

УДК 340.5

ОГРАНИЧЕННАЯ ОТВЕТСТВЕННОСТЬ ПОСТАВЩИКОВ УСЛУГ ЗА КОНТЕНТ, РАЗМЕЩАЕМЫЙ В ВИРТУАЛЬНОМ ПРОСТРАНСТВЕ

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Аннотация. Контент, которым делятся в виртуальном пространстве, не всегда приятен. Зачастую в интернете имеют место оскорбления и клевета, распространение информации о личной жизни, разглашение коммерческих тайн и т. д. В подобных случаях особо важными становятся решение вопроса об ответственности интернет-провайдеров и определение пределов такой ответственности. В настоящем исследовании пределы ответственности интернет-провайдеров определяются на основе их классификации. Рассматривается опыт зарубежных стран, немецкое правовое регулирование признается наиболее успешным. Различная классификация провайдеров в Азербайджане оценивается как недостаток, предлагаются пути улучшения сложившейся ситуации. Рассматриваются последовательность и продолжительность процедур удаления и блокировки распространяемого противоправного контента, что в зависимости от типа интернет-провайдеров имеет значение при определении пределов их ответственности. С этой целью были проанализированы национальные материальные и процессуальные правовые нормы, а также определены недостатки национального законодательства в данной сфере, поскольку вопрос ответственности провайдеров связан с информацией, распространение которой ограничено. Сделан вывод, что внесение изменений в нормы ответственности за удаление противоправного контента позволит также устранить процессуальные недостатки.

Ключевые слова: виртуальное пространство; интернет-провайдер; хостинг-провайдер; контент-провайдер; провайдер доступа; общий контент; юридическая ответственность.

Образец цитирования:

Гумбатов ЭА. Ограниченная ответственность поставщиков услуг за контент, размещаемый в виртуальном пространстве. *Журнал Белорусского государственного университета. Право.* 2024;3:104–110 (на англ.).
EDN: UWNZYY

For citation:

Humbatov EA. Limited liability of provider services for content shared in virtual space. *Journal of the Belarusian State University. Law.* 2024;3:104–110.
EDN: UWNZYY

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LIMITED LIABILITY OF PROVIDER SERVICES FOR CONTENT SHARED IN VIRTUAL SPACE

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Abstract. Content shared in virtual space is not always pleasant. In many cases, insults and slander, personal life information, commercial disclosures are allowed through such contents. In cases of such violations, solving the issue of responsibility of Internet providers and determining the limits of such responsibility is of great importance. In the article, the limits of providers' responsibility are based on their classification. In this regard, the experience of foreign countries was reviewed, and German legal regulations were identified as more successful experience. Different classification of providers in Azerbaijan was assessed by the author as a shortcoming and suggestions were presented in this regard. In addition, the sequence and duration of the procedures for the removal and blocking of shared illegal content were analysed, which, depending on the type of Internet providers, is important in determining the limits of their responsibility. For this purpose, the national material and procedural legal norms were analysed, and the shortcomings of the national legislation in this field were determined, since the issue of the responsibility of the providers is related to the information whose distribution is restricted. In the end, it was concluded that making changes in the norms of responsibility for the removal of illegal content will also eliminate procedural deficiencies.

Keywords: virtual space; Internet provider; hosting provider; content provider; access provider; shared content; legal responsibility.

Introduction

The issue of providers' responsibility for content shared in virtual space is based on the unity of two main information legal research topics: Internet regulation and information legal responsibility.

Back in 1962, American scientist J. Licklider, who put forward the idea of creating a global network of interconnected computers in his concept «galaxy network», through this network showed the possibility of instant access to data and programmes on the computer [1, p. 368]. According to its essence, that concept is very close to the copper of the modern Internet, and for these services J. Licklider is rightly called the father of the Internet [2, p. 35].

