

Regulation of freedom of speech on the Internet from the perspective of interest measurement

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ABSTRACT

As an important cornerstone of modern democratic society, the regulation of freedom of speech on the Internet not only concerns the protection of individual rights, but also directly affects the maintenance of social order and public interests. First of all, it is clear that the principle of interest measurement occupies a core position in the regulation of freedom of speech on the Internet. While expanding freedom and rights, it is necessary to balance public interests and private interests. By analyzing the multiple interest types behind the freedom of speech on the Internet, the potential conflict and balance mechanism between different interests are revealed. In the concrete regulation path, different interests should be carefully analyzed and compared according to the scientific method of interest measurement, so as to decide the interest object of priority protection. In particular, when dealing with the conflicts between freedom of speech on the Internet and private rights such as the right of reputation and privacy, differentiated protection should be carried out according to the particularity of the right subjects to ensure that the judgment results not only conform to the spirit of the law but also reflect fairness and justice. At the same time, in view of the unique complexity of cyberspace, it is necessary to build a legal framework that can not only maintain social order and public interests, but also fully protect Internet users' right to reasonable freedom of expression, so as to achieve the maximum harmony and unity of cyberspace governance efficiency and civil rights protection.

1 Introduction

Freedom of speech on the Internet is the derivative of the development of information technology in the Internet age, so it has the essential attribute of freedom of speech. Freedom of speech is stipulated in the Constitution of the People's Republic of China. As a basic right granted by the Constitution, citizens have the right to speak freely according to their own wishes and to listen to the statements and opinions of others without being interfered with, infringed upon or restricted by others. It is the foundation of the existence of a democratic society. With the development and popularization of science and technology, the Internet has gradually become an important platform for information dissemination. By December 2023, the number of netizens in China had reached 1.092 billion, an increase of 24.8 million over December 2022. The Internet penetration rate reached 77.5 percent. With the advent of the Internet era, the new features of the Internet, such as virtuality, subject anonymity, diversity and complexity of information sources, as well as ease of expression and interactivity, enable citizens to more fully exercise their right to freedom of speech, and also change the connotation of freedom of speech in the new era.

First of all, in the era of highly developed Internet, the ways of expression between individuals are constantly updated. Different from face-to-face communication, the scope of the subject of

expression is no longer limited to the region and space, and any subject in a different space can freely express and disseminate ideas in cyberspace through his own way. Therefore, cyberspace has become an important part of society, and the order of cyberspace has also become an important embodiment of social order. At the same time, the social platforms in the network era are constantly updated, and the amount of information in the network era is huge and complicated, and the subject of expression is more extensive. Individuals of different ages can communicate with each other and pass on information. Secondly, in the past era of face-to-face communication, individuals can only interact and transmit information offline or in written form, resulting in low efficiency of information transmission, and even difficult information exchange and transmission in the face of geographical and time problems. In today's era, speech and information are generally spread out through the Internet, and online speech can be freely exchanged across the geographical distance and spatial obstacles in reality. In the network, both the speaker and the receiver are located in different nodes of the network and can not be blocked by the real space. Due to the extremely fast transmission speed of network speech and the timeliness of information in network space, individuals receiving information do not have to worry about the lag between information and reality. The interaction of network speech is more bidirectional or multi-directional, and individuals can freely receive and express themselves outwards. In addition, the so-called network space, is an environment based on the Internet TCP/IP protocol construction, the environment realizes the transmission and sharing of information. It connects all the individuals on the information node with each other through technical means, forming a huge virtual network community. At the same time, the network space itself does not have the material form of physical existence, it completely depends on the support of electronic equipment and network technology to exist. It is precisely because of the virtual nature of cyberspace that human freedom of expression has been developed and extended on this platform like never before. People can express their views and share information more freely, without being constrained by space.

