

ТМ	Г. XXXVII	Бр. 4	Стр. 1779-1794	Ниш	октобар - децембар	2013.
----	-----------	-------	----------------	-----	--------------------	-------

UDK 342.727:004.773

Стручни рад

Примљено: 23. 07. 2013.

Ревидирана верзија: 26. 11. 2013.

Одобрено за штампу: 02. 12. 2013.

Elja Eljvira Gordon

University of Kragujevac

Faculty of Hotel Management and

Tourism

Vrnjačka Banja

## **FREEDOM OF EXPRESSION AND ITS LIMITS IN BLOGS AS MEANS OF CONTEMPORARY COMMUNICATION**

### **Abstract**

During the sixteen years of their existence, blogs have become one of the most popular means of communication and an essential tool for freedom of expression, allowing millions of people around the world to freely express themselves and communicate. Freedom of expression is a fundamental human right and an integral element of a democratic society. The growing popularity of blogs often challenges the right to freedom of expression. While providing its users to communicate and express themselves freely, they simultaneously bring into focus the existing misconception and misuse of freedom of expression. The discussion leads to the conclusion that statutory provisions that operate in real life should also be extended to virtual space and adapted for the current conditions and the distinctive features of Internet communication. Therefore, the balance between freedom of expression and respect for human rights should be one of the priorities of a democratic society.

**Key words:** freedom of expression, communication, blogs, Internet, civil rights and liberties

## **СЛОБОДА ИЗРАЖАВАЊА И ЊЕНЕ ГРАНИЦЕ У БЛОГОВИМА КАО СРЕДСТВИМА САВРЕМЕНЕ КОМУНИКАЦИЈЕ**

### **Апстракт**

Током шестнаест година свог постојања блогови су постали један од најпопуларнијих начина комуникације и суштински алат за слободу изражавања,

---

elenka1204@yahoo.com

који даје могућност милионима људи широм света да се изразе и комуницирају. Слобода изражавања је основно људско право и саставни елемент демократског друштва. Све већа популарност блогова често доводи у питање право на слободу изражавања. Пружајући својим корисницима прилику да комуницирају и слободно се изражавају, блогови у исто време покрећу тему постојања погрешног схватања и злоупотребе слободе изражавања. Дискусија доводи до закључка да законске одредбе које постоје у реалном животу треба проширити и на виртуелни живот, и прилагодити их текућим условима и актуелностима, као и специфичности комуникације путем интернета. Стога, равнотежа између слободе изражавања и поштовања људских права треба да буде један од приоритета демократског друштва.

**Кључне речи:** слобода изражавања, комуникација, блогови, интернет, грађанска права и слободе

#### *BLOGS AS CONTEMPORARY MEANS OF COMMUNICATION*

In recent times, the Internet has succeeded in creating an informative and communicative space on a global scale. As for its communicative function, the Internet has become one of the most effective means of connecting people, making its communicative characteristics increasingly important. Today, the Internet is perceived as a global communication channel providing the transmission of multimedia messages worldwide, as a global library and public information storage, as a news agency, as an auxiliary means of socialization and personal and group self-actualization through communication with concerned individuals and interest groups, and, finally, as a global business and leisure club (Соколов, 2002). Therefore, the Internet has become probably the most popular means of communication. A great number of websites are devoted to helping people communicate and socialize, find friends and associates, obtain information on a topic of interest, discuss topics, etc. There are various categories of websites designed for communication, such as chats, forums, social networking sites, blogs, and so forth. Perhaps, one of the most prominent website types among this variety is a blog, which is of interest to both users and communication researchers.

The concept of a blog refers to a form of a virtual online diary. The main content of a blog consists of regularly added entries such as texts (author's ideas, opinions, thoughts, links, news and personal diary entries, etc.), photos, music, videos, and other multimedia messages. The entries are set in chronological order with the most recent ones shown first. Blogs are easy and simple to use and do not require special knowledge from users. Therefore, a blog can be defined as "a web page that serves as a publicly accessible personal or group journal for an individual or a group" (Baggetun & Wasson, 2006, p. 454).

