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On the Boundary Setting and Legal Regulation of Free-dom of Speech on the Internet

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Abstract

With the advent of the information age, online freedom of speech has become an extension of freedom of speech in cyberspace. The massive internet user population has made the protection of rights and the regulation of power concerning online freedom of speech a significant issue. This article discusses the current legislative landscape of regulating online freedom of speech in China from two perspectives: the existing legislative framework in the online domain and the prominent issues that urgently require resolution. It further extends to the delimitation and legal regulation of online freedom of speech. Online freedom of speech is not beyond the reach of law and must be exercised without infringing on public interests, public order, good customs, or individual rights. The legal regulation of online freedom of speech should adhere to principles such as the clear and present danger principle, the actual malice principle, and the content-based control principle to ensure a balance between freedom of speech and legal liability. The government should establish fair standards for balancing interests, strengthen legislative research on new internet technologies and applications, ensure the legislative system remains up-to-date, protect online freedom of speech, and simultaneously purify the online order and regulate the cyber environment.

Keywords

Online freedom of speech; delimitation; cyberspace; legal regulation; balancing of interests

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1 Introduction

With the advent of the information age, the rapid iteration of digital information technologies has shifted a considerable part of the exercise of freedom of speech from the physical world to cyberspace. According to the 54th Statistical Report on China's Internet Development, as of June 2024, the number of internet users in China reached nearly 1.1 billion (1,099.67 million), representing an increase of 7.42 million compared to December 2023, with an internet penetration rate of 78.0%.While individuals utilize the internet to express their opinions and engage in social interaction, various forms of disorderly online expression—such as malicious insults, doxxing, scandal-related incidents, and online rumors—have emerged and gradually accumulated into a social phenomenon. In contrast, legislation concerning freedom of expression in cyberspace has lagged behind the rapid development of the internet in China. The sheer scale of internet users has made the protection of online freedom of speech and the regulation of related powers an urgent and significant issue. Therefore, it is particularly important to discuss the legal limits of regulating online freedom of speech.

2 From Freedom of Speech to Online Freedom of Speech

Freedom of speech is a universal and fundamental right enjoyed by individuals in a free society. Its existence provides the possibility for the protection of other rights and democratic freedoms. The Oxford Dictionary of Law defines freedom of speech as the right to express one's opinions and ideas through various forms of media. Article 19 of the Universal Declaration of Human Rights, one of the United Nations' fundamental legal instruments, summarizes freedom of speech as follows: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." In other words, freedom of speech is the liberty to express thoughts and opinions. It is often referred to as the "first right" and "the most important, potentially powerful, and dynamic resource of humanity." Article 35 of the Constitution of the People's Republic of China stipulates that citizens of the People's Republic of China enjoy freedom of speech, publication, assembly, association, procession, and demonstration. As a fundamental human right, freedom of speech encompasses three dimensions: inherent right, statutory right, and de facto right. As an inherent right, freedom of expression is a basic human right that should be recognized, respected, and protected by society and the state; as a statutory right, it is established at the level of constitutional and legal provisions; as a de facto right, it refers to the rights actually enjoyed by individuals in real-life contexts.

Online freedom of speech, as an extension and development of freedom of speech in cyberspace, refers to the autonomous state in which citizens—using internet platforms as a medium—have the right to disseminate their thoughts, claims, opinions, etc., without violating prohibitive provisions of laws and regulations, and free from interference by others. It similarly encompasses three dimensions: inherent right, statutory right, and de facto right. These dimensions are interconnected and mutually reinforcing, collectively constituting the complete connotation of the right to freedom of speech in the digital age.First, as an inherent right in cyberspace, online freedom of speech means that every internet user should enjoy the right to freely express opinions, viewpoints, and information online. This right ought to be recognized, respected, and pro-

