

A Review of the Controversy between Supporting Internet Censorship and Advocating Online Freedom of Speech

Li-hsing Wei

Department of Communication,
State University of New York-Brockport

E-mail: weilhsing@hotmail.com

ABSTRACT

This paper explores the contradictory interrelationship between cyber-laws and cyber-liberties by focusing on one of the crucial legal issues pertaining to online freedom of speech in Taiwan – the legitimacy and appropriateness of decriminalization of online defamation. Utilizing an online libel lawsuit as an example, the present paper interprets the appropriateness of applying the criminal defamation law to punish unlawful online expression. From the free speech perspective, this paper specifically deals with two centered questions: 1) Should online libel be a cyber-crime? 2) Is it legitimate and/or appropriate to apply the criminal defamation (libel) law to the cyberspace context? This paper claims that it is either unnecessary or inappropriate to treat the online wrongful or unlawful expression as a criminal crime. Despite the fact that the ease of Internet access offers encouragement to those who believe that more voices should be heard in democracy's "marketplace of ideas," at the same time, individuals have to be responsible for their words in the cyberspace as well as in the real world. Since the conflict between advocacy of online freedom of expression and supporting for Internet

copyright has no easy solutions and is likely to continue as technologies, social and political contexts change; rather than strictly censoring online expressions, one of the practicable ways to resolve this challenge is to balance between cyberspace promise of free speech and essential censorship of objectionable contents.

Keywords: cyber-law, Internet censorship, online freedom of speech, online libel

[收稿] 2001/10/24; [初審]2001/11/21; [接受刊登]2001/12/24

.Since Taiwan's National Information Infrastructure (NII) was initiated in June 1994,¹ the growth and prevalence of the Internet in Taiwan in the late 1990s has been an astonishing phenomenon. According to an Executive Yuan report, more than 3.9 million people in Taiwan have Internet accounts² (though a report by Taylor Nelson Sofres Interactive put the nation's total amount of Internet users at 5.7 million) (Asia Internet News: Aug. 16, 2000). While most people in Taiwan benefit from the high-speed and convenience of Internet use, some find a variety of social problems are generated, such as e-fraud, dissemination of the online pornographic materials, rumors, uncertain data security, invasion of personal privacy, and personal insults and threats exchanged over networks. With the increasing volume of content available on the Internet, most cyber-legal issues are linked to the conflict between the necessity and appropriateness of regulating cyberspace – some policymakers in Taiwan urge the government to establish an agency to regulate on-line activities;³ and approximate protection of individual's rights, personal privacy, and free speech – some social scholars and legal experts believe

¹ Taiwan's national information infrastructure (NII) was initiated in June 1994, right after United States Vice President, Albert Gore, announced the U.S. NII project in September 1993. An NII Special Project Committee was established under the Executive Yuan¹ to support the development of information and communication.² The various projects underway include "setting up a high-speed, broadband, backbone network, integrating cable, wireless, and satellite networks with an advanced telecommunications network, and the development of network content, applications, and services" (STLC). In the past six years, significant progress in NII development has been applauded, such as the island-wide deployment of a high-speed broadband network and the application of distance learning, TeleMachine, VOD (video-on-demand) and electronic library.

² According to Pro QC Studios sales manager, Chris Cottorone's interpretation, the Executive Yuan figure is determined by the number of ISP (Internet Service Provider) accounts that people or companies have paid for, but more than one person could be using an account. (Taipei Times: Aug. 2, 2000).

³ For instance, Yu Cheng-Tao, a legislator and member of the opposition Democratic Progressive Party, thinks that the government should establish an agency responsible for regulating online commercial transactions along the lines of the Federal Trade Commission in the United States (Asia Internet News: Aug., 1999).

that overly-strict laws may restrict personal rights and freedom and impose the development of the Internet's industries.

