

TALLINN UNIVERSITY OF TECHNOLOGY

School of Business and Governance

Department of Law

Anna Kobernjuk

**Violations of Freedom of Expression on the Internet in Russia and
China and possible solutions**

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Supervisor: Evhen Tsybulenko

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I declare that I have compiled the paper independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously been presented for grading.

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Anna Kobernjuk

(signature, date)

Student code: 164933HAJB

Student e-mail address: annakobernjuk@mail.ru

Supervisor: Evhen Tsybulenko, Ph.D. in Law and vanemlektor at TalTech

The paper conforms to requirements in force

.....

(signature, date)

Chairman of the Defence Committee:

Permitted to the defence

.....

(name, signature, date)

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ABSTRACT

The aim of the thesis work is to understand whether methods used by two different countries considered to be proper by Human Rights documents to filter and block certain information on the Internet, including any possibility of a person to freely express himself on different topics. Several legislations are present in the thesis work, which the Russian Federation and China use to explain certain reasons for blocking and filtering different content. However, from comparing and looking into legislation, it can be clearly seen that the two countries used have a different view of the Internet environment in general. China takes this opportunity to promote culture and own history, which should be carefully looked into while providing a list of different solutions. Russian Federation, on the other hand, fights extremism and terrorism activities with mixed definitions of what those acts are and if they overlap, which law will prevail. In the thesis there are different methods used, regulations of each country are looked into, different works of authors from all the world are checked for the possibility to solve the issue. Solutions are quite different, such as understanding different levels of speech, defining what acts are punishable in details, protecting people on the Internet and several other cases.

Keywords: freedom of expression, UDHR, Article 19, censorship, blocking, filtering

INTRODUCTION

To begin with, the European Court of Human Rights pointed out that technological advances raise new challenges and require improvements and adjustments in order to protect the rights and freedoms of citizens.¹ Both speaker and receiver of the information are protected by this right, and Handyside Case provides a clear understanding how Freedom of Expression is vital part of every State: “Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to [legitimate restrictions] it is applicable not only to “information” or “ideas” that are favorably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance, and broadmindedness without which there is no “democratic society”. This means, amongst other things, that every “formality”, “condition”, “restriction” or “penalty” imposed in this sphere must be proportionate to the legitimate aim pursued.”²

Technological progress has been moving forward, requiring Freedom of Expression to be looked at from different angles, applying values and principles of the new age. The Internet is now especially connected to Freedom of Expression, with the help of different websites and social platforms it is acceptable to express thoughts and receive them in the format people find appropriate. States are getting involved with the desire to regulate the Internet environment, and in this thesis work, two countries shall be taken into consideration with legislation and Acts in use to understand on what grounds this or that article can be banned on the website. Rights in general pose borders on individuals and government, outlining what may be done, and what limitations will be considered lawful in specific cases.³ But, as Scanlon mentions in his work, how can limits imposed on the rights be justified, even if they were done for a noble cause, how can decision be achieved, which limitations are proportional and are considered to be justifiable.⁴ Additionally, shall all categories be restricted and limited the same way, or a clear understanding shall be made between Freedom of

1 Randall, M. (2016). Freedom of Expression in the Internet, 26 Swiss. Rev. Int'l & Eur. L. 235 , page 236

2 Handyside v United Kingdom, Merits, App No 5493/72, A/24, 7th December 1976, European Court of Human Rights [ECHR], para. 49

3 Scanlon, T. (1979) Freedom of Expression and Categories of Expression, 40 U. Pitt. L. Rev. 519 , page 519

4 Ibid., page 519

Expression categories, purposes and possible restrictions in specific cases.⁵ Similar categories, which were presented by Scanlon, shall be used in the thesis work to demonstrate how two States in question, Russian Federation and China, treat Freedom of Expression specifically on the Internet, and can methods used be justified or is there another possibility to reach the same results, using less restrictive means. Categories in question are connected to participant interests, which is something that should be brought to the attention of a wide audience, and can be from promoting goods to desire to amuse people with personal work of art; and audience interests, which is connected with receiving information from the participants.⁶ In order to provide a solution to States in question, there shall be taken into consideration the hierarchy of expressions. According to European Court of Human Rights political expression has the strongest protection, and then goes artistic expression, commercial expression, celebrity gossip, pornography, and at the very bottom are gratuitous personal attacks and hate speech.⁷ Additionally to the provided information above, some authors have also an explanation about levels of expression. High-level is connected to expression that is „professionally produced, aimed at a wide audience, is well resourced and researched in advanced“, while low-level expression refers to „amateur content that is spontaneous, inexpensive to produce, and is often akin to everyday conversation“. ⁸ This will be valuable when in the last part of the work will be proposed different possible solutions to soften blocking and filtering acts in both States.

Freedom of Expression is an interesting topic to discuss since it is connected to all people. Every person has a right to freely express his opinion and to receive a comment on his opinion or work. Russian Federation and China have a different set of rules applied to Freedom of Expression, which shape and permit certain types of topics to flow in the Internet environment, but some are being filtered or blocked. The main research question in thesis work will focus on which issues legislation and Acts used in the Russian Federation and China face, when being applied to limit Freedom of Expression. Additionally, can there be a possibility to apply softer laws to make content on the Internet in both States widely accessible by users. If we will take into consideration the Russian Federation, then is the definition of an extremism in Russia clear enough to be suitable for filtering or blocking specific information? In the Thesis work will be used quantitative method, information will be obtained from journals and books regarding Freedom of Expression, how it was developed over the years, how new technologies adapt to this right or pose a threat to it, and what steps shall

5 Ibid., page 519

6 Ibid., page 521-524

7 Coe, P. (2015) The social media paradox: an intersection with freedom of expression and the criminal law, *Information & Communications Technology Law*, 24:1, page 20

8 Rowbottom, H. (2012). To Rant, Vent and Converse: Protecting Low Level Digital Speech. -*Cambridge Law Journal*, Vol. 71, No. 2, page 358

be taken by the States to keep this right balanced with the modern world. Additionally, secondary sources will be used as well, like UNESCO reports, which provide an overview of Internet Intermediaries and what role they play in this situation, also comparative study report, which was conducted by Swiss Institute of Comparative Law, where information regarding the Russian Federation was carefully conducted and explained in details for future references. All the provided information will allow to understand the key points of the right in general, receive an understanding of what restrictions can intermediaries have, and then it will be balanced with legislations from States. After going through general information several solutions will be provided based on the studies and articles.

The first part of the study will be connected with an explanation which intermediaries exist and restrictions connected to them. There are several types of intermediaries in question. Also, there are several liability models that State can impose on the intermediary and either free the intermediary completely from any responsibilities, or require to strictly follow the rules. The second part is connected to the definition of Freedom of Expression in different legal documents, and additionally shall be understood legal limitations that are justified to be used by the States. Some documents explain Freedom of Expression in a broader manner and provide with a long list of limitations. In the third part, there will be an explanation of how filtering and blocking is applied to the Internet environment in the Russian Federation and based on which documents. Russian Federation provide several Acts, which allow Freedom of Expression to be limited due to extremism, terrorism and several other acts. The fourth part will cover filtering and blocking in China. China has a different approach to Freedom of Expression, which will be an interesting comparison to the Russian Federation. The final part will have an explanation of possible solutions to find neutral grounds for blocking and filtering in two States in question. There needs to be an evaluation of speech in categories, there shall be a detailed explanation of what exactly can bring a website on the list of blocked websites and several other solutions.