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tected by online communities, platform operators, and national laws. It reflects that in the digital age, fundamental human rights should not be diminished or deprived due to technological or platform constraints but should instead receive broader attention and protection.Second, as a statutory right, online freedom of speech requires that relevant laws and regulations clearly define and protect users' freedom of expression. This includes formulating and refining the legal boundaries of online speech to ensure that users can freely publish opinions, exchange ideas, and share information in compliance with the law, without unreasonable restrictions or illegal suppression. Simultaneously, the law should provide necessary remedial mechanisms to ensure that users can protect their rights in accordance with the law when these rights are infringed.Finally, as a de facto right, online freedom of speech is manifested in the actual freedom of expression that users enjoy in their daily lives and online activities. This requires platform operators, internet service providers, and relevant authorities to actively take measures to ensure an open and diverse online environment, promoting the free flow of information and pluralistic expression. Meanwhile, users should also consciously abide by online rules, exercise their freedom of speech rationally and civilly, and collectively maintain a healthy and orderly cyberspace.

3 Legislative Status of Online Freedom of Speech Regulation in China

The unique expressive carrier and novel communicative space of the internet have given rise to online freedom of speech. China's current legislative landscape for regulating online freedom of speech has established a relatively comprehensive and well-established legal framework. However, it requires continuous development and refinement to adapt to evolving digital environments and societal needs. The legal regulation of online speech still has a considerable journey ahead toward maturation.

3.1 Current Legislative Framework in Cyberspace

As of now, China has enacted over 150 laws and regulations governing cyberspace, forming a comprehensive legal system rooted in the Constitution, supported by laws and regulations, based on traditional legislation, and structured around specialized internet statutes. In regulating online freedom of speech, China emphasizes not only legislative measures but also strengthens the integration of judicial and administrative regulation. Through judicial adjudication and administrative enforcement, multiple mechanisms collectively maintain order in online expression.In response to the prominent issue of online violence during a certain period, which drew strong public concern, the Supreme People's Court, together with the Supreme People's Procuratorate and the Ministry of Public Security, issued the Guidelines on Lawfully Punishing Online Violent Crimes in September 2023. These guidelines further clarify the prosecution standards and case handling requirements for crimes of online insult and defamation. To address issues such as online rumors and personal information infringement, the Cyberspace Administration of China formulated the Provisions on the Ecological Governance of Online Information Content to promote positive energy and combat illegal information; enacted the Provisions on the Governance of Online Violent Information to curb and combat online violence; and established the Provisions on the Management of Internet User Account Information to tackle the misuse of online accounts for spreading rumors and infringing on users' legitimate rights and interests.China's legislative regulation of online freedom of speech covers not only traditional areas such as

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public security management and criminal law but also extends to civil law, personal information protection law, and other aspects, forming a comprehensive and multidimensional regulatory system. In strengthening personal information protection, laws and regulations such as the Personal Information Protection Law of the People's Republic of China have been enacted, establishing a full-chain protection system for personal information rights. The Regulations on the Network Protection of Minors and the Provisions on the Online Protection of Children's Personal Information provide clear stipulations for safeguarding the legitimate rights and interests of minors, while further enhancing enforcement efforts to address online bullying, internet addiction, and illegal and harmful information.

3.2 Urgent Issues Requiring Resolution

3.2.1 Challenges in Coordinating the Legislative Framework and Legal Provisions

Although China has enacted multiple laws and regulations involving the regulation of online freedom of speech, the completeness of the legislative framework remains to be enhanced. On the one hand, some legal provisions may appear outdated due to the changes of the times, failing to fully adapt to the rapid development of internet technology and the continuous evolution of social media platforms. On the other hand, there may be certain degrees of overlap or gaps between different laws and regulations, resulting in gray areas or conflicts in legal application in judicial practice. Therefore, it is an important task at present to strengthen the systematicness, foresight, and coordination of the legislative framework and ensure effective cohesion between various laws and regulations.