Based on the controversial issue raised above, this essay explores the contradictory interrelationship between cyberlaws and cyberliberties by focusing on crucial legal issues pertaining to online freedom of speech in Taiwan – the controversy between criminalization and decriminalization of defamation. From the free speech perspective, this article attempts to deal with two centered questions. First, should online libel be a cyber-crime? Second, is it legitimate and/or appropriate to apply the criminal defamation (libel) law to the cyberspace context? Through a review of an online libel suit, the present paper aims to interpret the appropriateness and legitimacy of using the criminal defamation law as a means to regulate and punish wrongful on-line expression.

.Supporting Internet Censorship versus Advocating Online freedom of Expression

The invention of personal computers (PC) and network multimedia has brought about new ways of interaction among people around the world, creating alternative distribution channels for preexisting content in all existing media (i.e. newspapers, broadcasting, and other communication services). This new technology is substitutable for all existing media – which potentially poses a competitive threat for every provider of telephony, broadcasting, and other communication services (Metivier-Carreiro & LaFollette, 1997). Furthermore, for anyone who has a computer, modem or cable modem, and a telephone line, “the Internet is accessible to everyone, all the time, around the world” (Carter, 1997:3). When people access the Internet, they enter the electronic world or “cyberspace,” which was properly defined as a new world in which “the

global traffic of knowledge, secrets, measurements, indicators, entertainment, and alter-human agency takes on form, sights, and sounds”⁴ (Benedikt,1991; Portelli & Meade,1998:4). Despite that cyberspace is now part of the routines of our everyday life, it is fundamentally different from the virtual world. Cyberspace allows users, both speakers and listeners, to mask their identities (Portelli & Meade, 1998). As such, individuals in cyberspace can transmit and receive messages without revealing anything about their identities. Furthermore, computer networks enable users to convey any sort of messages (no matter appropriate or inappropriate) to unlimited numbers of audience. For instance, terrorists may find the Internet an easy, quick, and powerful tool to transmit persuasive messages to incite illegal conducts. The unique nature of cyberspace (accessibility, prevalence, and allowing users to mask identities) leads to both positive and negative results – it not only enables unlimited exchange of information and knowledge but also increases the probabilities of conveying indecent materials, especially potentially harmful expressions (i.e. hate speech and bomb making manuals).

Under the protection of constitution in democratic countries, Internet users are alleged to have the freedom to select the information they want to view and provide or receive information. Nevertheless, recently human rights activists have paid more attention to online freedom of expression because of a global trend to censor the Internet. For instance, in the book *The Internet in the Mideast and North Africa: Free Expression and Censorship*, Eric Goldstein noted (1999:7),

⁴ Michael Benedikt, the author of *Introduction to cyberspace: First Steps*, describes the Internet and cyberspace as a new universe, a parallel universe created and sustained by the world’s computers and communication lines. A world in which the global traffic of knowledge, secrets, measurements, indicators, entertainment, and alter-human agency takes on form, sights, sounds, presence never seen on the face of the earth blossoming in a vast electronic night.

“The rights to freedom of expression, information, privacy, and free association under international law apply as much to online communication as to other forms of individual communication. While international treaties and instruments do not address electronic speech specifically, their assertion of the right to ‘seek, receive, and impart information and ideas through any media and regardless of frontiers’ is clearly applicable to expression via the Internet.”

Nevertheless, with an increasing concern that the benefits of access to information will outweigh the hazards⁴ that technological development generates, especially the hazard of exposure to undesirable aspects of the Internet (Varlejs, 1998), some policymakers, social activists, and law enforcement officials call for a need to regulate the cyberspace as well as the real world. The advocates of Internet censorship argue that it is obligate to “make trade-offs between, on the one hand, individual rights and, on the other hand, public safety” (Strossen, 2000:11). Despite the fact that these advocates admit that Internet censorship may violate the rights of free expression, they highlighted the priority of maintaining social order or moral standards and protecting national and individual security. For instance, in favor of forcible censorship, Carter (1997) suggested that “the Internet’s omnipresence challenges us to create a new legal regime that accommodates a variety of traditional legal issues” (p.1). What Carter meant by this is that the existing laws that govern obscenity, incitement, and defamation do not seem applicable to computer networks. Virtually, out of a concern that specific net-based communication laws that narrow down the definitions of decent/indecent and lawful/unlawful online expressions are indispensable to the rapid changing technological age, some countries had specific legal regulations of online speech, such