1. INTERNET INTERMEDIARIES

Previously society was limited to what they were able to read and see, and from which sources this information could have been received. Before information was filtered by political views of a newspaper owner, or harsh editorial control over provided news, however, new media platforms changed the view on how information can be provided and received.⁹ There are no longer any limits and boundaries, information can be received at any time and about any possible question posed. Society has access to different platforms, such as Instagram, YouTube, and similar major players on the market, which allow public to share information freely. There are additional numbers for supporting those words, such as Twitter has a statement that it has active accounts of 320 million users, and normally 500 million tweets are posted every day.¹⁰ Another example can be Tumblr, which hosts 170 million microblogs, and major platforms keep growing, the amount of users is changing yearly.¹¹

It can be clearly seen that modern media platforms shape and change society by evolving and providing opportunities for expressing yourself without setting up a standard of what you can say. However, with changes issues appear, when information can be leaked, causing disturbances, provided content can be fake or used for propaganda, and similar issues arise from new developments. Nevertheless, before understanding if States use the correct methods to prevent the above issues from spreading, shall be understood what Internet Intermediaries exist. As it was defined in the 2010 report, the Organisation for Economic Co-operation and Development stated that internet intermediaries 'bring together or facilitate transactions between third parties on the internet. They give access to, host, transmit and index content, products and services originated by third parties on the internet or provide internet-based services to third parties'.¹² The role of intermediaries are growing significantly, so defining types is mandatory, in order to know the distinguishes between categories and what role they are playing.

9 Coe, P. (2015), *supra* nota 7, page 32

10 *Ibid.*, page 33

11 *Ibid.*, page 33

12 Ichou, R. (2015) *World Trends In Freedom of Expression and Media Development: Special Digital Focus 2015*.
Accessible: <https://unesdoc.unesco.org/ark:/48223/pf0000234933>, page 95

1.1. Types of Internet intermediaries

The categories were defined by Organisation for Economic Co-operation and Development, the United Nations Special Rapporteur on Freedom of Opinion and Expression, and other organizations, but the focus shall be on the most common categories.¹³

First category can be Internet Service Providers. The explanation of this category can be challenging since a wide range of companies shall be covered. In general, ISPs describe entities that provide a wide range of different services, which is why definition considered to be wide since it needs to cover all telecommunication companies, which offer any services, connected with the use of the Internet.¹⁴ Here we have access providers and host, where the first group can be considered the ones that provide Internet access for the remuneration for particular users, and the second group is connected with enabling website hosting services, which to some extent cover designing and creating websites.¹⁵

The second category shall be web hosting providers or simply 'hosts'. Hosts currently received a more general understanding, which is basically any company who controls a website or a webpage, allowing other people to post any material, which falls under website goal.¹⁶ Under this definition social media platforms, blogging services, and online communities exist.¹⁷

The third category shall be social media platforms. However, there is a distinction here, that should be clear: social media platforms allow individuals to connect and interact with other users and to share different content.¹⁸ A clear example can be Facebook or Instagram, where you can share information and different content, as well as get in touch with other people all over the globe.

And the final category is search engines, which are software programmes that use different

13 Ibid., page 96

14 Ibrahim, Y. (2016) Politics, Protest, and Empowerment in Digital Spaces, page 220

15 Ibid., page 220

16 Internet intermediaries: Dilemma of Liability, Accessible:

https://www.article19.org/data/files/Intermediaries_ENGLISH.pdf, 14 January 2019, page 6

17 MacKinno, R., Hickok, E., Bar, A., Lim, H. (2014) Fostering Freedom Online: The Role of Internet Intermediaries. Accessible: <http://unesdoc.unesco.org/images/0023/002311/231162e.pdf>, page 21

18 Internet intermediaries: Dilemma of Liability, supra nota 16, page 6

algorithms to receive documents and files from network or database in response to a query.¹⁹ As an example, we can use the most common searching engine, which is Google. People type down the desired information, and Google displays back information in hyperlinks of web pages, where the answer can be found further.

1.2. Liability Internet intermediaries have

Firstly, there is a strict liability model, which means that intermediaries are liable for the content posted by other users, which means that intermediaries are under obligation to check, filter and take down the content that is posted by the users of their services, and if the content is still available and was not taken down, then intermediaries can face fines, criminal investigations, and in some cases lose licenses.²⁰ This model is broadly used in China, where „Chinese government imposes liability for unlawful content on all intermediaries. If they fail to sufficiently monitor user activity, take down content or report violations, they may face fines, criminal liability, and revocation of business or media licenses,“²¹

Secondly, the safe harbour model, which exempts intermediary from liability, if certain conditions are followed.²² However, according to the European Union’s E-Commerce Directive, there shall be a clear distinction made between types of intermediaries, then obligations and conditions vary.²³ For Internet Service Providers to be part of the safe harbour, then they shall not initiate the transmission, select to whom it will be sent, modify it or change the content in any way, the content as well shall not be stored longer than required.²⁴ Another category is caching, where safe harbour will apply, if the cached content will not be modified and will be removed, when content will be claimed to be unlawful.²⁵ There are additional requirements taken into consideration, which are specified in the E-Commerce Directive, such as intermediaries shall not be directly collaborating in the illegal acts to be part of the safe harbour; once there will be a notice that content is illegal, it shall be immediately taken down; the burden of proof is on affected parties, intermediaries are not required to actively

19 Ibid., page 6

20 MacKinno, R., Hickok, E., Bar, A., Lim, H. (2014), supra nota 17, page 40

21 Ibid., page 40

22 Ibid., page 40

23 Internet intermediaries: Dilemma of Liability, supra nota 16, page 7

24 Shielding the Messengers: Protecting Platforms for Expression and Innovation (December 2012), Accessible: <https://cdt.org/files/pdfs/CDT-Intermediary-Liability-2012.pdf>, 14 January 2019, page 7

25 Ibid., page 7

check the content.²⁶

Lastly, the final model is broad immunity model. This model simply removes any liability from the intermediaries for the behavior of the users.²⁷ Intermediaries are not required to check the content, they just simply allow users to post any content possible.²⁸

1.3. Definition of Blocking and Filtering

Filtering and blocking are often used in order to protect Internet users from unwanted or illegal content. Filtering is connected to the use of technology, that will allow blocking pages, which have certain common characteristics, such as keywords or protocols, or if there is a certain connection to information that can be seen as unlawful.²⁹ Blocking is preventing an access to a specific website, IP addresses, protocols or other services, which are listed on the blacklist.³⁰ Very vital point to make is that the content is still existing on the network, it is not gone from the server.³¹

