

Online Defamation Law in the U.S.: Debate under the First Amendment

Fangnan Chen*

School of Law, Case Western Reserve University, Cleveland, OH 44106, U.S.

* Corresponding author: fxc197@case.edu

Abstract: This study will discuss the history of the development of online defamation law in U.S., analyzing the historical background of the formulation of defamation law and its legal regulation in different periods. The paper will also compare China's punishment for online reputation torts involving defamatory speech, reputation torts in civil law, reputation torts in criminal law, and reputation torts in the Internet era, pointing out that reputation torts still exists in China.

Keywords: Fake News, Reputation Torts, Defamation Crime, Online Defamation.

1. Introduction

Online defamation generally involves publishing a false speech of fact that harms one's reputation on the Internet. Individuals are likely to exercise less restraint online than they would in personal interaction, as they are protected, to varying degrees, by a veil of anonymity and thus may be prone to making even more extreme statements. Often, individuals use multiple platforms to make these statements, including crowd-sourcing review sites like Yelp, social media platforms like Facebook or Twitter, or even video posts on YouTube.

Public Figures filing online defamation lawsuits is nothing new in the United States. In the context of digital communication, celebrities and politicians are often scrutinized and can barely hide their secrets from the paparazzi. To gain attention through internet hits, some internet users and media outlets won't hesitate to make up stories and tell outlandish lies about celebrities. However, it is difficult for public figures to win lawsuits due to the difficulty of proving substantive malice. The special feature of Internet defamation cases against public figures is that not only the Internet user who publishes the defamatory information, but also the Internet service providers and Website host, may be held liable.

The interconnectivity of communications makes regulation of fake news by nations a particularly worthwhile area of comparative law study. Nations may attempt to regulate fake news but find themselves unable to stop the flow of unwanted speech generated from locations without such restrictions across their borders. Speakers, from individuals to massive internet service providers and social media platforms, may find that when the speech they generate or host crosses borders, different rules apply, and they may be liable for harms caused by their fake news speech, even though the laws of their home venues protect them. Comparative study makes the different scopes and details of laws regulating the global problem of fake news transparent and aids collaboration among regulators from different nations, external entities, media speech hosts, and other stakeholders to develop and implement laws and best practices to address it.

2. Brief History in U.S.

Reputation can be divided into individual, national, and collective reputation. The right of reputation discussed in this Article refers to the good social evaluation that an individual expects to obtain. In medieval European chivalric culture, reputation was equated with the honor of the nobility. The nobility could even fight for their honor. This situation lasted until the French Revolution and the western North American frontier period. With the establishment of the modern political and legal system, people no longer use dueling and other forces to protect their reputations.

The United States is recognized as the country with the highest degree of freedom of speech today. The right to protect one's reputation often conflicts with citizens' right to freedom of speech. However, Public figures have less protection in this area, as their lives and actions are often considered newsworthy and can be reported on by the media. The main reason is that they have more immediate means of self-help and respond to criticism or falsehoods via more accessible access to media. (See *Gertz*.)

This right of Free speech comes from The First Amendment of the U.S. Constitution. The history of the First Amendment to the U.S. Constitution is also the story of the American citizen's struggle for freedom of expression. The First Amendment states that "Congress shall make no law abridging the freedom of speech." [1] But it does not mean there has no boundary to citizens' speech. Just seven years after the First Amendment was enacted, the United States Senate enacted the Seditious Act to restrict speech that concerns government and officials.

But then *New York Times v. Sullivan* turned that around. In *Sullivan*, The New York Times ran an advertisement for the civil rights movement in the southern United States, reporting on police repression of student protests. *Sullivan*, a local police officer, sued the New York Times for defamation, which was upheld by an Alabama state court.

The New York Times then appealed to the federal Supreme Court, And the state court's decision was reversed. With *Sullivan*, The Supreme Court took the consideration of freedom of speech, changed the liability principle and the allocation of the burden of proof for the truth, injected the spirit of the Constitution into the traditional defamation law,

and endowed the public speech critical of public officials (a person in a position of public trust) with special protection. In *Sullivan*, the test of actual malice (Legal requirement for Public officers or Public figures when they file suit for libel) was established, and essentially ended the idea of "seditious libel" in America. The immediate consequence is that the press is free from libel action. [2] The speech criticizing public officials' official duties should be protected first, and their right to reputation can be violated in this case. Three years after the *Sullivan* case, the Supreme Court extended the application from public officials to public figures. For this reason, Public figures must prove actual malice of defendant in defamation cases. So it is much harder for a public figure to win a libel suit in the United States than it is for a private individuals.