⁵ Jo Ann Oravec (2000) identified three major computer hazards that households are encountering, including computer addiction, children’s access to online pornography, and violence (i.e. bomb-making).

as the Communication Decency Act of 1996 in the U.S. and the Communication and Multimedia Act of 1998 in Malaysia¹

Apparently, the conflict between protecting individual rights in terms of on-line freedom of expression and advocating Internet censorship is far from simplification. The standpoint of a policymaker is somewhat opposed to the viewpoint of a liberalist. The argument beyond this issue is – is there a potential need to censor the online activities? In addition, three crucial questions regarding the online free speech issue need to be considered: 1) are the alleged unique dangers of on-line expression exaggerated? 2) who would have the right to control or regulate cyberspace? 3) should network administrators, such as Internet service providers and webmasters, not be subject to the regulations of other existing mass communication laws?

As Goldstein noted, in many countries on-line expression is restricted less by Internet-specific regulations than by pre-existing press codes, defamation laws, and unofficial “red lines” (1999: 3). The current policy of Internet regulations in Taiwan is exactly consistent with what Human Rights Watch observed. On-line expression is regulated under the provision of the Constitution of R.O.C., pre-existing criminal code, civil

⁶. The Communications and Multimedia Act of 1998 in Malaysia, which came into effect on 1st April 1999, provides a regulatory framework to cater for the convergence of the telecommunications, broadcasting and computing industries, with the objective of, amongst other things, making Malaysia a major global hub for communications and multimedia information and content services. The Act repealed the Telecommunications Act 1950 and the Broadcasting Act 1988. The Malaysian Commission for Communications and Multimedia was appointed on 1st November 1998 as the sole regulator of the new regulatory regime. Although regulation in the form of licensing is provided for, one of the cornerstones of the new regulatory framework is self-regulation by the various industries, including the IT and multimedia content industries. To date, two industry forums, the Content Forum and the Consumer Forum, have been established and designated under the Communications and Multimedia Act. These industry forums are in the process of formulating voluntary industry codes to regulate the relevant aspects of the industry (see <http://www.msc.com.my/mdc/infrastructure/cyberlaws.asp>).

code, and revision of related mass communication laws; however, no Internet-specific regulations are enacted only for ruling the violation of on-line expression. In fact, if the government of R.O.C. asserts criminal jurisdiction over all online activities, there is a potential conflict between two profound policy interests – the free development of cyberspace and the needs for effective law enforcement. Specifically, the applicability of the criminal defamation law to the on-line expression has been a crucial issue and received a lot of attention after the increasing adjudications of relevant lawsuits. As such, the rest part of this article reviews a net libel lawsuit and then interprets the appropriateness of applying the criminal defamation law to punish unlawful online expression.

.The Current Policy of Internet Regulations in Taiwan

With the exception of the Computer-Processed Personal Data Protection Law⁵ of 1995, no given provision of laws are made for the

⁷ The Computer-Processed Personal Data Protection Law was enacted in order to regulate offenses against moral rights perpetrated through the wrongful use of computer-processed personal data, and to promote the proper use of such data. Personal data is defined as one's name, date of birth, personal identification number, and other information sufficient to identify a natural person. The law protects the right to: (1) search or read the data, (2) reproduce data, (3) supplement or revise data, (4) stop further processing or use of data; and (5) delete data (but this law, in only covering personal data defined as information which identifies a natural person does not cover information about corporations or other legal entities). The applicability of similar protections for such entities is a question that may have to be addressed at a later stage. Furthermore, there are a number of important limitations in applying the personal data protection law to the Internet. The law states that collection, computer processing, or utilization of personal data by any organization (either public or nonpublic), may be conducted only for a proper purpose or under certain conditions. The wording of this provision only covers public institutions, which refers to legally constituted central or local government bodies that exercise civil authority. However, the provision fails to cover other categories of users including individuals or legal entities whose business activities involve the collection, processing, and use of information available on the Internet. Therefore, if any of these individuals or legal entities misuse personal data via the Internet it may not be possible to regulate them under Taiwan's law. The entities that the law provides can be designated by the