At the same time, the virtual nature of cyberspace makes it unnecessary for subjects to use their real names, and individuals can freely express their views in cyberspace without being constrained by identity differences, that is, the anonymity of subjects. This makes more subjects willing and able to participate in cyberspace. However, although the anonymity of network subjects has many advantages, due to the characteristics of the Internet to transcend spatial restrictions, the audience is also more extensive and complex, which brings the consequences of complicated infringement disputes in cyberspace, and the difficulty of supervision and accountability. In addition, with the further development of information technology, various online platforms continue to emerge and innovate, introducing new functions and technologies, providing a rich variety of platform media for citizens to participate in online communication and interaction. In addition, there are various forms of information expression in cyberspace, and since netizens' statements usually involve multiple fields, their knowledge level, life experience and other factors are quite different, and individuals have different cognition and views on things, the sources of information in cyberspace are more complex and diversified. To sum up, in view of the multiple characteristics of freedom of speech on the Internet, which are intertwined, together constitute the unique face and complex ecology of freedom of speech on the Internet. Therefore, in order to understand and respond to the challenges brought by freedom of speech on the Internet in a more comprehensive and in-depth way, as well as to better balance the relationship between freedom of individual expression and social public interests, it is necessary to conduct a more detailed and systematic in-depth discussion and research on its limits and regulatory paths. This will not only help improve the system of Internet laws and regulations, but also provide strong theoretical support and practical guidance for the healthy and orderly development of cyberspace.

2 the necessity of regulation of freedom of speech on the Internet

In recent years, the rapid development of the Internet has greatly expanded the space for freedom of speech on the Internet. But at the same time, it also exposes the problem of insufficient regulation of freedom of speech on the Internet, which leads to a variety of violations of civil rights frequently. Various kinds of Internet speech anomalies emerge in an endless stream, seriously infringing on citizens' rights, violating public order and good customs, challenging judicial authority, and showing the characteristics of a wide range of infringing subjects and difficulties in accountability.

2.1 Insufficient regulation of freedom of speech on the Internet infringes on citizens' rights

In recent years, with the rise of the Internet, unrestricted online speech has caused a lot of problems, and various online speech anomaly phenomena have frequently appeared, including but not limited to spreading rumors, maliciously speculating on others and conducting human flesh search, which have seriously infringed on others' right of reputation and privacy. What is particularly noteworthy is that the resulting infringement cases are not only large in number, but also often accompanied by extremely serious consequences.

For example, in the cases of "Yang Lai's Claim for reputation right Dispute" and "Liu Qingqing and Wang Dongyang's infringement liability Dispute", there are infringement articles that are constantly forwarded by a large number of anonymous subjects, which has a wide impact, making it difficult for victims to pursue specific individuals, so they can only Sue for infringement on the network platform as the defendant, and their legitimate rights and interests are difficult to be fully protected. It can be found that they generally have the characteristics of a wide range of infringing subjects and difficult to pursue accountability. Due to the anonymity and trans-regional nature of the Internet, infringers can easily evade legal responsibility, which makes it extremely difficult for victims or their close relatives to seek judicial help. Even if the infringers can be held accountable through legal channels, it is often difficult for the victims to get adequate compensation for their losses, which undoubtedly further exacerbates the plight of the victims.

2.2 Internet speech anomaly, contrary to social order and good customs

Internet pornography and other Internet deviant speech have become a common phenomenon in the era of highly developed Internet. In the first half of 2020, China investigated and dealt with more than 1,800 cases of online pornography and illegal publications, shut down more than 12,000 illegal websites, and disposed of more than 8.4 million pieces of harmful information. Although the government has made greater efforts to promote the "clean and clean" campaign, unruly information in cyberspace is still spreading and difficult to eradicate, causing great harm to people's physical and mental health and cultural rights and interests, and creating difficulties for the establishment of a sound cyber order. In the digital era, along with the rapid progress of technology, a large number of unruly statements without authoritative verification have emerged on the Internet. These statements are not only in a state of continuous dissemination, but also significantly show the characteristics of intelligent technology enhancement, personalized algorithm push and "information cocoon" effect. These phenomena greatly aggravate the difficulty of identifying false information, making the spread of false information more rapidly and accurately targeted at specific audience groups, and thus its social impact is worse, challenging the boundary between information authenticity and public cognition. Specifically, the application of intelligent technology, including but not limited to artificial intelligence-generated content and intelligent