Blogs can be classified according to various criteria such as:

- by authorship (blogs can be individual or group);
- by accessibility (public – open to all, or private – open to a limited number of registered readers);
- by thematic scope (blogs can be thematic and generalized).

Generally, blog entries give readers the opportunity for discussion since

“blogging software allows the person who runs a blog to permit some, all, or none of the readers to post comments to the blog, with or without retaining power to edit or moderate the posts that go on, and those that do not” (Benkler, 2006, p. 217).

This process contributes to the communicative nature of blogging. Needless to say, this feature also adds an interactivity aspect to the process of communication and creates networks and communities. Blog popularity is often determined by the number of comments – the more comments blog entries gather the more popular the blog is.

#### *THE CONCEPT OF FREEDOM OF EXPRESSION*

Civil rights and liberties (or freedoms) refer to a body of individual rights and freedoms of political, economic, and social character that form the basis of the legal status of an individual in a society and that are necessary for the protection of fundamental human values such as life, freedom, dignity, and privacy. It is necessary to distinguish between “civil rights” and “civil liberties”. The concept of “rights” refers to a possibility that enables an individual to do something, possess something, or put something into practice, whereas the concept of “liberties” implies the absence of any restrictions in the implementation of any activity not prohibited by law. Freedom of expression, as well as its synonymous concept, freedom of speech, represents an integral part of civil rights and liberties. Whereas freedom of speech guarantees a political right of people to express their opinions and ideas without governmental restriction, freedom of expression extends this notion and also covers seeking, receiving, and communicating information, opinions, or ideas through any form of communication and media. Freedom of expression is a fundamental human right, which is an essential condition for the existence of a healthy and happy society since it is only through open debate that we can find optimal solutions and the best ways for organizing society. It includes not only the right to freely express thoughts and opinions, but also the right to share this information through various information channels and means of communication such as newspapers, radio, television, and the Internet.

Freedom of expression is referred to in a number of international instruments and documents of global and domestic significance and recognition.

Article 19 of the Universal Declaration of Human Rights provides 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 regardless of frontiers” (UDHR, 1948, Art.19).

The International Covenant on Civil and Political Rights (ICCPR) adds that this information can be expressed “orally, in writing or in print, in the form of art, or through any other media of [one’s] choice” (ICCPR, 1966, Art. 19, Paragraph 2). The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) stands in accordance with the previous two instruments (ECHR, 1950, Art. 10, Paragraph 1). The American Convention on Human Rights (ACHR), while viewing the notion of freedom of expression in the same manner as the previous instruments, adds to the protection of this right, stating that

“the right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions” (ACHR, 1969, Art. 13, Paragraphs 1,3).

The African Charter on Human and Peoples’ Rights (ACHPR) sees freedom of expression in terms that

“every individual shall have the right to receive information” and the right to “express and disseminate his opinions within the law” (ACHPR, 1982, Art. 9, Paragraph 1).

In accordance with the legislation of the Republic of Serbia, Article 46 of the Constitution of the Republic of Serbia guarantees freedom of thought and expression in terms of “freedom to seek, receive, and impart information and ideas through speech, writing, art, or in some other manner” (Constitution of the Republic of Serbia, 2006, Art. 46).

Self-expression is an important instrument for human life and activities. As stated in the Declaration of the Right of Man and the Citizen, “the free communication of ideas and opinions is one of the most precious of the rights of man” (DRMC, 1789, Art. 11). Freedom of expression is, therefore, one of the most significant civil liberties and an essential element of the constitutional foundation of any state. The degree of implementation of freedom of expression shows the level of legal awareness in a society and characterizes the existence of true democracy in a state. Freedom of expression plays an important role on both individual and public levels. It supports individual dignity and self-actualization and at the same time enables public participation in state-related decision making.