regulation of multimedia content transmitted on the Internet. The application of free speech principles to the Internet is still unclear because Taiwan's laws do not make any specific provision for offense against individual privacy and rights in this context. Despite that the government could rely on existing laws for the punishment of users who ultimately draw material from Internet access that are not inconsistent with the Constitution, and the Criminal Code or Civil Code, the Internet may fall outside the legal definition of media currently codified in Taiwanese law. For instance, although a text transmitted over the Internet may resemble a published work, it is unlikely to meet the definition of a published work under the Publication Law, which defines published work as that which is produced by mechanical or chemical printing.

Recently, with the increase of cyber-related crimes, Taiwan's government is more likely to regulate the content of online information.⁶ A set of 1997 amendments to Taiwan's criminal law made online pornography and libel illegal. Unauthorized alteration or destruction of a Web site is also punishable. In 1998, the Science and Technology Law Center (STLC), an institute for Information Industry, set up a project named "*Combating Cyber Crime Infrastructure of R.O.C.*" to layout a model for combating cybercrimes. The main objective of this project is to review the related laws of R.O.C. and propose legislation or amendment.⁷ There are three kinds of laws that are closely related to the issue of free speech, including:

Ministry of Justice (MOJ).

⁸ The NII Steering Committee has taken the lead by inviting the private sectors and the experts in the fields of law and social science to thoroughly review all the potential legal issues with the consideration of our national heritage in mind. Technological experts are also consulted for the reference of what has been/is being done in other countries (STLC).

⁹ Other proposals for cyber-crime combating including: 1) providing legal advice and assistance to prosecutors and investigative agencies; 2) providing education to judges and prosecutors on internet-related law; 3) helping to implement cyber crime criminal enforcement policy; and 4) seeking cooperation in combating cyber-crimes.

1. The Satellite Broadcasting Law and Cable Radio & Television Law

After the Publication Law⁸ was abolished on January 25, 1999, the Satellite Broadcasting Law and Cable Radio and Cable Television Law became effective on February 3, 1999. The new laws protect subscribers' rights while they also regulate the contents of contracts between system operators and subscribers. Meanwhile, after the Broadcast Radio and Television Law was passed, a four-level classification system for television programming was announced on December 31, 1999, and enacted the following day. The system emphasized regulating the content of violence and sex, which many parents and educators has its negative influence on children and adolescents.

Regulations on the encoded transmission of programs in the restricted category took effect on July 1, 2000. Prior to that, the Government Information Office⁶ (GIO) had notified the related operators to adjust their program production and broadcasts as soon as possible and to complete related measures on encoded systems to meet the related requirements in the Regulations Governing Television Program Classification.

2. Broadcasting and Television Law and Cable Television Law

¹⁰ Taiwan's legislature abolished a 70-year-old Publication Law on Jan. 25, 1999, which was used to tightly control the mass media and suppress political dissent. The cabinet decided in September to do away with the law. Government spokesman Chen Chien-Jen said that the law, first enacted when the Nationalist government was based in Mainland China, is outdated and does not befit a democratic country. Since the lifting of martial law in 1987, the law became a formality. Under the law, which was last revised in 1975, the government was able to deny registration, confiscate printed materials, stop publication, withdraw printing licenses, and impose penalties if a publication was found to "incite internal disorder or foreign aggression." (Asian political news: Jan 18, 1999, http://www.findarticles.com/m0WDQ/1999_Jan_18/53642257/p1/article.jhtml).

After the Broadcasting and Television Law was passed, the Regulations Governing Television Program Classification (RGTPC) took effect on July 1, 2000. Prior to that, “the GIO had notified the related operators to adjust their program production and broadcasts as soon as possible and to complete related measures on encoded systems to meet the related requirements in the RGTPC” (STLC).