recommendation algorithms, has provided strong technical support for the spread of online anomic speech. Algorithms push content based on users' behavioral preferences. Although they aim to improve user experience, they may also unintentionally build "information cocoons", limiting users' access to diverse viewpoints and exacerbating cognitive biases and misunderstandings. In addition, intelligent technology also tends to amplify emotional factors in online speech. When sensitive content such as pornography and violating social public order and good customs is involved, its spread speed and breadth increase exponentially, which is easy to cause drastic fluctuations in social emotions, posing a serious threat to social stability and moral order.

2.3 Improper expression of online speech impairs judicial authority

When discussing the boundaries of the right to freedom of speech online, its potential impact on judicial authority cannot be ignored, especially when the trial of a case is in the spotlight and the public is widely involved in the discussion. Although the free exercise of online speech is the embodiment of the right of expression of citizens, if it is improperly expressed, it may not only infringe on the private rights of others, but also cause far-reaching influence in the judicial field. Specifically, when the judicial organs handle public cases, they will inevitably be subjected to the scrutiny of public opinion, and the disputes arising from public opinion pose a challenge to the judicial trial. Although the court makes trial results based on facts and laws, the excessive rendering and improper guidance of online public opinion has undoubtedly weakened the public's trust in judicial authority. At this time, if online opinion becomes the dominant social voice, its orientation will directly or indirectly affect the judicial process. If the outcome of the trial is consistent with the direction of public opinion, although it may enhance the public's acceptance of the judgment, it is also necessary to guard against the risk of undue interference with judicial independence, which is the so-called "trial by public opinion". On the contrary, if the trial result is contrary to the public opinion, it may trigger the public's doubts on the fairness of the judiciary, resulting in serious damage to the judicial authority, and the foundation of public trust in the judicial system will be shaken. In addition, even if the public opinion is formed under the collection of the same kind of online speech, its influence is also double-sided. On the one hand, appropriate and rational public opinions help the judicial organs to fully grasp the facts of the case, reflect the general social view of justice, and promote the formation of fair rulings. On the other hand, when public opinion is improperly guided or over-amplified, forming a strong and biased "public opinion trend", it may deviate from the legal logic and truth of the case itself, and interfere with the judicial organs' judgment based on legal principles and evidence.

Therefore, it is necessary to deeply explore the regulatory mechanism of the right to freedom of speech on the Internet, and explore the solution of disputes over the right to freedom of speech on the Internet by weighing the interests of state public authorities, citizens' right to freedom of speech, and the social responsibility of online platforms as information dissemination intermediaries, which is conducive to promoting the construction of the rule of law on the Internet in China and establishing a healthy and sound Internet environment. To maintain social stability.

3 the application of the principle of interest measurement in the regulation of freedom of speech on the Internet

In the field of law, the "United States v. Albryan" case established the principle of interest measurement as a milestone, which set up a key guiding framework for the subsequent judicial practice to deal with the conflict of interest, especially in the field of legal regulation of network

speech, the principle has played an indispensable guiding role. It promotes a reasonable balance between freedom of speech and other values such as public interest and social order. The ranking of various interests is a complicated value judgment problem, but human beings always live in the same society, which should make the members of the society better. Therefore, although there is no absolute fixed value judgment criterion, there is a core consensus on the measurement of different interests. It is mainly reflected in the pursuit of common prosperity of mankind and the common expectation of sustainable social development. Therefore, the principle of interest measurement is a powerful rule when dealing with cases related to freedom of speech on the Internet. However, in the era of highly developed network, due to the differences in national conditions and social reality, countries have their own unique regulations when applying the principle of interest measurement to study the limits of the right of freedom of speech on the Internet, and their different tendencies to protect a variety of conflicting interests.