### *FREEDOM OF EXPRESSION IN BLOGS*

The year 2013 marks the sixteenth anniversary of the blog. During these years blogs have proved to be an essential tool for freedom of expression allowing millions of people around the world express themselves and communicate. As Christoph Dreyer, a spokesman for Reporters without Borders in Germany, mentioned in his interview to *Deutsche Welle* (German International Broadcaster),

“Blogs have been, and still are, a tremendously powerful instrument in defending freedom of expression and freedom of the press simply because they are so easy to set up and easy to use and so hard to control, especially in settings where traditional media are tightly controlled. ... Blogs have become much more interactive. People share, and sharing has become a very important activity and way to disseminate information and opinions” (<http://www.dw.de/blogs-still-aid-global-freedom-of-expression/a-16846154>).

The Electronic Frontier Foundation (EFF) has recently published the Bloggers’ Rights, which include the following:

- Bloggers can be journalists (and journalists can be bloggers).
- Bloggers are entitled to free speech.
- Bloggers have the right to political speech.
- Bloggers have the right to stay anonymous.
- Bloggers have freedom from liability for hosting speech the same way other web hosts do. (<https://www.eff.org/bloggers>)

These and other characteristics of blogging make blogs particularly significant in exercising freedom of expression. For example, blogs are informal channels of communication, which allows bloggers more freedom and independence in expressing various ideas and opinions, sharing more information than in formal sources of information. The availability of feedback and commentary as one of the basic principles of blogging results in open discussion and interactivity. This, in turn, leads to audience accumulation, where free communication of thoughts and opinions is made possible and legitimate.

In addition to that, most blogs are free of charge and are convenient and easy to use. This allows practically everyone to become a blogger or to have access to many other blogs. Blogging allows authors to use the spoken language and, thus, appeal to a wider audience. Bloggers are able to select their target audiences and can, therefore, be heard by those whom they aim to reach. The specificity of the blog diary form with personal narratives, first-hand stories and news, and private reflections and opinions carries a connotation of sincerity and, therefore, originally attracts numerous readers, which in turn increases the bloggers’ chances to express themselves and be heard. Blogs offer ample opportunities for their authors by enabling them to share not only verbal information, but any other multimedia messages, such as music, videos, and so forth. Cer-

tainly, it cannot go unmentioned that blogger anonymity allows the authors to express themselves freely and share their opinions and thoughts.

### *BLOGGING IN THE CONTEXT OF JOURNALISM*

There has been a continuing debate whether blogs could be regarded as means of mass communication and whether bloggers could be considered journalists. Taking into consideration the great popularity gained by blogs, they should be regarded as a means of mass communication since a blog's platform allows mass audience throughout the world to communicate and interact. It is worth noting that there is no consistent opinion or definition among the legal instruments regarding whether bloggers can be called journalists. Whereas General Comment No. 34 of the International Covenant on Civil and Political Rights includes blogging in journalism when saying that

“journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere” (UN HRC, 2011, Art. 19, Paragraph 44),

another legal instrument defines a journalist as

“any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication” (R (2000)7, 2000, App., def. a),

which means, as explained in the Memorandum to the instrument, that even though “professional accreditation or membership is not necessary”, a journalist is supposed “to work regularly and receive some form of remuneration for his or her work” (ibid, Paragraph 13).

The question of whether a blogger can be considered a journalist is very important since it refers to such aspects as reliability, responsibility, accountability of bloggers, and so forth. Even though some blog defenders, who tend to see bloggers as journalists, claim that blogs are inherently self-corrective and, therefore, may be even more accurate than traditional news forms; they still may not be as accurate and trustworthy as mainstream journalism. This is due to the absence of systematized verification and editing process that is related to the blogs' obvious inability to maintain the same standards of truthfulness, verifiability, fairness, and completeness as are exercised in most of the traditional journalistic output (Morozov, 2005). Numerous are the incidents when unchecked facts and rumors disseminated by blogs damage reputations and careers of an individual or a group. In addition, there are cases when bloggers post photos or videos of persons without their consent, thus exposing them to danger. This makes obvious the fact that blogs' self-correction and ethical issues are far from perfect. Therefore, calling any blogger a journalist is similar

to calling anyone who holds a scalpel a surgeon. Thus, it can be said that all journalists can be bloggers, but not all bloggers can be journalists.