As far as the content of programs is concerned, the Broadcasting and Television Law stresses that “broadcasting and television programs must not be detrimental to national interests, incite people to commit crimes, and impair public order or morals” (STLC). In other words, if a broadcast program involves other people or organizations and is detrimental to their interests, the station should not refuse any request from political parties to suspend the program.

3. Article 309 of Criminal Code for Public Insults and Article 310 of Criminal Code for Defamation

Despite that technological experts predicted that the “wild nature” of the Internet would lead to a huge increase in libel cases, few online libel lawsuits have been filed or noticed publicly in Taiwan so far. That does not mean that these cases don't exist or that the issues they raise do not bear noticing. Conversely, the speed and convenience of the Internet for the transmission of data has led to a potential increase of libel cases. Several instances of libel over the Internet have gained considerable notoriety. Consumers who are dissatisfied with new purchases have used the Internet to strongly criticize the vendor and urge others to boycott the vendor. Threats and personal insults exchanged over networks are also very frequent. For instance, a US tampon manufacturer reportedly paid NT\$10,000,000 (US\$328,000) to a Taiwanese woman who sent out e-mails alleging that one of her friends had fallen sick after using the firm's products. The e-mail, which was widely circulated in Taiwan, Hong

Kong, the United States, and Canada, claimed that one of the manufacturer's tampons had contained insect eggs that hatched and afflicted the user. Police in Taiwan located the so-called victim (who knew nothing about her putative illness) and arrested the instigator of the e-mail. The tampon manufacturer decided not to bring charges against the woman, instead offering money in return for a retraction (Asia Internet News: June 14, 2000).

Under the public insults law, the offense is punishable by a fine of less than NT\$300. On the other hand, under the defamation law, the offense of slander, which refers to making public defamatory spoken statements, is punishable by a maximum of one-year imprisonment or a fine of less than NT\$500. Libel, defined as publication of defamatory written words or pictures, is punishable by a maximum of two-years imprisonment or a fine of less than NT\$1000. While dissemination of distorted facts constitute the crime of defamation, the defamation law makes it clear that “expression of opinion” is exempt from any criminal liability as long as the opinion is not made with malice and the matter in question is one of public interest (Taipei Times: Jan. 31, 2001). Thus, despite that truth and fair comment are allowed to be used as defense against libel or slander charges under the law, traditionally, the court requires the defendant to place the burden of proof in defamation cases, which was criticized as depriving them of the so-called privilege against self-incrimination (Taipei Times: July 8, 2000).

.Taiwan’s First Online Libel Suit

1. The Taipei District Court⁹ v. Chuo (1998)

¹¹ The judicial hierarchy in the Republic of China comprises three levels: district courts and their branches at the lowest level that hear civil and criminal cases in the

On June 17, 1998, the Taipei District Court ruled that Chuo, a student in the National Chengchi University who posted an article on the computer bulletin board system (BBS), entitled “Another Form of Rape,” to accuse his professor, Chao, of plagiarism, was convicted for violation of Article 310 of the Criminal Code for defamation. Chuo was sentenced to 55 days imprisonment or a fine of NT\$300 a day. According to the Court, the appellant intended to continue disseminating distorted facts to impair Professor Chao’s reputation. Thus, Chuo’s speech on the BBS was not protected by the constitutional provision of freedom of speech.¹⁰ Chuo appealed against the judge’s decision and argued that the purpose of his remarks was for “public interest” and should be included in the constitutional provision of freedom of speech. However, the judge in the High Court did not accept his defense because Chuo could not find any evidence to prove what he has said was true.

2. Constitutional Interpretations of the Council of Grand Justices¹¹

first instance; high courts and their branches at the intermediate level that hear appeals, as the court of second instance, against judgments of district courts or their branches; and the Supreme Court at the highest appellate level which reviews judgments by lower courts as to their compliance with or violation of pertinent laws or regulations. Thus, issues of fact are decided in the first and second instances, while only issues of law are considered in the third instance. However, there are exceptions to this “three-level and three-instance” system. Criminal cases relating to rebellion, treason, and offenses against friendly relations with foreign states are handled by high courts as the court of first instance, and appeals may be filed with the Supreme Court.