Thus, the Internet, which appeared as a computer network called ARPANET in 1969, has completely covered society in the modern world [3]. This determines its thorough investigation as an object of scientific research. Although the guiding principles of Internet regulation are set for the purpose of its governance, they essentially serve to protect basic human rights and freedoms on the Internet. The Declaration on freedom of communication on the Internet adopted by the Cabinet of Ministers of the Council of Europe on 28 May 2003

contains seven principles, one of which is related to the limited liability of providers for shared content. Thus, in accordance with the sixth principle, member states should ensure that the provider services do not interfere with the content of Internet materials while limiting the functions of information transmission or access to the Internet by national legislation. However, this does not apply to cases of decision-making to prevent or eliminate violations of law. This means that interference is allowed for legitimate purposes and is completely legal. The Law of the Republic of Azerbaijan of 4 June 2005 No. 927-IIQ «On telecommunications» (hereinafter Law on telecommunications) states that operators and providers are not responsible for the content of data transmitted through telecommunication networks, unless otherwise specified in the legislation (Art. 43.3). However, it is somewhat controversial which specific providers are meant here. Because as we know, Internet providers are classified as content provider, host provider, access provider. Is limited liability defined for all types? In the article, such questions will be analysed on the basis of the legislation of different states, as well as the Republic of Azerbaijan.

Materials and methods

The formation of virtual space is not analysed in a positive way. In the digital age, serious changes are observed in the nature of crimes through the opportunities provided by new technologies. Violations, which are no longer on the physical plane, but on the virtual plane, cause serious concerns for the modern world population. Deepfakes, which have a special weight among

such violations, are one of the current problems of the time. International organisations that take this potential seriously consider deepfake to be one of the biggest threats of the future [4, p. 703].

Experts estimate that by 2026, up to 90 % of online content will be synthetically generated. Synthetic media refers to media created or manipulated using artificial

intelligence (AI) [5]. In most cases, synthetic media is created to play games, improve services or improve the quality of life¹, but already today, the increase of synthetic media and improved technology has led to the possibility of disinformation, including negative results such as deepfakes.

In many cases, the existing legal regulations are not adequate to solve the legal problems created by the Internet. Solving the legal problems created by the Internet with existing positive regulations is a situation specific to the special field of law. In cases where the existing normative documents are insufficient, it is considered appropriate to add new provisions that complement each other, and if this is not possible, to make independent legal regulations. The fact that such arrangements are based on doctrine rather than spontaneity can ultimately lead to successful practice. Therefore, the interpretation of the human rights aspect of issues related to the Internet and virtual space is one of the most important topics today. From this point of view, the responsibility of Internet providers should be studied from the aspect of guaranteeing human rights and freedoms on the one hand, and specific guarantees should be provided in the legislation because

there are many rights and freedoms that are opposed to freedom of information. For example, as the sharing of any content in the virtual space falls within the scope of freedom of information, if that content violates honour and dignity or results in the dissemination of information related to private life, the issue of protecting honour and dignity and protecting the right to privacy comes into focus.

Nevertheless, legal regulations should determine the issue of liability according to the classification of Internet providers, which is one of the main problems of national legislation.

The object of the study was the analysis of the problems of determining the liability issues of Internet providers in substantive and procedural legal norms and applying them in practice. The subject of the research included the search for solutions to the mentioned problems, the presentation of proposals and recommendations.

The theoretical and methodological basis of the article is the provisions of such sciences as information law, legal cybernetics, criminal law, administrative law and informatics. Logical, historical, systematic-legal and comparative-legal methods of scientific research were used during the writing of the article.

Discussion

Classification of providers: differences in legal regulations. Internet service providers are defined as mediators who enable users to access the Internet, provide electronic services and opportunities provided by the Internet to users, thus playing the role of a «bridge» between users and the Internet. The main service provided by service providers is to provide users with Internet connection, Internet communication and access to content. Apart from this, various services such as providing content, providing domain name, hosting services are also performed by service providers [6, p. 741]. Examples of Internet service providers in our country are «AzerTelecom» and «CONNECT». When Internet service providers want to provide Internet access services, they contract with telephone or telecommunications companies and acquire the right to use these dedicated lines, which they generally lease to Internet users for a fee.

