expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, whether spoken, written, printed, artistic form Or through any other medium of his choice." The two conventions have defined freedom of expression and expanded the means of freedom of expression. Among the basic rights of citizens listed in our Constitution, we have given the definition of freedom of expression from the legal norms. Such as political freedom in Article 35, freedom of communication in Article 40, article 41 criticism of state organs and their personnel, right to sue, Article 47 freedom of scientific research, literary and artistic creation and other cultural activities.

However, from the academic point of view, the current academic circles in our country have not reached a consensus on the definition of Internet Expression Right. Hu Wen long said: network remarks refers to the dissemination of information in the network.^[2] Xie Xin zhou believes that

Internet users use the Internet as a tool to spread their opinions or comment on others' opinions through posting and contributing. This includes large articles of commentators and brief comments of the forums.^[3]Wang Xinghua thinks that: network remarks single refers to the news set by the network column, Internet users here comment and comment articles in the forum are all network remarks.^[4]The author may have different opinions on the definition of these three scholars,I think that these three scholars narrow the definition of internet expression and neglect the extensiveness of the subject of network expression.Combined with the characteristics of the network, the definition of internet expression right the should be considered to people through the network and published on the network to share views or opinions of freedom.

After the definition, internet expression right can be summarized in its characteristics are the following:

First, from the perspective of its main body, the main body of internet expression right is extensive.And because of the characteristics of the network, the main body of internet expression right has a certain degree of anonymity and concealment, anyone can freely access the network without restraint.

Second, one of the differences with traditional freedom of expression is that the expression of the right to express one's form is conveyed through the Internet as a connection.As a result, all voices and images posted on the web about your own opinions can be considered as belonging to the right of internet expression.

Finally, thanks to the Internet as a special tool for information dissemination, people can express their various opinions, including all aspects of social life, as much as the country's major policies and personal trifles, which may lead to conflict of rights.

2.2 The Status Quo and Problems of Internet Freedom of Expression

Judging from the statistics of some cases, due to the anonymity, covertness, responsibility and interactivity of the Internet, people may infringe on the personal rights and interests of others such as reputation or honor when expressing their opinions through the Internet.In October 2016, the Supreme People's Court held a news conference to release typical cases of protecting the rights and interests of heroes such as the Five Heroes in the Langya Mountains.At the press conference, since a long time ago, the People's Court has accepted a number of civil cases involving the rights and interests of heroes, historical figures, honors and other personalities.There are many more cases of using such media as a tool to infringe the reputation or honor of others.This shows that in real life, due to the uniqueness of the network, the statements made in the network are difficult to carry out the technical regulation, resulting in more and more unscrupulous people, lack of legal awareness and freely expressing themselves on the Internet Opinions or views, which led to the endless spread of Internet information, filled with all kinds of bad language, violence and even network incitement to split the country.

3. The boundary of the right to express

3.1Conflicts between Right of Network Expression and Citizen 's Personality

The popularization of the Internet has created a platform for freedom of speech, giving people maximum freedom of expression and meanwhile, it means that the right has its boundaries.Because of the respective characteristics of network communication and privacy, the natural conflict of freedom of expression and privacy exercised through the Internet is a kind of counterbalanced relationship.Under the Internet platform, people's expression posted on the Internet can not interfere with the life and privacy of others.According to statistics, disputes over online reputation accounted for the majority, showing almost a "single domineering" status,Classic cases such as:"2013 Baidu 360 Fight of Fame", "2013 Kong Qingdong Weibo verbally netizen case", "2012 Children's Writer sued Baidu case" and so on, but there are also a few involved in privacy, portrait right, name Dispute cases.

3.2 The Boundary between Internet Expression Right and Public Interest

The public interest as a free exercise of the boundary of the network speech means that the publication of the online speech should not damage the public interest. Such concept has long been established in international human rights documents and national constitutions. The French "Declaration of Human Rights" pointed out that the publication of opinions should be stopped when it "disrupts public order under the law." Article 51 of China's Constitution stipulates: "Citizens of the People's Republic of China, while exercising their freedom and rights, must not undermine the legitimate rights and freedoms of the state, the collective and society and other citizens." The freedom of speech in the internet must be exercised as the boundary for the good and the bad of the public order. Once beyond this threshold, it constitutes an abuse of freedom of expression on the Internet and the perpetrator will face unfavorable legal consequences.

4. Protection of Internet Expression Right in China

4.1 Jurisprudence Analysis on the Legal Protection of the Right of Internet Expression

First of all, we can clearly understand that the right of internet expression belongs to one of the right of expression, and the right of expression should also be protected on the right of internet expression. Although Internet Expression Right has played a huge role in promoting the progress of democratic civilization in human society, the behavior of utilizing the expressiveness of Internet Expression Right beyond the boundary of rights also occurs from time to time. Therefore, to constantly improve the legal system of Internet right of expression must give full play to its own value, at the same time, limit its existing shortcomings. Law researchers has been fully dialectic of the limitation of Internet Expression Right in theory. There are two theories: First, absolute protectionism; Second, relative protectionism. In fact, most of the countries in today's society have restrictions on the right of expression of the Internet and there can be no absolute freedom of speech and expression. Because the law to pursue or protect is not Internet Expression Right, in addition to the protection of the right to express and network such as reputation, privacy and public order and so on. Therefore, we should think that the protection of Internet Expression Right is the relatively restrictive mode of protection against the right of expression.

4.2 Protection of Internet Expression Right in China

Since the Internet popularized in China in the 1990s, the relevant agencies in our country have formulated many laws, administrative regulations and departmental rules on online speech. In our country's constitution, there are relevant provisions on the freedom of speech and expression. Although the content of Article 35 does not specify the freedom of speech on the Internet, the content of the legal provisions essentially means freedom of speech and expression, and the freedom of expression on the Internet should also be included, of which Article 41 protects the freedom of citizens to express their opinions on the supervision of public power. However, 51 of them restrict the freedom of expression from the constitutional standpoint.

In addition to the constitution, our country has also formulated the Regulations on the Security of Computer Information Systems, the Measures for the Administration of the Security of International Network of Computer Information Networks, and the Regulations on the Administration of the Confidential Information of the International Network of Computer Information Systems. Generally speaking, judging from the legislation of our country on the right of expression of the Internet, there are many laws and regulations that regulate the expression of Internet speech. However, due to the large number of government agencies that make these laws and regulations, from the top to the bottom of the departmental level, Order is also different.

4.3 Suggestions on Perfecting the Legal Regulation of the Rights of Internet Expression

First of all, we can learn from Germany and formulate a unified law protecting the freedom of expression in the Internet. Because at present, most of the legal norms governing the freedom of speech in the Internet in our country are mostly administrative laws and regulations, departmental

regulations, and so on, so the law passed by the highest-level legislature can be formulated.

Second, establish and improve the legal system of network supervision, so that the government can do something according to law. Drawing on the practice of the British government in handling self-regulatory industries, our government can actively intervene in self-regulatory associations or organizations composed of network service providers in accordance with the law.

Finally, as a citizen, all network participants should have a strong sense of rights and should be responsible for purifying the network environment.

In the cyber environment, just like any other environment, no citizen can gain the so-called complete freedom at the expense of the legitimate rights and interests of others. Therefore, in the new era, we should also constantly improve citizens' right to express their opinions on the Internet.

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