1.4. Different Types of Blocking and Filtering

There are four categories identified, which are connected to Article 10(2) of the European Convention of Human Right, that make blocking and filtering of a content legal.³² The list of those categories consist „of the protection of health or morals, including the fight against websites containing child pornography or illegal online gambling websites, the protection of national security, territorial integrity or public safety, including counterterrorism, the protection of intellectual property rights and the protection from defamation and unlawful treatment of personal data.,³³ Those categories may indeed vary from State to State, but those considered to be the basic ones. If we will take into consideration Russia, then „the distribution of information containing obscene language, (non-child) pornography, and so-called homosexual propaganda are also listed

26 Ibid., page 9

27 Ichou, R. (2015), supra nota 12, page 106

28 Ibid., page 106

29 Freedom of Expression Unfiltered: How blocking and filtering affect free speech (December 2016), Accessible: https://www.article19.org/data/files/medialibrary/38586/Blocking_and_filtering_final.pdf, 14 January 2019, page 7

30 Ibid., page 7

31 Ibid., page 7

32 Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content (December 2015), Accessible: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806575b4>, 14 January 2019, page 776

33 Ibid., page 776

among the online material which may legitimately be the subject of blocking and takedown measures.³⁴ This clearly shows that States mostly define what can be blocked themselves.

The most methods used to allow secure use of the Internet are:

1. Uniform Resource Locator blocking, which blocks web pages,
2. Internet Protocol address blocking, which will not allow to connect to a certain host,
3. Domain Name System tampering, which excludes the whole domain names,
4. Protocol blocking, which will not allow to connect to certain types of networks.³⁵

Filtering as well has several forms, which are:

1. Blacklist, where there is a certain list or Uniform Resource Locators created, which will be filtered out,
2. Whitelist, which is a list of Uniform Resource Locators that can be accessed without the need to look them though,
3. Keyword blocking, which is connected to the possibility to block websites, where one or more blocked words are present.³⁶

Several types of the methods can be used at the same time without any issues, so further will be investigated what are the legal basis of implementing filtering and blocking, and which method is used commonly to achieve this.³⁷

34 Ibid., page 777

35 Freedom of Expression Unfiltered: How blocking and filtering affect free speech (December 2016), supra nota 29, page 8

36 Ibid., page 8

37 Ibid., page 8

2. FREEDOM OF EXPRESSION

In this part of the thesis work definition of Freedom of Expression shall be provided from different legal sources. Further will be listed limitations and connection of the right to the Internet in general in the modern age. This will be helpful for the further understanding of methods used by the Russian Federation and China.

2.1. Definition of the right

Freedom of Expression became widely acknowledged only after United Nations and Universal Declaration of Human Rights, where in the Article 19 can be found that „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.,³⁸ Furthermore, the Freedom of Expression made an appearance in the International Covenant on Civil and Political Rights, where in the Article 19 Freedom of Expressions received a detailed definition and understanding, along with possible restrictions:

- „1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.“³⁹

38 UN General Assembly, Universal Declaration of Human Rights, Resolution 217 A (III) (10 December 1948), Article 19, Accessible: <https://www.refworld.org/docid/3ae6b3712c.html>, 30 April 2019

39 Ibid., Article 19

As can be seen and was stated before by the Handyside Case, then Freedom of Expression is a vital part of democratic society. It gives a possibility to express your own opinion on something, and also receive it. According to the United Nations Human Rights Council Special Rapporteur's Report on the promotion and protection of the right to freedom of opinion and expression, International Covenant on Civil and Political Rights provision can be applicable to the Internet, since it became a vital part of everyday life to express opinion and yourself.⁴⁰ Internet allows to gain information from different places and sources, which was not possible before, and this greatly contributes to development of society, which is why International Covenant on Civil and Political Rights took into consideration all possible electronic and Internet-based forms.⁴¹ Additionally to that United Nations General Assembly in 1946 specified that Freedom of Expression is a core source to other freedoms: „Freedom of information is a fundamental human right and... the touchstone of all of the freedoms to which the UN is consecrated.“⁴² Here examples can be Freedom of Assembly and Association, Freedom to Vote.

2.2. Limitation of the right

Freedom of Expression is not a hardcore human right, which means that it can be limited and derogated. It can be limited to protect the rights of others.⁴³ The measures taken to limit Freedom of Expression shall be justified if they are prescribed by law; pursue a legitimate aim; and comply with the principle of proportionality.⁴⁴ The first requirement, it should be specified by law. It should be written down in clear and understandable manner, and the law must be accessible to the public and shall be precise as possible so that people would be able to shape their conduct accordingly.⁴⁵

Secondly, as specified in the Article 19(3) of the International Covenant on Civil and Political Rights, then there shall be a legitimate purpose for the restrictions, such as protection of national security or of public order, or of public health or morals.⁴⁶ To better understand what purposes can

40 Coe, P. (2015), supra nota 7, pages 18-19

41 Ibid., pages 18-19

42 UN. (1946). Calling of an International Conference on Freedom of Information. Resolution 59, 14 December 1946, Accessible: <https://www.refworld.org/docid/3b00f0975f.html>, 30 April 2019

43 Randall, M. (2016), supra nota 1, page 241

44 Ibid., page 241

45 UNHRC, General Comment No.34: ICCPR, Article 19: Freedoms of opinion and expression, UN Doc. No

CCPR/C/GC/34 (12 September 2011), par 25 Accessible: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, 30 April 2019

46 UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), Resolution 2200A (XXI) (16 December 1966), Article 19(3), Accessible: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i->

be here justified, Article 10(2) of the European Convention on Human Rights has a list of legitimate restrictions, which are connected to the public order:

„2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.“⁴⁷

Thirdly, the final criteria is that this limitation is necessary for a democratic society. Moreover, as it was stated by the United Nations Human Rights Council, the principle of proportionality shall be followed in all cases, the measures used shall be appropriate to achieve those goals, and there must be no other measure, that could have been used and was less intrusive.⁴⁸ Additionally, by United Nations Human Rights Council was noted, that if State invokes a legitimate ground for restriction, then it must show and explain what is a threat, and what is the connection between the threat and restrictions imposed.⁴⁹

2.3. Freedom of Expression and Internet

Internet shall not be compared to any other media, which existed before and through which information was published and available to the public. When creating regulations, there shall be taken into consideration that different types of people use the Internet for daily purposes, such as children, teenagers, adults. Internet freedom cannot be filtered and blocked to please only one group out of all existing. The main issue arises is how to balance freedom of expression and the Internet altogether?