3.2.2 Non-Standard Practices in Judicial Adjudication and Administrative Enforcement

During judicial adjudication and administrative enforcement processes, irregular and unfair practices such as inconsistent case handling standards, non-standardized enforcement procedures, and abuse of discretionary power occur from time to time. These phenomena not only undermine the authority and credibility of the law but also impair the effectiveness of regulating online freedom of speech. For instance, although China has established provisions regarding information disclosure, their implementation remains unsatisfactory. Many departments strictly classify information that should be publicly accessible as confidential. In such circumstances, the reduced access to information for internet users naturally affects the quality of their online expression. Due to non-standardized and imperfect relevant systems, coupled with influences from traditional power culture and other factors, government agencies are prone to irregular and arbitrary practices when regulating online information. Some negative information concerning the government is susceptible to censorship and restrictions.

3.3 The Balancing Challenge Between Protection and Restriction of Online Freedom of Speech

How to effectively curb illegal activities such as online rumors, defamation, and infringement while protecting citizens' right to online freedom of speech represents a significant challenge in current regulatory practices. China's existing provisions related to online speech predominantly prioritize security and order in their legislative values, focusing heavily on cyber governance and network information security, while

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providing insufficient protection for citizens' freedom of speech. For example, Article 36 of the Tort Liability Law offers only general provisions regarding the protection of online freedom of speech, and the tort liability of online speakers—particularly internet service providers—easily constrains citizens' freedom of expression and space for public oversight. On one hand, excessive restrictions may suppress diversity and innovation in speech, infringing upon fundamental rights; on the other hand, laissez-faire approaches could lead to the deterioration of the online environment, affecting social stability and public interests. Therefore, exploring and refining the balancing mechanism between protection and restriction of online freedom of speech not only tests legal wisdom but also constitutes a crucial aspect of achieving modernized governance in cyberspace.

4 Delimitation and Legal Restrictions of Online Freedom of Speech

Compared to the value of traditional freedom of speech, the value of expression in cyberspace tends to exhibit greater depth, granularity, and comprehensiveness. The timeliness of information dissemination and the bidirectional nature of information interaction on the internet significantly expand the opportunities for citizens to participate in public policy decision-making. Through network technologies that differ from traditional media, citizens can directly monitor relevant public events, public decisions, and government administrative enforcement actions, enabling direct dialogue and information interaction between citizens and public authorities, thereby enhancing the enthusiasm for civic oversight.Due to three defining characteristics of online freedom of speech—the vastness and anonymity of its actors, the convenience and interactivity of expression, and the extensive and complex impact of speech—restrictions and penalties that were relatively straightforward in the era of traditional speech have become more challenging to enforce in the online environment. Consequently, clarifying the boundaries of online freedom of speech and robustly safeguarding citizens' freedom of expression online through legal means is particularly crucial. While protecting freedom of speech, it is essential to establish reasonable boundaries to constrain and limit online expression, thereby achieving an equilibrium between freedom of speech and social order as well as public interests.

4.1 Delimitation of Boundaries

Online freedom of speech does not entail the unlimited right to express any statement. Without clear boundaries, illegal acts such as malicious rumor-mongering, defamation, incitement to hatred, and disclosure of state secrets may arise. These actions not only harm personal reputation and privacy but may also trigger social unrest, disrupt public order, and undermine public interests.It must be emphasized that the exercise of online freedom of speech should be based on ensuring no infringement of public interests, public order and morals, or individual rights and interests.

4.1.1 Prohibition of Harm to National Security

Citizens shall not use online platforms to disseminate speech that incite secession, undermine national unity, or subvert state power through means such as rumor-mongering or defamation. With the continuous evolution of global economics and politics, the concept of national security has shifted from traditionally resisting external threats in political and military domains to safeguarding a nation's core survival interests.

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In its modern context, national security encompasses multiple domains including politics, economy, culture, and ecology.Instability in any of these domains may jeopardize national security. Uncontrolled speech, when amplified through sensationalism, can equally become a destabilizing factor. Without national security as its foundation, the protection of citizens' individual interests becomes illusory.