¹² Despite the fact that the Constitution of Taiwan guarantees the right of all citizens to free speech, stating that “the people shall have freedom of speech, teaching, writing, publication, assembly, and association,” (Article 8 and 14) and “the people shall have rights to present petitions, lodge complaints, and institute legal proceedings” (Article 15), the preceding articles and additional revisions of the Constitution limit the situations “not detrimental to social order, public welfare, the freedoms of others, and the greater public good” (art 22, “All other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the Constitution); *Id.*, art. 23 (“All the freedoms and rights enumerated in the preceding articles shall not be restricted by law except by such as may be necessary to prevent infringement upon the freedoms of others, to avert an imminent danger, to maintain social order, or to promote public welfare) (STLC).

¹³ The Grand Justices are nominated by the President. They are responsible to interpret the Constitution and unify the interpretation of laws and ordinances. The

Civil liberty groups in Taiwan have long argued that freedom of expression is intruded by the defamation law, under which defamation is a crime punishable by a jail sentence or fine. On July 7, 2000, in response to a request by the former editor in chief and a journalist of *Business Weekly*, who were convicted of libel for publication of defamatory stories in 1996 against then Minister of Transportation and Communications Tsai Chao-Yang, the Council of Grand Justices re-interpreted the criminal defamation law. The council ruled that the nation's defamation law does not intrude on freedom of expression, while any libel defendant is entitled to privilege against self-incrimination. Despite that it has been suggested that defamation disputes could be resolved through civil rather than criminal proceedings, the council believes that criminal liability is still a more appropriate means, considering what it called the "circumstances of the country" (Taipei Times: July 8, 2000). The Justices noted that "on the issue of whether the civil damages or criminal punishment shall be used against defamatory acts, what should be taken into consideration includes the citizens' law-abiding awareness and their attitude toward other individuals' rights, effectiveness of the existing civil system, the extent to which the media are bound by professional codes, and effectiveness of the media self-regulation" (Taipei Times: July 8, 2000).

When the defamation law is applied to the Internet context, the conflict regarding the constitutionality of the defamation law is more disputable. According to Lin Tzu-yi, a professor of constitutional law at National Taiwan University who specializes in studies on freedom of expression, the rules of behavior patterns on the network are best defined and regulated by the Internet users themselves rather than lawmakers. As

Council of Grand Justices meets twice a week and holds additional meetings as necessary. Oral proceedings may be held whenever the need arises. After an interpretation of the Constitution or unified interpretation of a law is made, the Judiciary publishes the text of the interpretation, the reasons supporting it, and dissenting opinions, if any. The petitioner and persons concerned are also notified.

such, cyber-related laws may not impede the development of the island's Internet Industries (PC Home Daily: June 1998). On the other hand, Lin disagreed with the Council's decision ruling that the defamation law is constitutional. He argued that "it is ludicrous to say Taiwan is not ready for decriminalization of defamation because its circumstances don't allow it. If not now, the council should have told us when it will be possible" (Taipei Times: July 8, 2000).

3. Should Online Unlawful Expressions be Crimes?

From Chuo's case, we could find that the final judicial decision of whether a libel suit is guilty or guiltless is determined by the judge's definition of *unlawful expression* and *distorted facts*. Yet there is no legal provision on the specific definition of the term "unlawful" or "distorted." In my perspective, "unlawful" is a broad term that may include a number of circumstances. For instance, downloading articles from a network forum for business purposes is unlawful while downloading articles for academic purposes may not be unlawful. Similarly, posting critical articles on the network forum may be either lawful or unlawful, which depends on how people evaluate the content of the critical articles. The central problem is, should Chuo's online critical expression be a crime and punishable? Personally, I am more unlikely to view Chuo's critical expression as serious as a crime, especially a criminal crime even though Chuo's irrational and unwise conduct is blameful. Defamation is a private mistake made by an individual against another one. Law is just one of means to regulate and punish the conducts of using distorted facts to impair other's reputations. Social norms (such as self-regulations of both online service providers and users) or re-education (such as parental supervision and encouraging every Internet site to label its content) are also regulators. Furthermore, one of alternative ways to decriminalize defamation is to amend the criminal code to be the civil code and issue a

fine to the violator.