In the General Comment No.34 on Freedoms of opinion and expression it is specified that there shall be free and uncensored information circulating between public and possibility given to

[14668-english.pdf](#), 30 April 2019

⁴⁷ European Convention on Human Rights, Article 10(2), Accessible:
https://www.echr.coe.int/Documents/Convention_ENG.pdf, 30 April 2019

⁴⁸ UNHRC, General Comment No.34: ICCPR, Article 19: Freedoms of opinion and expression, supra nota 45, par. 34

⁴⁹ Ibid., par. 35

comment on certain issues or actions, such as elections or political questions.⁵⁰ Explicitly it is stated that State parties shall be aware of global trends and changes, which are connected to the Internet, and all necessary steps shall be taken, so that Internet media intermediaries will be independent and information through them will be available to the public.⁵¹ Moreover, the intermediary shall not be liable for the content that is published via it, but it is required to take needed steps in order to take down the content that was flagged as illegal.⁵² European Union opinion on this issue is specified in the E-Commerce Directive of 2000, where the intermediary is required to remove unlawful content but is not under obligation to monitor it constantly.⁵³ Afterwards, there were certain changes and a breakthrough due to Delfi v. Estonia case, where Grand Chamber accepted that Delfi was an active intermediary, and was not a passive technical service provider, and Delfi had a certain control over user-created comments.⁵⁴ Since it had an active role, then it could not use limited liability model under the E-Commerce Directive (Directive 2000/31/EC), but has to apply certain measures for removal of illegal comments, even can be a filter implemented, that will flag those words.⁵⁵ Additionally, the Court also added that the ability of large news portals on the Internet to continuously monitor their own websites and delete the comments which can be offensive.⁵⁶ Furthermore, knowing and taken into consideration all the information from the previous parts shall be investigated Russian Federation and China on how Freedom of Expression is protected and are limitations considered to be lawful, follow legitimate purpose and proportionate.

50 Ibid., par. 13-17

51 Ibid., par. 13-17

52 European Union, Directive 2000/31/EC, 8/6/2000, Accessible: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32000L0031>, 30 April 2019

53 Ibid., Article 12-14

54 Randall, M. (2016), supra nota 1, pages 249-250

55 Ibid., pages 249-250

56 Ibid., pages 249-250

3. RUSSIAN FEDERATION

Almost 10 years ago vital changes happened in the Russian Federation, which lead to one key conclusion that all websites in Russian Federation are subject to the same regulatory requirements.⁵⁷ There is no distinguishment between platforms, same rules and limitations apply to all of them, which are taken from several sources. The first source is the Constitution of the Russian Federation, where in the Article 29 there is explicitly specified that everyone shall have the guaranty to freely express thoughts, and shall be able to freely seek, receive, transmit information by any legal means.⁵⁸ One of the vital key elements is specified in the fifth paragraph, that freedom of mass media will be guaranteed and censorship shall be prohibited.⁵⁹

The second category is the Criminal Code of Russian Federation.⁶⁰ There are certain Articles that provide regulations on what shall be considered illegal and punishable by law on the Internet, such as Article 171.2 about illegal organising and conducting games of chance, Article 185.3 about market manipulation, Article 242 about illegal making and distribution of pornographic materials or objects, as well as using minors for making pornographic images and materials.⁶¹ Some of the actions can be punishable by a fine, however, severe ones are punishable by deprivation of liberty for three to ten years.⁶²

The third category is the Code of Administrative Offences of Russian Federation.⁶³ In several Articles, there is an explanation what will be fined and considered illegal in Russian Federation, such as Article 7.31 about placing unreliable information about goods on the Internet.⁶⁴ As well some

57 Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content (December 2015), supra nota 32, page 570

58 The Constitution of the Russian Federation 12.12.1993, Accessible: http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptlCk6B6BZ29/content/id/571508, 14 January 2019, Article 29

59 Ibid., Article 29

60 Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content (December 2015), supra nota 32, page 570

61 Criminal Code of the Russian Federation No. 63-Fz Of June 13, 1996, Accessible: <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf>, 14 January 2019

62 Ibid., 14 January 2019

63 Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content (December 2015), supra nota 32, page 571

64 Code of Administrative Offences of Russian Federation No. 195-Fz Of December 30, 2001, Accessible:

actions are considered to be punishable by fine, and some are punishable by deprivation of liberty.⁶⁵

The fourth category is Civil Code of the Russian Federation.⁶⁶ This category mostly provides copyright protection and similarly related questions, such as described in Article 1484 about Exclusive Right to a Trademark.⁶⁷ Also, Article 152 has a vital mention that honor, dignity and business reputation shall be protected by this document.⁶⁸

The fifth category is Federal Act On Information, Information Technologies and Protection of Information.⁶⁹ Act provides information and explanation of what will be considered generally accessible information, what will be restricted, as well as in Article 10.2 there is detailed information for bloggers, since currently in the Russian Federation the amount of bloggers is growing, with legal cases against them and what they say on the Internet.⁷⁰ Article 1 sums this all up by saying that “This Federal Law regulates relations arising in: 1) exercising the right to search, receipt, transfer, production and dissemination of information; 2) applying informational technologies; 3) ensuring protection of information.”⁷¹

There is as well Federal Act on Communications, where Article 1 specifies that „Goals of the Present Federal Law The goals set in the present Federal Law are as follows: - creation of conditions for rendering communications services on the entire territory of the Russian Federation; - rendering assistance in the introduction of promising technologies and standards; - protection of the interests of the users of communication services engaged in the activity of economic subjects in the sphere of communications; - providing for efficient and fair competition on the market of communications services; - creation of conditions for developing the Russian infrastructure of communications and for ensuring its integration with international communications networks; -

<https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru073en.pdf>, 14 January 2019

65 Ibid., 14 January 2019

66 Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content (December 2015), supra nota 32, page 571

67 Civil Code of the Russian Federation No. 52-FZ of November 30, 1994, No. 15-FZ of January 26, 1996, No. 147-FZ of November 26, 2001 and No. 231-FZ of December 18, 2006, Accessible: <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru083en.pdf>, 14 January 2019

68 Ibid., 14 January 2019

69 Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content (December 2015), supra nota 32, page 571

70 Federal Act On Information, Information Technologies and Protection of Information No. 149-FZ of July 27, 2006, Accessible: <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru126en.pdf>, 14 January 2019

71 Ibid., 14 January 2019

provisions for the centralised management of Russia's radio frequency resource, including the orbital-frequency resource and the numeration resource; - creation of conditions for satisfying the requirements in the communications of the state administration, of the country's defence and of state security, as well as for ensuring law and order.⁷² Additionally, there is Federal Act on Mass-Media, Federal Act on Countering the Extremist Activity, Federal Act on Countering Terrorism and Federal Act On the Protection of Children from Information Harmful to their Health and Development.⁷³

However, can having all these Acts in action mean, that filtering and blocking of information is happening smoothly and without any issues? Usually, when there are such a great amount of legislations implemented, it can be challenging for citizens to shape conduct accordingly, when some of the laws are vague, or they collide and provide quite different information on the content in question. In the following subchapters several vital problems shall be looked into with examples from legislations.