As a result of the generalisation of modern legal literature and legal regulations, the following types of Internet providers can be distinguished.

Host provider. Hosting, i. e. hosting service, is defined as the ability to store content such as information, documents or files submitted to the Internet network with the technical infrastructure it provides, and to transfer them directly to the Internet using Internet connections. In other words, when accessing websites through domain names, it is a service of hosting web pages on your computer and providing access to these pages by redirecting users to the corresponding

page through the domain name. The person and companies that perform this service are called hosting providers [7, p. 318]. As a rule, hosting providers, who do not interfere with the operations performed by users, prepare the necessary conditions for the correct storage or transmission of the data that they want to obtain, according to the users' requirements. Examples of host providers include search engines such as *Google, Bing, Safari*, online shopping platforms such as *eBay, Trendyol*, websites such as *google.com*, and social media platforms such as *Facebook, YouTube, and Instagram*. It should be noted that these example websites can create page content by themselves and are considered content providers to the extent that they create content.

Internet access provider. An access provider is a telecommunication entity that mediates users' access to content on the Internet and works on the physical infrastructure to provide access service and provides it to service providers and users for a fee. In the doctrine, an access provider is defined by T. Soysal as a type of Internet service provider that connects users' computer equipment to each other and to other Internet service providers through lines it owns or leases from the local network [7, p. 308]. In this context, any entity that provides Internet service, from a local business to the International Telecommunication Union, is generally defined as an access provider. The access provider does not store information and data on its own servers by mediating access to content belonging to others, but

¹Facing reality? Law enforcement and the challenge of deepfakes: an observatory report from the Europol Innovation Lab. Luxembourg : Publ. Office of Europ. Union, 2023. P. 6.

only provides an access service. As such, the term «access provider» is often used synonymously with the term «Internet service provider», which more broadly refers to any entity that provides Internet service. The same rule is provided in our national legislation: the term «Internet provider» was applied as a supplier providing technical facilities for connecting to the Internet network by means of telecommunications (Art. 2 of the Law of the Republic of Azerbaijan of 3 April 1998 No. 460-IQ «On information, informatisation and information protection» (hereinafter Law on information, informatisation and information protection)). But can such providers only be legal entities? The aforementioned regulations of 2017 allow both natural and legal entities to act as Internet providers.

Content provider. A content provider is defined in the doctrine as a natural or legal person who contributes with the information provided to the creation of any content that Internet users can access on the Internet and provides this information or data to others with the support of an access and hosting provider. Website owners who upload content to the website, people who create the content and design of Internet broadcasting, people who prepare content and upload it to the Internet, authors who prepare an Internet newspaper, people who comment on the news in the newspaper, people who share with their profile on social media can also be cited as examples of content providers. In some cases, hosting providers upload content directly to the Internet to increase their preference for accessing the content themselves. Hosting providers which upload content that can be accessed by users on the Internet are considered content providers in terms of these services. For example, those who upload various photos to photo-sharing platforms are content providers, and those who deploy the system to publish these contents are hosting providers. If a photo sharing platform in the position of a hosting provider uploads an image to its system, this platform will be the content provider in terms of the photos it uploads, and in the case of uploading images by members, the hosting provider.

It should be noted that within the framework of Art. 12–15 of the Electronic commerce directive of the European Parliament and the Council of 8 June 2000 No. 2000/31/EC, only technical intermediaries are considered as Internet service providers and evaluated as services consisting of the transmission of data via a communications network to ensure the proper functioning of the internal market, in particular services that ensure the free movement of personal data between access. This means that the regulations regarding content providers are not included in the directive, as the service of producing, changing and providing information offered to users is not considered as providing the technical capabilities of the Internet.