3.1 A comparative study on the position of the principle of interest measurement in various countries

Since the idea of interest measurement was put forward, different countries have different positions on the principle of interest measurement in the field of Internet freedom of speech regulation because of different ways of protecting rights. Japan and Germany in the civil law system and the United States and the United Kingdom in the common law system have gradually learned from their own judicial practice and studied the specific application methods of interest measurement, forming the application methods of law that are in line with their national conditions and social development.

First of all, Hecker, who founded interest jurisprudence in Germany, advocated that judges should pay attention to multiple conflicts of interest in legal disputes. When legal provisions are not enough to provide a clear basis for judgment, judges should evaluate the priority order of various interests and make interest choices. In German judicial practice, Germany is completely different from the absolute protection mode of the United States. Germany has very strict protection of freedom of speech on the Internet. In the face of conflicts between the right of freedom of speech on the Internet and other rights, the protection of freedom of speech on the Internet is usually placed in a lower position, which is restricted by public interest, "general law" and personal dignity. Germany's regulatory stance on freedom of speech on the Internet reflects the state's focus on the protection of public interests. In order to promote the stability of public order in the Internet era, Germany has made more comprehensive and detailed regulations on the regulation of Internet speech. Secondly, in Japan, jurist Eiichi Hoshino put forward the method of interest classification, that is, judges should consider the value connotation of legal provisions, classify interests and make comparisons to determine which interests should be given priority. As a country of civil law system based on written law, Japan often restricts or prohibits speech of a certain content through explicit provisions of law. It adopts the so-called "content as the object of control" standard. This doctrine holds that control of freedom of speech is necessary and necessary, and that control of speech depends on the specific content of the speech itself. In other words, when a conflict of interest occurs, the interests that should be given priority should be judged by analyzing the nature and influence of the content of speech based on the connotation of legal provisions. Compared with Germany, the protection method in Japan is more flexible. Judges make analysis according to the situation of specific cases, so as to seek the maximum protection of public interests and citizens' rights. In addition, Pound of the United States proposed the method of classification of interest levels, that is, through the classification of interest levels, to seek a solution that does not harm the collective interests and social interests, and to judge the social effect of the judgment as the

standard. As for the restriction of freedom of speech, the United States adopted the standard of "clear and present danger" doctrine proposed by Justice Holmes as the mainstream. This standard was put forward by Holmes in *Schenck v. United States*, which was an important ruling of the US High Court. The ruling also showed the position of the US Supreme Court on the freedom of speech on the Internet, and determined that "protection is the principle, restriction is the supplement". And protection is not indiscriminate, depending on the context, period, and nature of the speech to determine whether to bear responsibility for speech. Later, some scholars put forward different standards. For example, in 1948, Professor Alexander Meiklejohn determined the standard of "for public" and "for private" speech, that is, citizens' speech is divided into public speech and private speech, and public speech is speech in the public interest. The two types of speech have different levels of protection. If citizens' speech is "public speech", it is absolutely protected by the First Amendment and cannot be restricted. If the speech is "private speech", it is subject to the Fifth Amendment and can be restricted and regulated by due process. In essence, the above two kinds of standards meet the same goal, that is, they both conform to the core consensus of the principle of measuring interest, aim at promoting human prosperity and development, and tend to protect the legal interests of the higher level of interest under the speech environment and value judgment. In addition, the United States also has the "direct incitement" principle, which focuses on the relationship between speech and action, as a supplement to the "clear and immediate danger" standard and profit or loss. Compared with the civil law system, the United States has a stronger protection of freedom of speech on the Internet. In the principle of protection, the liability bearing method is analyzed according to the comprehensive factors such as environment and period.