3.1. Broad definition and extensive amount of Acts

If we will look into extremism, then there is no widely used definition for extremism, on which majority countries agreed upon. In Russia blocking and filtering is applicable to the content when there is a certain connection to the extremism found in it. From the Article 1 of the Federal Act on Countering Extremism there are vital points for understanding what is extremism in general, such as „the forcible change of the foundations of the constitutional system and the violation of the integrity of the Russian Federation; the subversion of the security of the Russian Federation; the seizure or acquisition of peremptory powers; the creation of illegal military formations; the exercise of terrorist activity; the excitation of racial, national or religious strife, and also social hatred associated with violence or calls for violence; the abasement of national dignity; the making of mass disturbances, ruffian-like acts, and acts of vandalism for the reasons of ideological, political, racial, national or religious hatred or hostility toward any social group; the propaganda of the exclusiveness, superiority or deficiency of individuals on the basis of their attitude to religion, social, racial, national, religious or linguistic identity; the propaganda and public show of nazi

72 Federal Act On Communications No. 126-FZ of July 7, 2003, Accessible:

https://www.wto.org/english/thewto_e/acc_e/rus_e/WTACCRUS58_LEG_264.pdf, 14 January 2019

73 Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content (December 2015), supra nota 32, page 573

attributes or symbolics or the attributes or symbolism similar to nazi attributes or symbolics to the extent of blending; public calls for the said activity or for the performance of the said acts; the financing of the said activity or any other encouragement of its exercise or the performance of the said acts”⁷⁴

As can be seen, the list is quite extensive and broad, touching upon different categories, starting from changing the constitutional system till displaying Nazi symbols. Since the definition is not precise and clear, it can be problematic to people without law background to understand if actions, such as criticizing the church will be considered extremism, if for using works of Nazi leaders for historical purposes will give them a fine or will be considered not an issue. Moreover, from the list of categories, there is also different penalties applied to the actions person conducted. Some of the actions can be penalised with the fine, however, some of them are penalised by deprivation of liberty. In the Russian Criminal Code Article 280 specifies the penalty for committing extremism acts via mass media „shall be punishable by compulsory labour for a term of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years or without such, or by deprivation of freedom for a term of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years or without such.”⁷⁵ However, interesting fact appears from Article 280, using the Internet for extremism activities is considered to be an aggravating circumstance. Without the use of the Internet, there is a chance to receive a fine, but once there is a spread of extremism materials online, person can be deprived of freedom. It can be connected to the fact that greater amount of people will be able to see and read through this information.

One of the examples can be the case about Chelyabinsk resident Konstantin Zharinov. If we will look through facts of the case, he was convicted in 2015 under Article 280 Part 1 of the Russian Criminal Code for sharing an appeal by radical Ukrainian organization Right Sector to “Russians and other enslaved peoples” on his VKontakte page.⁷⁶ Konstantin Zharinov is a political scientist and has several books written about terrorism, so repost was made following professional interest, he was not even expressing his own opinion.⁷⁷ Blogger, Konstantin Zharinov, has appealed his

74 Federal Act on Countering Extremist Activity, Accessible: <https://www.legislationline.org/documents/id/4368>, 14 January 2019, Article 1

75 Criminal Code of the Russian Federation, supra nota 61, Article 280

76 Misuse of anti-extremism, Accessible: <https://www.sova-center.ru/en/misuse/news-releases/2018/07/d39704/>, 14 January 2019, Misuse of Anti-Extremism in June/July 2018

77 Ibid., Misuse of Anti-Extremism in June/July 2018

sentence in the European Court of Human Rights, and after looking through facts of the case European Court of Human Rights asked the Russian Federation if this sentence can be considered violation of Freedom of Expression, which is protected by Article 10 of the European Convention on Human Rights, and if the answer will be positive, then can this punishment be proportionate to the offence, since Zharinov received for the repost 5 years of jailtime.⁷⁸

3.2. Formulation and wording of the Law

It can be quite deceptive, several Acts may have the same information, which will cause issues in applying the correct one and penalising criminal for the committed crime. Example can be terrorism, since it is both mentioned in the Federal Act on Countering Extremism, Federal Act on Countering Terrorism and in the Criminal Code as well. However, from the Federal Act on Countering Terrorism in Article 3 there is a definition what terrorism is and what actions are considered to be terrorism. Article 3 states that: „2) terrorist activity shall mean activity including the following: a) arranging, planning, preparing, financing and implementing an act of terrorism; b) instigation of an act of terrorism; c) establishment of an unlawful armed unit, criminal association (criminal organization) or an organized group for the implementation of an act of terrorism, as well as participation in such a structure; d) recruiting, arming, training and using terrorists; e) informational or other assistance to planning, preparing or implementing an act of terrorism; f) promotion of terrorist ideas, dissemination of materials or information calling for terrorist activities, substantiating or justifying the necessity of such activities; 3) an act of terrorism shall mean perpetrating an explosion, arson or other actions connected with intimidating the population and posing the risk of loss of life, of causing considerable damage to property, as well as other especially grave consequences, for the purpose of unlawful influence upon the adoption of a decision by state power bodies, local self-government bodies or international organizations, as well as the threat of committing the said actions for the same purpose“.⁷⁹

From the definitions given above it can be seen that one Act is using similar definitions as the second Act, however, there is no information which Act will prevail in the situation. Terrorist material on the website can both fall into extremism and terrorism categories, which follow different sentences. Terrorism activities are severe, however, in Russian Federation, if a person was

⁷⁸ Ibid., Misuse of Anti-Extremism in June/July 2018

⁷⁹ Federal Act on Countering Terrorism, Accessible: <https://www.legislationline.org/topics/country/7/topic/5>, 14 January 2019, Article 3

convicted for extremism, he will be on the list, which is for both extremism and terrorism actions.

3.3. Limitations as part for the protection of public order

State values and principles can also play a vital part in imposing limitations. Freedom of expression can be limited for the protection of territorial integrity and for the protection of public order.⁸⁰

Russia focuses on independent news sites, and a list of websites, which were sent to Russian Internet Service Providers, so they were instructed to shut down servers that were delivering the offending content.⁸¹

Additionally, protection of State secrecy limits Freedom of Expression if certain information on the Internet can lead to the spreading of the information further, then State authority can request to block this website and/or removal of its illegal content.⁸² The criminal liability for disclosure of information of a State is strengthened, additionally, to this, the concept State treason is now also considered provisions of financial, technical, material help to a foreign state, to international or foreign organization.⁸³ The Criminal Code of the Russian Federation in the Article 283.2 sets liability for the disclosure of classified information in the form of imprisonment of up to 7 years not only for those who had access to it, but also for those who received it by accident.⁸⁴

Acts before are quite neutral and simply state that giving away State secrets is illegal, this can be traced in every State legislation, but another core limitation is connected to the Freedom of Religion. It can be seen due to the latest changes and developments, that Russian Federation considers Freedom of Religion valuable, however, puts Freedom of Expression on a slightly lower level, even though both rights can be limited and derogated, and are not considered to be Hardcore Human Rights.⁸⁵ Before, there was no such crime in the Russian Criminal Code, however, after amendments in 2013 in Article 148 there is a prohibition to commit acts which show disrespect for society and can insult the religious feelings of believers.⁸⁶ In Paragraph 2 there is a possibility to

80 Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content (December 2015), supra nota 32, page 578

81 Ibid., page 579

82 Ibid., page 582

83 Ibid., page 582

84 Criminal Code of the Russian Federation, supra nota 61, Article 283.2

85 Kuznetsov, D. (2014) Freedoms Collide: Freedom of Expression and Freedom of Religion in Russia in Comparative Perspective, 2 Russ. L.J. 75 , page 89

86 Ibid., page 89

receive severe punishment if such actions will be committed in the places designed for religious assemblies and similar ceremonies.⁸⁷