According to the analysis of the information legislation in our republic, the legal approach to the types of Internet providers is reflected in the Law on informa-

tion, informatisation and information protection and Law on telecommunications. First of all, we should note that Internet service is a type of telecommunication service. National legislation defines the scope of telecommunications entities as follows:

- telecommunication operator is a legal entity or a natural person engaged in entrepreneurial activity that provides telecommunication services on legal grounds through its owned telecommunication network;
- telecommunications provider is a legal entity or a natural person engaged in entrepreneurial activity that provides telecommunication services using the telecommunication operator's network.

According to the Regulation of internet telecommunication service providers and operators of 12 October 2017 No. 427, Internet telecommunication service providers include Internet service providers and host providers. If the first ones provide the technical possibility to connect to the Internet network by means of telecommunications, the second ones provide the service of placing the Internet information resources in their information systems in order to ensure the use of them. Apparently, the term «content provider» is not used in our republic. When solving the issue of responsibility for the content posted on the Internet, responsibility is determined for the owner of the Internet information resource or individual persons. By Internet information resources, the law accepts resources created for the purpose of information dissemination in the Internet network, which is given a domain name to refer to that resource (Art. 2 of the Law on information, informatisation and information protection). Therefore, content providers are not considered as Internet providers in national regulations.

If we look at foreign countries, according to Art. 2/1-f of Law of the Republic of Turkey of 4 May 2007 No. 5651 «On regulation of publications on the Internet and combating crimes committed by means of such publication», content provider means «natural or legal persons who produce, modify and provide any information or data provided to users over the Internet». Internet content providers are individuals or organisations that organise the publication of information or documents on the Internet. Content providers have the ability to post messages posted by others on forums and to delete their own messages when necessary. Such an arrangement can be considered more successful.

Interesting facts from foreign experience on the responsibility of providers. The United States is the first country to legalise the notice and takedown system. The Internet service provider shall immediately remove the broadcast and terminate access upon notification of a broadcast containing an illegal element. According to regulations in the US, Internet service providers must ensure that such content is removed upon notification. The Digital millennium copyright act, established in 1998 for intellectual property violations, introduced both notice and takedown and notice and put back models.

In fact, this model relieves the host provider of all responsibility.

To fully understand the practice, one should refer to the case of *Gucci* in the United States District Court of New York (*Gucci v. Gucci Shops, Inc.*, 688 F. Supp. 916 (S.D.N.Y. 1988)). At the end of the court proceedings in the case, the court decided that the Internet service provider was complicitly liable if it knew about the illegal activity, but did not take the necessary measures.

There is generally no regulation of Internet service provider criminal liability in England. However, the 2002 Directive known as the Electronic commerce agenda stipulates that liability for illegal information or data on the Internet will primarily lie with the person or entity providing the data. Accordingly, if an Internet service provider is notified of an illegal application, it must take action within a reasonable time to stop the transmission. Otherwise, it will be responsible and a criminal case will be opened against it. In general, child pornography, obscene and racist discourses are considered the subject of blocking access to the Internet.

In general, the of the European Parliament and of the Council of 8 June 2000 Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (hereinafter Directive on electronic commerce) has a significant impact on the legal regulations of European countries. The directive has taken an interesting approach to the issue of responsibility of Internet providers. Thus, the directive limits the responsibility of providers for «caching», that is, in order to be exempt from liability for the automatic, indirect and temporary storage of information accompanying data transmission services on the network and aimed at more efficient data transmission at the request of the user, the provider must comply with the following five conditions.

Article 14 of the Directive on electronic commerce appears to contain conditions for the exemption of hosting providers from liability and does not regulate a general liability regime. According to the article, the hosting provider, who assumes a passive and impartial role, will not be responsible for illegal information and activity transmitted to the Internet environment if it does not know about it and does not understand the consequences of this situation. In addition, it will not be liable again in the event of the said information or blocking of access to the information after being informed. If the content is provided by the service provider itself, the service providers will be responsible.