As for the interest measurement in cases of freedom of speech on the Internet, Germany in the civil law system takes the position that public interest is higher than other rights and interests, while Japan seeks to maximize the interests according to the flexible analysis of individual cases, while the United States adopts the absolute protection mode for the protection of freedom of speech on the Internet, giving greater protection to the freedom of speech on the Internet. What these measures have in common is that they all try to provide a reasonable solution when the legal provisions are unclear or there are multiple conflicts of interest, so as to achieve a fairer or more effective verdict. However, when it comes to the specific interest choice methods, they only give the principle theory and rarely carry out the concrete improvement. Their application also faces the challenge of how to deal with the interest ranking and how to avoid over-reliance on the judge's own value judgment.

3.2 The exploration of the practical path of the principle of interest measurement

There is a core principle for any restriction of freedom, that is, freedom should not be reduced but expanded, civil rights and public interests should not be reduced, but civil rights and public interests should be expanded, and the same is true for freedom of speech on the Internet. The principle of interest measurement is the main judicial practice path that has been proved effective and reasonable by practice to regulate the freedom of speech on the Internet. The function of freedom of speech on the Internet includes not only the realization of personal value, but also the promotion of social development. There are various types of freedom of speech on the Internet, which reflect both individual interests and public interests. Therefore, the application of the principle of interest measurement in the regulation of freedom of speech on the Internet usually needs to consider the balance and trade-off between public interests and private interests. First, we should analyze the types of interests behind the freedom of network speech, and weigh them against the conflicting interests. On the basis of interest measurement, we should judge the importance of the two, and decide to prioritize the protection of one party. The interests that may conflict with the freedom of network speech include public interests and private interests, among

which the public interests include national security, public order and good customs and judicial authority, while the private interests include the right of reputation, privacy and property rights.

First of all, when online speech involves public interest and private interest, the measures of protection are usually different according to the types of private interest. Taking the right of reputation as an example, the right of reputation is a specific personality right of a specific civil subject, which represents the protection of personality value by law, and the intensity of protection for different subjects is different. In this case, freedom of speech often involves the state, political parties, government agencies and other subjects with public attributes. Freedom of speech plays the democratic and social value of its supervision by public opinion, and its value or the event itself is related to the interests of the majority of people. At this time, the dispute undoubtedly belongs to the public domain and is closely related to public interests. Generally, the public interest is higher than the private interest. Therefore, in this case, the protection of the right of freedom of speech on the Internet is higher than the right of reputation, and the right of reputation should be restricted, so as to promote democratic decision-making and social supervision.

Secondly, when the freedom of speech on the Internet conflicts with national security, judicial authority and social order, judges usually give priority to the protection of public interests and restrict the freedom of speech on the Internet. Take network security as an example, the network carrier not only provides convenience for the public to express opinions freely, but also provides opportunities for hostile forces to carry out various reactionary activities. Therefore, the information in cyberspace is not good or bad. After Internet users receive information about terrorism and separatism, whether they are subjective or intentional, they may make sensitive remarks that are not conducive to ethnic unity and national unity. If such speech is not restricted, it will pose a serious hidden danger to national security. In addition, in the era of open Internet, the public can express their opinions on the trial of a case, and when the amount of comments is too large, public opinion may be generated. Whether the public comments lead to the same direction of trial or not, it may have a certain impact on the result of judicial judgment. When the result of judgment is not in line with "public opinion", the judicial authority will be weakened. In this case, although the public is an important subject in the supervision of judicial justice, most of the remarks are derived from their simple concept of justice, and may even produce inflammatory remarks, which may influence the judgment result by guiding the direction of public opinion. Therefore, such inflammatory remarks should be identified and restricted, so as to protect judicial authority. And promote the virtuous circle of judicial trial and supervision.