Here case is connected to the Magomed Khazbiev, who was charged with inciting hatred against social group “government officials” on the basis of a three-hour video interview he had given to the Ğalğajče, which is Ingush opposition website.⁸⁸ A group of experts was called to investigate the video, and there were signs of inciting hatred against Ingushetia and against the authorities in general, additionally, there were signs to change the government in the Republic of Ingushetia. Article 282 was used in this case, however, it seems that it can be not entirely correct.⁸⁹ There were no signs for legal actions to actually change the government, the whole interview can be seen as public discussion.⁹⁰

3.4. Limitations for specific group

Limitation can be targeted only on a specific group, for that reason there as a Federal Act on the Protection of Children, which has a list of material examples, that are considered to be harmful to children health and development. Prohibited material is specified in Article 5 (2):

1) Encouraging children to commit acts which threaten their life and/or health, including the infliction of harm to health or suicide; 2) Inducing children desire to use narcotics, psychotropic and/or intoxicants, tobacco and alcohol products, beer and beverages produced on its basis, to participate in gambling, prostitution, vagrancy or begging; 3) Substantiating or justifying violence and/or or cruelty motivating exercise violence against people or animals, except as provided for by this Federal Act; 4) Denying family values, promotes non-traditional sexual relationships and forming disrespect for parents and/or other family members; 5) Justifying unlawful behaviour; 6) Containing obscene language; 7) Containing pornographic information; 8) Containing information about personal data of minor who have suffered as a result of illegal actions (inaction), including full names, middle name, photo and video of the minor, his parents and other legal representatives, the date of birth of the minor, the audio recording of his voice, his place of residence or place of temporary residence, place of work or study, and other information allowing directly or indirectly

87 Ibid., page 89

88 Misuse of anti-extremism, supra nota 76, Misuse of Anti-Extremism in May/June and November/December 2018

89 Ibid., Misuse of Anti-Extremism in May/June and November/December 2018

90 Ibid., Misuse of Anti-Extremism in May/June and November/December 2018

establish the identity of the minor.⁹¹

In order to limit the access to those websites, there is a Unified Register created, which is a system of identification of websites that contain such harmful materials, and this Register is under Roskomnadzor authority.⁹² There are certain examples, such as on the 8th of November in 2012, Russian Encyclopedia was blocked for the article about how to correctly commit suicide; the IP address of Lurkmore.to was blocked due to several articles about drugs, however, the website was removed from the Register and unblocked after website administration deletes those drugs related articles; Youtube was blocked in 2012 for several hours in some regions due to anti-Islam movie *The Innocence of Muslims*, but after movie was taken down, then platform was working again.⁹³ Furthermore, in April 2015 Roskomnadzor blocked more than a hundred websites, which had pornographic information.⁹⁴ However, here limitations can be considered not quite proportionate to other groups, such as teenagers, adults and older people, since websites, which fell for some short period out of reach, had information not only connected to the offensive content for children, but additionally movies, music, audiobooks, which are used in every day life by other groups.

The Federal Act requires to have a symbol or a message near the information on the website that can be harmful to health and development of children.⁹⁵ The information, that shall be limited because of its harmful environment is:

1) information provided in the form of pictures and descriptions of violence, physical and/or mental violence, crime or other antisocial activities; 2) information that causes to the children fear, terror and panic, including representation in the form of pictures or descriptions in dehumanizing form of non-violent death, disease, suicide, accident, disaster or catastrophe and/or their consequences; 3) information provided in the form of pictures and descriptions of sexual relations between a man and a woman; 4) information containing abusive words and expressions that are not related to swearing.⁹⁶ Here it should be clearly understood, while imposing a limitation or blocking a content, that what can be fearful for children, is simply quite normal for older generations.

91 Федеральный закон "О защите детей от информации, причиняющей вред их здоровью и развитию" от 29.12.2010 N 436-ФЗ (последняя редакция), Accessible: http://www.consultant.ru/document/cons_doc_LAW_108808/, 14 January 2019

92 Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content (December 2015), supra nota 32, page 580

93 Ibid., page 580-581

94 Ibid., page 580-581

95 Federal Act on the Protection of Children, supra nota 91, Chapter 3.12

96 Ibid., Chapter 2

Example of this can be connected to the Mikhail Larionov, who is 21-year-old gamer. He posted on Twitch.com a clip from a live stream of the game World of Tanks, which he titled "Disrespect toward the Ukrainian people!".⁹⁷ He received a 2-year suspended, however, such behavior considered to be common in the gaming industry.⁹⁸ Comments and videos like that should be understood in the gaming context, when people express their frustration or try to infuriate other players by such comments, but not openly offering to take actions against any groups of people.

⁹⁷ Misuse of anti-extremism, supra nota 76, Misuse of Anti-Extremism in February/March 2018

⁹⁸ Ibid., Misuse of Anti-Extremism in February/March 2018

4. CHINA

The People's Republic of China has the most amount of Web users, there are approximately 618 million people active on social media, and all the biggest websites in the country have over 3.2 billion accounts.⁹⁹ In the Constitution it is mentioned that state respects and safeguards human rights, additionally, China has 630 law schools, where 60 of them are connected to the human rights education, which means that State actively supports human rights and promotes them, and, moreover, China ratified large amount of human rights instruments, and takes part in drafting new instruments in the same field.¹⁰⁰ With great attempts to bring human rights to public and provide people with possibilities to express themselves, further shall be understood how China regulates Freedom of Expression in Internet Environment. It would be better to take different approach to how China regulates internet, since it would be easier to understand why certain limitations are applied.

4.1 Different Internet Vision

In Article 35 of the 1982 Constitution of China, it is stated that „Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.“¹⁰¹ In order to provide protection for citizens from unwanted content on the Internet the Information Office of the State Council published a White Paper on the Internet in China, where it is specifically mentioned that “Chinese citizens fully enjoy freedom of speech on the Internet” and that the “government is determined to unswervingly safeguard the freedom of speech on the Internet in accordance with the law.”¹⁰² There is also Chinese government report „How the Chinese Authorities View the Internet: Three Narratives”, where government clarified that Internet is widely opened and without any boundaries, which can be an issue, people can express themselves via different channels and platforms, forming incorrect opinion and sending to the wider public information, which is deemed to be wrong and damaging.¹⁰³

99 Sevastik, P. (2015) Freedom of Expression and Opinion in the People's Republic of China and the Internet, 60 Scandinavian Stud. L. 253, page 254

100 Ibid., page 255

101 Constitution of the People’s Republic of China 4.12.1982, Accessible: http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm, 09.02.2018, Article 35, 09.02.2018

102 Sevastik, P. (2015), supra nota 99, page 259

103 Concerning the Development and Administration of Our Country’s Internet, Accessible:

It seems that governmental authorities consider Internet as a source of information, where only some part of it provides proper and logical information, however, everything else can be harmful to their citizens and their well being. At some point it can be agreeable, Internet environment does not always have correct information provided in a proper manner, and at some point, users tend to present content, that has nothing to do with reality. However, this is not always the case, information like this can be simply disregarded. If we look into methods that are used, then China uses a very interesting and sophisticated method for filtering content in all possible categories.¹⁰⁴ Major Chinese search engines use the keywords method, additionally, several Regulations are used with the legal framework, such as General Media Regulation, Internet Access Regulation and Internet Content Regulation.¹⁰⁵ According to the Regulations mentioned above, Internet Service Providers are legally responsible for the content they display and are required to check and delete inappropriate content, otherwise staff members can be arrested and license from the company will be taken away.¹⁰⁶