In the age of the Internet, the definition of public figure extended to the Internet influence and other celebrity. The United States is the birthplace of online technology and the first country to be harmed by online defamation. In recent years, with the rise and growth of social media such as Facebook, Twitter, and Instagram, the Internet has replaced traditional media as the primary site of defamatory information.

3. Fake News-Terminology and Participants

"Fake news" as a phenomenon spans the globe and dates back centuries. As the source of focused concern in the United States, however, fake news as a concept is quite modern and, even so, is ill-defined. Watchdog websites used the fake news label before the 2016 presidential election to identify misinformation, meaning false information, in news stories and other places across the internet. Their research uncovered the fake news subset of disinformation, meaning falsehoods deliberately disseminated to serve the purposes of the distributors. Then, the 2016 election moved Donald Trump into the White House, who popularized the fake news label in a third variation as rhetoric describing information offered by journalists or news organizations he viewed as enemies for the purpose of undermining their credibility. This third variation coopts the descriptive term as advocacy against the possibility of non-biased journalism, or, in a more extreme version, against the possibility of objective truth and becomes an item of misinformation or disinformation itself. Misinformation, disinformation, and the dishonest labeling of truthful news stories as fake news are harmful and, in many applications, overlap and interact symbiotically. "Fake news" as the focus of this Report thus encompasses all three variations in meaning. This Report will hereinafter refer to misinformation as the most inclusive term. [3]

Recent American experiences with the spread of misinformation identify the components of the phenomenon, which signal the appropriate targets of regulatory interventions. First, there is the speaker. Russian operatives intervened in the 2016 presidential election by planting false information on social media. Second, there is the media platform. Operatives relied on platform policies and technologies, such as paid-for "boosted advertising," human-simulating bots, and amplifying algorithms, to spread the false speech. Third, there are the recipients-so-called "useful idiots"-who view the claims and spread them, wittingly as false or unwittingly. While the label is hardly flattering, it appropriately identifies speech recipients as crucial

participants in the spread of misinformation and appropriate targets of regulatory interventions to stem it. A small investment by the Russian instigators yielded hundreds of millions of shares. [4]

4. The Free Speech Guarantee

Regulation to stem the spread of misinformation must occur within the complex structure of the U.S. Constitution's free speech guarantee. Regulations may take the form of restrictions of false speech. But, because the Constitution severely limits the government's ability to aim at the content of speech so directly, the government must often turn to less direct means, such as requiring speakers to add information to their speech or regulating media platforms to encourage them to broadcast diverse viewpoints or not to broadcast misinformation.

Because these indirect efforts involve regulating truthful speech, the entire, and complex, free speech structure provides important background to the government's authority to regulate to prevent the harms caused by false speech. This Part will provide a brief overview.

The Free Speech Clause provides, "Congress shall make no law abridging the freedom of speech, or of the press." Although the words say "Congress," the United States Supreme Court has held the free speech guarantee to restrict the actions of all government agencies and officials, across the branches of government-legislative, executive, and judicial-and through the levels of government-federal, state, and local. "Speech" includes information spoken and written, art, music, symbolic expression, and any other form of communication across all types of media. [5]

HOLMES V. LOVE

Courtney Love, former lead singer of Hole and widow of Nirvana frontman Kurt Cobain, was a client of Holmes. Holmes had been hired to handle a fraud case against the administrator of Cobain's estate. Holmes filed a defamation lawsuit against Love after he tweeted, "I was so devastated when Attorney Holmes in San Diego was paid off." The case is believed to be the first trial in the U.S. involving Twitter defamation charges. Holmes was considered a "limited purpose public figure" due to her relationship with Love, so she needed to prove that Love acted with "actual malice." In her testimony, Love claimed that she intended the tweet to be a direct private message and deleted it as soon as she realized it had been made public.

In 2014, the court found that Holmes had failed to prove by "clear and convincing evidence" that Love "knew that her statement was false or doubted its veracity" and, therefore, had failed to prove actual malice

FAKE NEWS – 'PIZZAGATE' SHOWS HOW FAKE NEWS HURTS REAL PEOPLE

In November 2016, a week before the US presidential election, someone tweeted that Hillary Clinton was a core member of a pedophile ring. Rumors then continued to spread via social media, as did repeated accusations by right-wing talk show host Alex Jones that she was involved in child abuse, and that her campaign chairman, Jones, in a YouTube video referred to "all the children that Hillary Clinton has personally murdered, split and raped." The video was uploaded to the Internet four days before the election and was viewed more than 400,000 times.

Even after Trump's victory - and despite the New York Times and Washington Post refuting the lies - the story continued to go viral. Comet Ping Pong restaurant regularly

receives abusive and threatening harassing phone calls. When the restaurant manager sought help from the Washington police, he was told the rumors were constitutionally protected speech. Jones' comments about Clinton undoubtedly involved defamation, and she could have filed a civil suit against him. However, such an approach is bound to be time-consuming and laborious, and in the United States, court hearings can take years to complete.