Moreover, when there is a conflict between the personal interests involved in online speech, that is, the right of freedom of speech on the Internet and the right of reputation, privacy, property and other private interests, since both belong to private rights, freedom of speech on the Internet is not necessarily superior to other rights guaranteed by law, and other legitimate rights of citizens should not be harmed just because of the protection of their freedom of speech. At the same time, the intensity of protection of private rights varies according to whether the right subject is special or not. The subject of the right of reputation includes citizens and legal persons, while citizens include ordinary citizens and public figures. The particularity of the right subject can be interpreted from multiple dimensions, including but not limited to its social status, public influence, personal sensitivity and the scope of influence after the right is infringed. Although everyone is equal before the law, it does not mean that all rights subjects should adopt exactly the same standard when enjoying rights protection. On the contrary, differentiated protection according to the particularity of rights subjects reflects legal fairness and justice. Taking the right of reputation as an example, reputation represents the trustworthiness, social status and dignity of the subject of rights. In addition to the superficial honor, a higher reputation also represents a huge economic value. For example, due to the wide visibility and influence of public figures in the society, their right of

reputation is often more strictly protected. This is because the reputation of public figures is not only related to their personal honor, but also involves the public's trust and evaluation of them, which has a significant impact on social opinion. In addition, compared with ordinary citizens, while enjoying social resources and attention, public figures also need to bear more social responsibilities and supervision by public opinion. Therefore, it is more difficult to identify infringement of public figures' right of reputation than the general public. For example, in the case of *Fan Zhiyi v. Wenhui Xinmin United Press Group* Dispute over the right of Reputation in 2002 (cited in the judgment), the focus of the dispute was "whether the media enjoy greater space for freedom of speech when reporting on public figures, and whether such space should be subject to certain restrictions". The court finally ruled that Wenhui Xinmin United Press Group did not constitute an infringement of Fan Zhiyi's right of reputation.

Therefore, criticism and comments on public figures in media reports, as long as they are based on facts, fair and objective, and do not contain malicious content such as insult or slander, should not be regarded as infringing on the right of reputation. It can be seen that when dealing with cases of conflicts between freedom of speech on the Internet and private rights and interests, the court should weigh the interests according to the particularity of the right subject, flexibly apply legal provisions, and ensure that the judgment results are in line with the spirit of the law and reflect fairness and justice.

4 Epilogue

Freedom of speech is an important basic human right, and the advent of the network era makes freedom of speech on the network an important part of it. As of December 2023, China has built a total of 3.377 million 5G base stations, covering all prefecture-level cities and county towns. The high penetration rate of the Internet also means that, The exercise of the right to freedom of speech on the Internet is facing more complex and diverse scenarios, indicating the possibility of various kinds of disputes over the right to freedom of speech on the Internet. In the current network environment, it is not uncommon for netizens to infringe others' right of reputation, privacy, and even public order, good customs and national security when they express their opinions. When various legal interests are constrained and in conflict with each other, how to balance these legal interests so as to more comprehensively protect the interests of the majority of people has become an important issue. There is neither internal harmony nor internal contradiction between private interests and private interests, and multiple interests are indispensable. Judges should use reasonable and effective interest measurement methods to maximize the protection of human rights in specific legal disputes.

In the process of exploring the regulation path of the right to freedom of expression on the Internet, the judge should uphold the scientific attitude of interest measurement, widely learn from and carefully evaluate the beneficial international practice and experience, and deeply grasp the unique complexity characteristics of China's cyberspace: That is, the virtual nature of the network environment, the high anonymity of participants, the multiple coexistence and complex interweaving of network platforms and information, and the convenience and high interactivity of speech expression. Based on this, the potential conflicts between public interests and individual rights and interests, as well as different individual rights and interests, need to be finely balanced, aiming to build a legal framework that can not only effectively maintain social order and public interests, but also fully protect the majority of Internet users' right to reasonable freedom of expression, so as to achieve the maximum harmony and unity of cyberspace governance efficiency and civil rights protection.

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