4.1.2 Respect for Public Order and Good Morals

Public order and good morals refer to the general order and common morality essential for the existence and development of a state and society. Civil subjects shall conduct their activities in compliance with public order and good morals, and must not violate these fundamental norms. Although not explicitly stipulated in statutory form, public order and good morals function as normative constraints on human behavior, much like legal rules. Even in the virtual realm of the internet, online users' conduct remains subject to the constraints of real-world public order and good morals.

4.1.3 Prohibition of Infringement upon Individual Rights

The exercise of freedom of speech must not violate the lawful rights and interests of others. Firstly, freedom of speech shall not infringe upon the right to privacy. The Tort Liability Law of the People's Republic of China explicitly recognizes the right to privacy as a civil right and interest, which shall not be violated; otherwise, the violator shall bear tort liability according to law. In contemporary social life, it is generally accepted that public figures enjoy a narrower scope of privacy protection than ordinary citizens, specifically referring to personal information unrelated to their profession or public role. Under specific circumstances where public interest conflicts with individual privacy, it may be necessary to sacrifice certain personal interests. The public may justifiably disclose private matters of others based on principles such as the "public interest and legitimate public concern defense," the "principle of diminished privacy expectation for public officials and figures," or the "consent of the concerned party principle." Beyond these exceptions, no one may arbitrarily disclose another's privacy under the guise of freedom of speech.Secondly, freedom of speech shall not violate the right to reputation. Reputation constitutes the comprehensive societal evaluation of a citizen's or legal person's character, competence, credibility, honor, achievements, status, and other attributes—i.e., the objective perception of their social value. The right to reputation encompasses two aspects: firstly, the right of citizens and legal persons to protect the social evaluation they enjoy and to benefit from it; secondly, the right to seek judicial redress against infringement upon their reputation. The Supreme People's Court's Reply to Certain Issues Concerning the Trial of Cases Involving the Right to Reputation and Interpretation on Certain Issues Concerning the Trial of Cases Involving the Right to Reputation provide clear provisions for the protection of citizens' right to reputation, enumerating specific acts that constitute defamation.

By establishing these boundaries, individuals are encouraged to express themselves more rationally and responsibly, achieving a balance between rights and responsibilities. This guides online discourse toward a positive and healthy direction, enhances the overall quality of cyberspace, and is of significant importance in protecting minors from harmful influences. The exercise of freedom of speech within the legal framework can prevent abuse and infringement upon the rights of others, while also providing clear legal basis for judicial authorities to ensure the lawful punishment of illegal online speech.

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4.2 Legal Regulation of Online Freedom of Speech

4.2.1 Principles Governing the Legal Boundaries of Online Freedom of Speech

In academic discourse, three fundamental principles are generally recognized regarding the legal boundaries of regulating online freedom of speech: the clear and present danger principle, the actual malice principle, and the content-based regulation principle.The clear and present danger principle first appeared in the 1919 case of Schenck v. United States. It addresses whether the U.S. Constitution and laws extend protection to speech when such expression poses a potential danger to the established social order. This principle emphasizes not only whether a certain speech act is genuinely harmful, but also the degree of its harmfulness and its immediacy in time. China's legislative regulation of online freedom of speech also embodies the clear and present danger principle. Article 12 of the Cybersecurity Law of the People's Republic of China stipulates that all organizations and individuals using the internet must comply with the Constitution and laws of China, respect social morality, observe public order, and must not disseminate online speech that seeks to overthrow the socialist system or incite subversion of state power.The actual malice principle originated in the landmark case of New York Times Co. v. Sullivan. ”Actual malice” refers to situations where one knowingly makes or publishes false statements, or acts with reckless disregard for their truth or falsity, with the sole purpose of defaming public officials in connection with their official duties. China's legislative framework restricting freedom of speech also reflects the actual malice principle. Article 41 of the Constitution of the People's Republic of China provides that citizens have the right to criticize and make suggestions regarding state organs and their functionaries, and to lodge complaints, charges, or accusations against their unlawful or negligent conduct. However, it explicitly prohibits fabricating or distorting facts for the purpose of false accusation or framing.The content-based regulation principle holds that specific categories of speech may be expressly restricted or prohibited by law on the basis of their content. Under this principle, expressions that endanger national security or social order, as well as speech that constitutes clear actual malice, such as insults and defamation, are explicitly prohibited by law. Chinese legislation concerning the regulation of speech also reflects the content-based regulation principle. Article 51 of the Constitution of the People's Republic of China stipulates that in exercising their freedoms, citizens of the People's Republic of China must not infringe upon the lawful rights and interests of the state, society, or other individuals.