On the other hand, as Kennedy noted, “making defamation a crime has long been acknowledged to have an extremely ‘chilling effect’ on freedom of the press and freedom of speech” (Taipei Times: July 10, 2000). The thought that one may be thrown in jail by the government for saying the wrong thing about a person, despite earnest effort at reaching a settlement with the victim, is sufficient to mute many people. In cyberspace, making defamation unlawful and punishable poses more challenges since it inevitably forces Internet service providers to monitor everything in their systems, which “would lead to de facto censorship” (Hearst, 1997: 15).

4. Should the Laws Regulating the Real World be Applicable to Cyberspace?

In Taiwan, there are already a number of laws regulating content and framing freedom of speech, such as the Satellite Broadcasting Law, Cable Radio & Television Law, Broadcasting and Television Law, Cable Television Law, and the Criminal Code and Civil Code. However, with the rapid shifting of technological and social development, the application of pre-existing laws to the cyberspace context is required to update. There is a necessity for the government to establish appropriate criteria for the legislative measures to adjust the related laws, making these laws more compatible with the cyberspace context. The new technical-based laws need to narrow down the definitions of decent and indecent (or objectionable) online expressions, determining when a statement is constitutionally protected as opinion or objectionable and punishable. Undoubtedly, two categories of expressions are unprotected by the Constitution – obscenity and incitement to illegal conducts (hate speech). In defamation, libel, or invasion of privacy cases, judges need to ponder some significant issues, such as “the standard of fault (e.g. actual malice

or negligence)” (Fraleigh & Tuman, 1997: 350) and the means to an end (the purpose of the speech).

V. Discussion

U.S. District Court Judge Stewart Dalzell offered an insightful perspective that “the Internet provides significant access to all who wish to speak in the medium, and even creates a relative parity among speakers.” In agreement with his perspective, the present article claims that it is either unnecessary or inappropriate to treat the online wrongful or unlawful expression as a criminal crime. One of the alternative ways to decriminalize the defamation law is to turn it to the civil code. When we consider the conflict between supporting online free expression and advocating Internet censorship, we have to consider the perspective from both sides. There is a premise before we go on arguing the appropriateness of Internet censorship – the Internet is not really a different place but a place in which it often reflects what goes on in the real world. Offensive or wrongful speech and thought can be found in the real world as well as on the Internet. Despite the fact that the ease of Internet access offers encouragement to those who believe that more voices should be heard in democracy’s “marketplace of ideas” (Tedford, 1997), individuals have to be accountable for their words in cyberspace as well as in the virtual world. Since the conflict between advocacy of online freedom of expression and supporting for Internet censorship has no easy solutions and is likely to continue as technologies, social, and political contexts change; rather than strictly censor online expressions, one of the practicable ways to resolve this challenge is to balance between cyberspace promise of free speech and essential censorship of objectionable contents.