In most of the European countries based on the Directive on electronic commerce, almost similar legal arrangements have been made regarding the responsibility of providers. Of these, the experience of Germany draws more attention. Germany was one of the first countries to regulate the Internet. In German law, the liability

of Internet service providers is regulated in the Telemedia act of 26 February 2007 (hereinafter Telemedia act). This document contains provisions applicable to criminal, public and private law disputes. As a general principle, content providers are responsible for their own content that they make available for use. In terms of access providers, in principle, they are not liable for the access they provide, but the circumstances in which they may be liable are governed by a dual distinction. Art. 9/1 of the Telemedia act stipulates that the access provider shall be liable if it initiates the transmission or selects the recipient of the transmission or selects or modifies the transmitted information itself. As for host providers, although Art. 10 of the mentioned act states that there is no legal or criminal liability for host providers, this irresponsibility is only absolute in cases where the content is not known to be illegal [6, p. 758]. In this case, as soon as the host provider becomes aware that the content belonging to another is clearly illegal and does not immediately take necessary measures to remove this content or prevent access to it, this conscious action will result in legal and criminal liability. However, in cases where the host provider does not have the technical means to prevent this transmission, it cannot be held responsible. In addition, according to the last paragraph of Art. 11 of the Telemedia act, if the user who produces criminal data is in the service and under the control of the service provider, then the service provider may be liable.

According to Art. 184 of the German Criminal Code, a blacklist of domain names, IP addresses and URLs of child pornography websites is provided by the federal criminal police. Also, the list is updated by a group of 5 experts checking. As one of the interesting experiences in this regard, we can mention that in 2000, Internet providers in Germany blocked access to 76 websites outside Germany, mainly the United States, that broadcast racist and neo-nazi content².

As far as Asian countries are concerned, China is the country that attracts more attention. To connect to the Internet in China, registration is required at the local police station. China has allowed giant American IT companies such as *Google*, *Yahoo*, and *Microsoft* to operate in their country on the condition that they develop systems in line with the internet policy. China uses the world's most advanced system of Internet access blocking and monitoring. Technically speaking, one of the content blocking systems such as IP, URL, DNS can be used or all of them can be applied in combination to block access [8, p. 62].

Thus, based on the analysis of foreign experience, we can conclude that more successful arrangements are made in Europe.

Limits of providers' liability. Current experience shows that different providers interact with users as

²German official asks U. S. ISPs to block neo-nazi sites [Electronic resource]. URL: <http://edition.cnn.com/2000/TECH/computing/08/29/hate.sites.idg/index.html> (date of access: 29.09.2024).

access and transit service providers, as well as telecommunication providers offering access to Internet, while Internet content is provided by different content providers, which may or may not be managed. This latter distinction between connection-related service providers and content-delivery service providers is particularly relevant to liability analysis. Thus, while host and content providers have a potentially global reach, those providing services or connectivity to end users within a given territory will typically be subject to the legal and geographic restrictions of such territory. So, although the web page is available worldwide, the connection providers will be different depending on the computer used to access the website. Therefore, access and connectivity service providers must comply with the laws of the jurisdiction in which they operate, while hosts and content providers will be subject to the regulations of any jurisdiction where their content is available. Of course, each state has its own rules for the provision of services between the end user and the Internet provider. Broadly speaking, there are no specific international or national regulations that directly and specifically affect Internet providers. In such situation, the problem of how to solve the issue of responsibility will be analysed in detail below.

Since the term content provider is not used in the national legal regulation, the responsibility for the content rests with the owner of the Internet information resource or the owner of its domain name. The most important condition here is that information about both subjects should be displayed on the site in a clearly readable form. Another important condition is imposed on the owner of the Internet information resource: it is the duty to ensure compliance with the norms of the Azerbaijani language, for which the owner of the Internet information resource is personally responsible (Art. 13-2 of the Law on information, informatisation and information protection).