4.2.2 Pathways for the Legal Regulation of Online Freedom of Speech

In view of the prominent unresolved issues surrounding online freedom of speech in China, the government should establish relatively fair standards for the balancing of interests and flexibly coordinate the interaction between freedom of expression and other protected rights. It should also systematize the existing legal framework for online speech regulation and unify legislative standards, while emphasizing the integrated use of comprehensive regulatory measures combining legal instruments and network technologies. Specifically, this entails extending rights enshrined in the Constitution—such as freedom of expression, the right to privacy, and the freedom of association—into cyberspace. Given the rapid development of internet technologies and applications, legislative research in these areas must be strengthened, with relevant laws and regulations revised and improved in a timely manner to ensure that the legal framework remains

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both systematic and adaptable to technological progress.At the same time, greater effort must be made to enhance cohesion and coordination among different laws to avoid legal conflicts and gaps. Legislative interpretations by the Standing Committee of the National People's Congress, as well as judicial interpretations by the Supreme People's Court and the Supreme People's Procuratorate, serve to supplement legislative shortcomings. A combination of rigid (clear rules) and flexible (discretionary) measures is necessary to better achieve the objectives of purifying the online order, regulating the cyber environment, and protecting freedom of expression.Legislation should also pay close attention to the technical characteristics of the internet and impose restrictions only to the minimum necessary extent, preventing the pursuit of legitimate objectives through disproportionate means. In the process of regulating constitutional rights such as online freedom of speech, any technological measures employed must also undergo constitutional scrutiny to justify their legitimacy.

5 Conclusions

The rapid advancement of the information age and the continuous emergence of new technological tools have inevitably exerted significant impacts on traditional human rights and existing legal frameworks. Through a layered analysis of online freedom of speech—from its status as an inherent right, to a statutory right, and ultimately to a de facto right—it becomes evident that online freedom of speech, as an extension of freedom of speech into cyberspace, has grown increasingly important.However, the anonymity, convenience, and interactivity of cyberspace also create conditions for the potential abuse of online freedom of speech, posing risks to social stability and the protection of individual rights. Thus, the question of how to safeguard citizens' fundamental human right to freedom of expression while at the same time fostering a healthy and orderly online environment remains a long-term challenge. It is therefore particularly important to delineate the boundaries of online freedom of speech and to employ legal instruments to ensure its proper regulation.In response to these issues, this paper proposes that the legal regulation of online freedom of speech should be guided by certain principles and pathways. These include establishing fair standards for the balancing of interests, strengthening legislative research on emerging internet technologies and applications, and emphasizing the integrated use of comprehensive regulatory measures. Such measures aim to achieve a balance between online freedom of speech and the protection of social order and public interests. The march of history continues forward, and the legal regulation of online freedom of speech must likewise be continuously refined and developed. As internet technologies evolve at a rapid pace, new legal issues and challenges will inevitably arise. This requires us to maintain keen insight and an innovative spirit, constantly advancing the ongoing development and adaptability of the legal framework in this field. At the same time, greater efforts should be devoted to raising awareness of the importance of online freedom of speech through public education, thereby enhancing the public's legal consciousness and ethical literacy, and jointly fostering a harmonious and healthy online environment.

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