Checking Computer Information Network and Internet Security, Protection and Management Regulation, it can be seen through several Articles, that „No unit or individual may use the Internet to harm national security, disclose state secrets, harm the interests of the State, of society or of a group, the legal rights of citizens, or to take part in criminal activities.”¹⁰⁷ Article 5 has a list of information that is not allowed on the Internet, such as „(1) Inciting to resist or breaking the Constitution or laws or the implementation of administrative regulations; (2) Inciting to overthrow the government or the socialist system; (3) Inciting division of the country, harming national unification; (4) Inciting hatred or discrimination among nationalities or harming the unity of the nationalities; (5) Making falsehoods or distorting the truth, spreading rumors, destroying the order of society; (6) Promoting feudal superstitions, sexually suggestive material, gambling, violence, murder; (7) Terrorism or inciting others to criminal activity; openly insulting other people or distorting the truth to slander people; (8) Injuring the reputation of state organs; (9) Other activities against the Constitution, laws or administrative regulations.”¹⁰⁸

<https://www.hrichina.org/en/content/3241>

104 Internet Filtering in China in 2004-2005: A Country Study, Accessible: <https://opennet.net/studies/china>

105 Ibid.

106 Ibid.

107 Computer Information Network and Internet Security, Protection and Management Regulation, Accessible: <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/information-technology/computer-information-network-and-internet-security-protection-and-management-regulations-1997.html>, Article 4

108 Ibid., Article 5

4.2 Protection of Culture and History

China top priorities are always information management, the cooperation between State and the private sector, and allow a great amount of freedom even with connection to political topics.¹⁰⁹ State-owned platforms like Pengpai deliver interesting political news, in the same time staying in the boundaries and keeping people within them.¹¹⁰ The main goals in China was mentioned by president Xi Jinping, who states that Chinese media need to „tell China’s story“ to the world, there is a clear vision by the government to have a free of fake news Internet environment, where you can post news and articles, and receive information as long as it does not offend political structure of the State, and as long as it protects national security and history of the country, which is something that should be considered.¹¹¹

China uses a firewall to block access to certain websites, such as Google Search Engine, instead of that citizens are being re-directed to the Chinese Search Engine.¹¹² China legislature enacted several laws, which indeed recognize personal rights, such as right to privacy, however, this is balanced with Golden Shield project for "the adoption of advanced information and communication technology to strengthen central police control, responsiveness, and crime combating capacity, so as to improve the efficiency and effectiveness of police work."¹¹³ With such a great amount of people in the country, States try to eliminate criminal activities with such methods. Additionally, to having Internet Service Providers censoring information with the employees, some users also provide help to the Service Providers, look through what has been posted and if this is considered to be legal.

China has a completely different culture and vision of the world, with its history and traditions, which are still being followed step-by-step, it is incredible and understandable why such level of protection is offered to the citizens. Additionally to that, we can see the results with the economic boost, government is looking after the citizens and provide them with all the needed information, products, however, maybe there can be a possibility to lower the shield and allow some protection

109 Kalathil, S. (2015) Beyond the Great Firewall: How China Became a Global Information Power. Accessible: https://www.cima.ned.org/wp-content/uploads/2017/03/CIMA-Beyond-the-Great-Firewall_150ppi-for-web.pdf, page 4

110 Ibid., page 4

111 Ibid., page 6

112 Chen, E. (2003) Global Internet Freedom: Can Censorship and Freedom Coexist, 13 DePaul-LCA J. Art & Ent. L. 229 , page 239

113 Ibid., page 250

flow from Europe and other countries, which can allow establishing a dialogue between government and citizens.

One of the examples about how the Chinese government looks after citizens is the Yanxi Palace situation, which happened quite recently. It was quite popular Chinese drama, which was streamed on iQiyi platform and was the most watched online drama, however, it was canceled due to „ propagating a luxurious and hedonistic lifestyle, encouraging admiration for imperial life and a glorification of emperors overshadowing the heroes of today.“¹¹⁴ China is trying to promote values and the correct ideology among citizens, it is trying to show that hard-work and trust in the government will pay off, which is understandable. This example may look like a mother protecting a child from the hardships of the outside world. Can there be other possibilities to achieve the same, but in a softer way, where culture and historical background is still present?

114 Yanxi Palace: Why China turned against its most popular show, Accessible: https://www.bbc.com/news/world-asia-china-47084374?ocid=socialflow_facebook&ns_source=facebook&ns_campaign=bbcnews&ns_mchannel=social, 10 February 2019

5. SOLUTIONS

5.1 Distinction between levels of speech

In order to apply adequate limitations, there shall be a clear understanding of what is considered high and low-level speech. However, it may sound quite easy to distinguish those types in mass media, TV and in other sources of information, it is not so clear for the Internet content. There are several safeguards imposed in order to understand the difference, such as understanding the context, how long was this information online, was it intended to the wider public or limited amount of people had a possibility to see it, what is the level of preparation and how seriously should be taken into consideration the content.¹¹⁵ One of the main key points is the audience. If the content was checked by a great number of people, this will indeed require severe protection, since the speech, information provided by another person will and shall shape the minds of other people and establish the needed connection, start a dialogue about issues that may trouble the variety of citizens. Nevertheless, it was pointed out by Strasbourg Courts that mass media has certain duties and responsibilities it needs to follow, which means that protection can become conditional, if certain steps and rules will be followed.¹¹⁶

This can be considered a good point, we can take as examples different blogs and YouTube channels, which take little or no time in checking the information they provide to listeners and readers. However, one incorrect provided link, messages, and this can damage another person's reputation without the possibility to rectify it. The line between which content was destined to be for the wider category of people, which content was destined to be private is no longer clear, the boarder is wiped out. Additionally, intention shall be taken into consideration, if a person creates a video on the platform about certain topic, he wanted to be heard, he should clearly understand, that any person can check this message and reply to him. This message will have least protection than message on your personal blog, which is opened for only several classmates.

The last point, which was taken into consideration by Strasbourg Court, is how long it may have taken to prepare the content, how experienced was the speaker and were there any possibilities to

115 Rowbottom, H. (2012), *supra* nota 8, pages 376-377

116 *Ibid.*, page 372

intervene.¹¹⁷ If this is a YouTube video, then it will have less protection, since, in order to create a video with all the required content and visual background, it will take time. During this period of time person had a possibility to change how he wanted to bring his opinion, which language he should have used. If person posts videos every day during a year, he can be considered an experienced speaker, who shall know what can be said online and what shall be kept to himself.