In addition, the legislator defined specific information content, the publication of which is prohibited not only for the owner of the Internet information resource and the owner of the domain name, but also for the users. For example, this ban will apply to any user on the social network. This information is listed in Art. 13-2.3 of the Law on information, informatisation and information protection. As the content violates legitimate interests, their dissemination may threaten the safety of society, the state, and the individual. For example, information related to state secrets is aimed at the national security of the state, insulting or slanderous information, as well as information that violates the integrity of private life is against the individual and harming life and health of people, mass violation of public safety, and causing significant property damage is directed against the society as a whole.

The problem does not arise with the specified list, but with the execution of the procedure. So, according to the mentioned law, a different rule has been defined.

The distribution of prohibited information is discovered directly by the owner of the Internet information resource, the owner of the domain name or the host provider. This time is the following:

- when the owner of an Internet information resource or the owner of a domain name directly discovers that there is information that is prohibited for distribution in that information resource or its relevant part, when they receive a request about it, to remove this information from the information resource or ensure restriction of access to that information resource or its relevant part;
- when such information is directly discovered by the host provider or when it receives information, it immediately takes measures to remove the information by the owner of the information or restrict access to that information resource or its relevant part.

The following question arises: is there a provision that provides for a specific crime or administrative offense for the dissemination of prohibited information? First of all, we should note that the Criminal Code of the Republic of Azerbaijan does not provide for a specific responsibility for the dissemination and transmission of information that is prohibited. Only the use of Internet information resources as a constituent element of some crimes is envisaged. For example, insult, defamation, illegal sale of narcotics or psychotropic substances to minors, organisation of gambling games, etc. Using the Internet to disseminate other information will create responsibility for that act itself. So, publishing information constituting a state secret on the Internet will create liability under Art. 284 of the Criminal Code of the Republic of Azerbaijan. However, Art. 388-1 of the Code of Administrative Offenses of the Republic of Azerbaijan defines administrative responsibility for disseminating or permitting the dissemination of information that is prohibited in a specific form. In this regard, the approach of foreign experience is different. For example, in Turkey, the term «content provider» is used. Thus, in Art. 4 of Law of the Republic of Turkey of 4 May 2007 No. 5651 «On regulation of publications on the Internet and combating crimes committed by means of such publication», as well as in Art. 6 of Regulation on the procedures and principles regarding the regulation of publications made on the Internet of 30 November 2007 No. 26716, the responsibilities of content providers are regulated in the same manner. According to this, «the content provider is responsible for all types of content that it provides to the Internet environment. The content provider is not responsible for the content of others to which it provides links. However, if it is clear from the presentation format that he accepts the content to which he provides a link and that he intends for the user to reach said content, he is liable in accordance with the general provisions. The liability referred to here is liability arising from guilt. In this context, the creator of the web page will be responsible for its content in accordance with the general provisions.

Conclusions

As a result of our research, it was concluded that the following classification of Internet providers exists in world practice: content provider, host provider, access provider. However, in the information legislation of our republic, instead of the content provider, the expression of the owner of the Internet information resource is used. This statement is not so successful, because the owner of the information can entrust different providers to form his website and carry out its subsequent maintenance. This type of legal arrangement ultimately makes it difficult to determine the responsibility of that provider. Therefore, we consider it appropriate to use the term content provider and give its legal definition in domestic law.

Determining the limits of responsibility of Internet providers should be specified not only based on their types, but also with reference to the content of the dis-

seminated information. We believe that the norms related to the responsibility of content providers should be determined by benefiting from the experience of Turkey and Germany: the content provider is responsible for any content that it provides for use in the Internet environment. In the second paragraph, which stipulates a reservation, it should be established that the content provider is not responsible for the content belonging to another person to whom it provides connection. However, if it is clear from the presentation form that the link appropriates the content it provides and aims for the user to access the content, it is liable according to the general provisions. In addition, there is uncertainty in the procedure of blocking access to information that is prohibited in the Republic of Azerbaijan. Therefore, it is necessary to re-develop the procedural rules in the national legal regulation, especially to pay attention to the issues of duration.

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Received by editorial board 03.10.2024.