Reference

- “Editorial: Time to decriminalize defamation.” *Taipei Times on the Web*.
July 10, 2000, April 7, 2001.
(<http://www.taipeitimes.com/news/2000/07/10/print/0000043216>)
- Carter, Victoria. (1997). “The Internet: An Introduction to Legal Issues in Cyberspace.” *International Financial Law Review*, London, pp. 3-5.
- Crook, Steve. “Taiwan e-rumormongers take aim at reputations.” *Asia Internet News on the Web*. June 14, 2000, April 7, 2001.
(<http://asia.internet.com/2000/6/1408-taiwan.html>)
- Crook, Steve. “Taiwan ponders regulation as cyber-crime increases.” *Asia Internet News on the Web*. Aug. 3, 1999, April 7, 2001.
(<http://asia.internet.com/1999/8/3001-taiwan.html>)
- Douglas, M. (1997). Fralegigh & Joseph S. Tuman. *Freedom of Speech in the Marketplace of Ideas*. St. Martin’s Press, Inc.
- Foerstel, Herbert N. (1998). *Banned in the Media: a reference guide to censorship in the press, motion pictures, broadcasting, and the Internet*. Westport: Greenwood.
- Goldstein, Eric. (1999). *The Internet in the Mideast and North Africa: Free Expression and Censorship*. (Ed). New York: Human Rights Watch.
- Government Information Office, Republic of China. “*Taiwan's Media in the Democratic Era*” on the Web. April 7, 2001.
(<http://www.gio.gov.tw/info/ipi/addressing.htm>)
- Hearst, Andrew. “Is AOL responsible for it hip shooter’s bullets?”
Columbia Journalism, 36(4): 14-15.
- Kennedy, Brian. “Defamation ruling an ill wind for democracy.” *Taipei Times on the Web*. July 10, 2000, April 7, 2001.
(<http://www.taipeitimes.com/news/2000/07/10/story/0000043217>)
- Lin, Irene. “City official defeats slander suit.” *Taipei Times on the Web*.
Jan. 31, 2001, April 7, 2001.

- (<http://www.taipeitimes.com/news/2001/01/31/print/0000071725>)
Lin, Irene. "Judges restate defamation law." *Taipei Times on the Web*. July 8, 2000, April 7, 2001.
- (<http://www.taipeitimes.com/news/2000/07/08/story/0000042947>)
Metivier-Carreiro, Karen A & Marcel C LaFollette. (1997). "Commentary: Balancing cyberspace promise, Privacy, and protection – Tracking the debate." *Science Communication*, 19, 3-20.
- Nystedt, Dan. "Cell phone, Internet use on the rise." *Taipei Times on the Web*. Aug. 02, 2000, April 7, 2001.
- (<http://www.taipeitimes.com/news/2000/08/02/print/0000046196>)
Rodan, Garry. (1998). "The Internet and Political Control in Singapore." *Political Science Quarterly*. 113.
- Science and Technology Law Center (STLC). "The Internet and its legal ramifications in Taiwan" On the Web. 1996, April 7, 2001.
- (http://stlc.iii.org.tw/stlc_e.htm)
Science and Technology Law Center (STLC). "The National Information Infrastructure (NII) of R.O.C." on the Web. 1996, April 7, 2001.
- (http://stlc.iii.org.tw/stLc_e.htm)
Sedallian, Valerie. (1996). "Controlling the Illegal Content over the Internet." Paper presented during the debate *Censoring the Internet: a lawyer's deceit* in the Media Law Committee, 26th International Bar Association Conference, Oct. 23.
- Strossen, Nadine. (2000). "Cybercrimes v. Cyberliberties." *International Review of Law Computers, Technology*. 14, p. 11-24.
- Tedford, Thomas L. (1997). *Freedom of Speech in the United States*. (Ed). Pennsylvania: Strata Publishing, 1997.
- Varlejs, Jana. (1998). "Who Censors the Internet and Why." Paper invited for the International Conference: Freedom of Expression, Censorship, Librarians, Riga, Latvia, Oct. 14-17.

網路審查與網路言論自由之探討

魏立欣

紐約州立大學 BrockPort 分校傳播所

摘要

自從網際網路成為新興傳播媒介以來，它便成為許多個人及非傳媒組織的發言工具，而且得以用便利、廉價的方式發揮言論與訊息散播的功能，這種現象已經顛覆了傳統的媒體與言論自由的觀念。本文針對網路新科技下的個人傳播行為、網路媒介上的言論自由、以及現有法律適用性的議題加以探討，同時以一宗在台灣發生的網路毀謗訴訟官司與判決作為案例說明。如作者提出，既有的法律並沒有考慮到網路言論的不同特質，故無法適切的發揮規範網路言論的功能，舊有的毀謗法律對於所謂網路的不合法言論又過於嚴苛，故如何具體地保障網路言論自由而又適當的加以規範，正是作者在本文所提出的省思之處。

關鍵字：網際網路法規，網路言論自由，網路毀謗訴訟