One key point to add, political speech category should have more severe protection.¹¹⁸ Political speeches allow to start a dialogue between regular people and the States, in this situation speaker and audience interest in both ways are vital here.¹¹⁹ It can be added, that any gossip and information for the basic entertainment shall have least protection than something global and wider, which is aimed at creating a mutual understanding between regular citizens and government.

5.2 Clear definitions and non-discriminatory penalties

This solution can apply to Russian Federation, so that limitations shall have narrow and clear definitions, the law should contain limitations in one field, not take piece by piece from all other fields additionally.¹²⁰ If we will look into case with extremism, then there is a penalty for posting works of Nazi leaders, and then completely another penalty and another field, which is connected with terrorism activities. The definition is quite broad, it should not try to cover all the fields, but focus on only one of them and be as precise as possible. Also, those limitations shall be applied by the body, which is independent of any influences from political, commercial and other possible sides, and it shall be applied in non-discriminatory way with adequate safeguards.¹²¹ Limitations shall be applied to all public in general, all people should have a feeling that they are all protected equally, not only some religions, political views, but no matter what belief a person has, he still has a possibility to speak about his thoughts and receive information about this in free manner. Limitations are created to protect individuals. The limitations shall be proportionate and, if there is another possible way to limit hate-speech, for example, then this method shall be used.

Additionally, there should be no restrictions on the content which is true, especially when people

117 Ibid., page 373

118 Scanlon, T. (1979) Freedom of Expression and Categories of Expression, *supra nota* 3, page 535

119 Ibid., page 535

120 Schmidt, M. (2010) Limits to the Restrictions to Freedom of Expression - Criteria and Application, 5 Religion & Hum. Rts. 147, page 150

121 Ibid., page 151

tend to bring to attention racism and intolerance, this should not be censored, and offenses involving freedom of expression should never be considered under a penal code.¹²²

5.3 Millian Principle

Limitations shall be taking into consideration the Millian Principle, where certain harms cannot be taken as part of a justification for legal restrictions on freedom of expression.¹²³ These harms are the following: "(a) harms to certain individuals which consist in their coming to have false beliefs as a result of those acts of expression; (b) harmful consequences of acts performed as a result of those acts of expression, where the connection between the acts of expression and the subsequent harmful acts consists merely in the fact that the act of expression led the agents to believe (or increased their tendency to believe) these acts to be worth performing.»¹²⁴

If there will be an interpretation for this principle, then, in general, there shall be a limitation to the content that is faulty and can lead to wrongdoing. With this government will protect the audience and protect citizens from fake news, which populate the Internet and it can be quite difficult to understand which news is trustworthy and which is not. People consume everything on the Internet and this makes them an easy target for the manipulation. Not only children can be easily used for the wrongdoings, but it can also be any person, who has access to the Internet.

5.4 Other possible solutions

It cannot be denied, that people play a vital part in establishing dialogue. There are two different points of view additionally to that, when La Rue ‘believes that censorship measures should never be delegated to a private entity, and that no one should be held liable for content on the Internet of which they are not the author.’¹²⁵ There is too much burden put on the government to find a solution how to regulate Internet environment, but since this area is not limited, at some point private companies have to deal with this unregulated power. Intermediaries such as Google, You Tube and Facebook have achieved a dominance, which means that digital activists need to comply with rules

122 Ibid., page 151

123 Scanlon, T. (1979) Freedom of Expression and Categories of Expression, supra nota 3, page 531

124 Ibid., page 531

125 Joyce, D. (2015). Internet Freedom and Human Rights, European Journal of International Law, Volume 26, Issue 2 , page 505

from these mechanisms if they are willing to be heard.¹²⁶ Intermediaries cannot hold power in their hands, cannot set limits for their own benefits. Internet shall not be used as a tool, rather as a possibility to create a dialogue. The same idea is followed by Jaron Lanier, who has a human approach of a problem.¹²⁷ We need to understand that the protection is required for human beings, not phones, computers and so on. As Jaron Lanier points out, then people should be valued, they shall be given the possibility to flourish and be distinctive.

126 Ibid., page 510

127 Ibid., page 512

6. Conclusion

In conclusion, it can be clearly seen that Freedom of Expression is a vital part of our lives in the modern world. It allows people to freely express opinions about every possible topic, which is why several documents exist to list the right itself and reasonable limitations. However, one vital fact shall be taken into consideration, which is connected to the intermediaries. Intermediaries have several levels, not every category is responsible for the content the same way. There shall be a clear understanding between Internet Service Providers and Social Media Platforms, as one of the examples. Internet Service Providers is a wide category, while Social Media Platforms deals only with the content that people can share with each other on the Internet. From that, we can establish liability levels, which are formed into three groups and each has a set of rules to follow.

Moreover, after understanding basic facts about Intermediaries, there needs to be a piece of knowledge about Freedom of Expression itself. According to Article 19 from Universal Declaration of Human Rights, then it is clearly seen that people have a right to express thoughts freely and receive information from all the sources.¹²⁸ Moreover, there are certain limitations, which States can use and filter certain content if they threaten the national security and public order. But it should be kept in mind that every limitation shall be prescribed by law, have a legitimate aim and be proportionate.¹²⁹

In the thesis work, we had two States as examples used. One is the Russian Federation, another one is China. In the Russian Federation all websites fall under the same regulations. There are several sources, which regulate information on the Internet, such as Criminal Code, Code of Administrative Offences, Civil Code, Federal Act On Information, Information Technologies and Protection of Information and many more. Each source provides information about what content can be restricted. However, several issues appear from that. The first and the major one can be broad definitions and extensive amount of acts used. As example extremism was used, which definitions

128 UN General Assembly, Universal Declaration of Human Rights, *supra* nota 38, Article 19

129 Randall, M. (2016), *supra* nota 1 , page 241

have actions listed from different categories, such as posting works from Nazi leaders and ending with exercising the terrorism activity.¹³⁰ Also, additionally to the listed issues, limitations are also applied to the content based on the group. Some information is considered to be too harsh and cruel for certain groups, such as teenagers and kids, which is why the whole website is taken down until that crucial article is removed.

China, on the other hand, has a completely different vision of the Internet, which is curious and needs to be taken into consideration. China allows you to express opinion and receive information needed, however, the government is concerned with protecting history and culture from the intrusion. With such a long and prosperous culture it is vital to save it and allow to flourish further. Also, China sees that Internet can pose danger to citizens, which can be close to reality, having all the fake news and incorrect information floating around.

There can be several solutions offered to the States. For applying acts and limitations, it would be beneficial to distinguish and understand different levels of speech. Political speech shall receive maximum protection, this will allow government and people to establish dialogue, which gossip and usual content can have less protection.¹³¹ However, even here certain steps shall be taken into consideration, such as how long it took the speaker to prepare, was there a possibility to interact and similar chances to change the content. Furthermore, definitions should be less broad and clear, so that citizens will have a clear understanding about what is and can be penalized, but even sanctions should be non-discriminatory. In the end, States are trying to protect people, their own citizens, Government should value people and provide them with maximum protection.

130 Federal Act on Countering Extremist Activity, *supra* nota 74, Article 1

131 Scanlon, T. (1979) Freedom of Expression and Categories of Expression, *supra* nota 3, page 535

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