JOHNNY DEPP/AMBER HEARD ONLINE DEFAMATION TRIAL

The Washington Post published an op-ed by Depp's ex-wife, Heard, in which she described herself as a survivor of domestic and sexual violence. The article did not name Depp, but Depp accused Heard of slandering him for abusing her and ruining his reputation and career.

Heard subsequently filed a counter-suit, claiming the Washington Post for \$100 million.

The jury found that Heard made the statement with "actual malice," which is required to recover damages for defamation where the purported victim is a public official or public figure and the alleged defamation relates to a matter of public concern. In order to prove "actual malice" in connection with a defamation claim, the plaintiff must show that the statement was published with knowledge that it was "false or made with reckless disregard of whether it was false or not." However, "the actual malice standard does not measure malice in the sense of ill will or animosity, but instead the speaker's subjective doubts about the truth of the publication."

5. Who Has Liability for Online Defamation Cases in the U.S.?

A defendant in a traditional defamation lawsuit may be the author of the information (the person who made the defamatory statement). "Publishers," such as newspapers, exercise significant control over published content and are subject to strict liability. "distributors," such as bookstore owners, which distribute content without having control over it and are liable only if they knew or had reason to know about the defamatory nature of the publication. "common carriers," such as telephone companies, which only transmit information and are not liable for defamation. Similar to traditional defamation, the defendant of online defamation cases also can divide into author, publisher, distributor, and common carrier. Author (Internet users who posted defamatory speech, forwarders, and commenters of defamatory content on the Internet can also be held liable for defamation) is an Internet user who publishes defamatory information about public figures on the Internet. Due to the virtual nature of the Internet, which differs from the particular characteristics of the speed of dissemination of traditional media, most Internet users choose to publish defamatory information anonymously. Publishers can be online magazines or newspapers that publish the content. In online defamation cases, a distributor refers to any third-party individual or organization that republishes, shares, or disseminates defamatory content, which can include websites, social media platforms, search engines, or any other entity that plays a role in distributing the defamatory material. The internet service provider or other organization that provides access to the Internet could be the common carrier in online defamation cases. Although the classification of the subjects of liability for online defamation and traditional defamation

are roughly the same, the manner of liability is indeed very different.

There is a distinction between a publisher and a distributor in U.S. online defamation Law. A publisher, such as a newspaper or other entity with editorial control over the information they sent out, can be found liable if it meets traditional liability and has acted negligently. A discriminator, on the other hand, is a person or institution that passively continues to disseminate existing information without knowing that the content of the data is unlawful and that it is unlikely to make any changes to the content in the course of its offering. The court will generally not rule that they are responsible for the information for their passive communication of the data. They are not liable for defamatory statements in the media unless they continue to put it on sale despite an officially issued injunction.

6. Conclusion

The ongoing tension between online defamation laws and First Amendment protections reflects a fundamental struggle in American jurisprudence-how to preserve free speech in the digital age while preventing the spread of damaging falsehoods. The internet has democratized communication but has also made defamation more pervasive, forcing courts to reinterpret long-standing legal doctrines. Landmark rulings like *New York Times Co. v. Sullivan* remain foundational, yet the scale and anonymity of online discourse complicate their application.

Current legal protections, particularly Section 230, have been both praised for fostering free expression and criticized for enabling unchecked harm. While some argue for stricter platform accountability, others warn that excessive regulation could suppress legitimate speech. The solution may lie not in sweeping reforms but in nuanced adjustments-such as refining the definition of defamation for online contexts, encouraging faster dispute resolution mechanisms, and promoting digital literacy to reduce the spread of misinformation.

Ultimately, the law must evolve to address new challenges without eroding constitutional freedoms. Striking this balance will require careful consideration of competing values: the right to speak freely and the right to protect one's reputation. As technology continues to reshape communication, courts and legislators must remain flexible, ensuring that legal standards adapt to the realities of the digital world while upholding the principles of justice and free expression.

References

- [1] Anthony Lewis, *Freedom for the Thought That We Hate: a Biography of the First Amendment* (Basic Books 2) (2009). 17-19.
- [2] Zejin Yao, *Public criticism and reputation protection in China*. (2013).12-15.
- [3] Xiang Luo, *Path Choice and Reflection on the Criminal Law System of Cyber Violence with the Splitting of Insulting Offense*. (2024). 286-290.
- [4] Daxton R. Stewart, *Social Media and the Law: a Guidebook for Communication Students and Professionals* (Routledge) (2017)
- [5] Francis D Cogliano, *Thomas Jefferson: Reputation and Legacy* (University of Virginia Press) (2008)