Since bloggers are not universally acknowledged journalists, they are generally not covered by the journalists' protection of sources' confidentiality. As stated in the Explanatory Memorandum,

“The protection of the confidentiality of sources of information is limited to journalists. [...] Individuals who are not journalists are not covered by this Recommendation” (R (2000)7, 2000, Paragraph 10).

However, determining whether bloggers could be entitled to the constitutional or statutory protection from required disclosure of information is still not as simple as when applied to traditional journalists. This explains why court judgments on the subject vary in practice.

Although they are not official journalists, the law protects bloggers in the same way as journalists when it comes to attacks aimed at silencing those exercising their right to freedom of expression. As stated in General remarks,

“Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation, and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress” (UN HRC, 2011, Art. 19, Paragraph 23).

One of the important questions of contemporary debate concerns bloggers' anonymity. Preserving a balance between the anonymity interests of blogs' authors and the legal recourse interests of those whom the bloggers write about is becoming increasingly significant as the blogging phenomenon gains influence in our society. The Joint Declaration of Freedom of Expression and the Internet prescribes that

“Awareness raising and educational efforts to promote the ability of everyone to engage in autonomous, self-driven, and responsible use of the Internet should be fostered ('Internet literacy')” (OSCE, 2011, Art. 1, Paragraph 1).

However, it appears that, as regards the general practice of protection of bloggers' anonymity in relation to defamation and concern for the protection of reputation, when deciding whether to reveal the anonymous blogger due to allegations of defamation, the court would consider whether public interest supporting the revelation outweighs the interests of right to privacy and freedom of expression of those bloggers sought to

be identified. In other words, the law recognizes that freedom of expression should not be equalized to the right to ruin anyone's reputation, thus balancing the rights of bloggers of freedom of expression with the rights of the subjects of bloggers' publishing. This is done in order to prevent the use of the Internet as a means for intentional defamation of an individual (or a group), whether in their private or professional life.

Therefore, freedom of expression in blogs should be understood in the context of legal accountability and ethical responsibility of bloggers. Several attempts have been made to create a code of ethics for bloggers. However, considering the global scale of the blogosphere, a universal code of ethics should be designed that would serve as a set of guidelines for ethical behavior and a grounds for ethical decision making for bloggers.

The fact that both professional journalism and blogging are not ideal and have their drawbacks should be admitted. In this context, it would probably also be important to focus not only on who is publishing the information, but also on how it is done and what the quality of information being broadcasted is. Bloggers can help professional journalists. A good assistant is no less important than a professional. Bloggers can be of great help to journalists in a sense that they can draw traditional media attention by exposing provable facts about actual events, thus serving as a rich source of information.

### *THE LIMITATIONS AND LIMITS OF FREEDOM OF EXPRESSION*

#### *The limitations of freedom of expression*

The concept of freedom of expression should not be understood in absolute terms since absolute freedom is not possible. In fact, freedom of expression is limited and reduces itself to the expression of thoughts, opinions, and intentions that are not prohibited by the law.

The abovementioned instruments that guarantee the right of freedom of expression at the same time provide restrictions and limitations. According to Article 19 of the ICCPR, there are two categories of limitations that 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 people's health and morals (ICCPR, 1966, Art. 19, Paragraph 3).

The ECHR defines these restrictions more specifically. Thus, Article 10 of the ECHR provides the following limitations of the exercise of the right to freedom of expression since it carries with it duties and responsibilities that may be subject to such formalities, conditions, restrictions, or penalties as are prescribed by the 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” (ECHR, 1950, Art. 10, Paragraph 2).

The ACHR states that the exercise of the right of freedom of thought and expression

“shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” (ACHR, 1969, Art. 13, Paragraph 2)

The instrument also provides that

“any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law” (ACHR, 1969, Art 13, Paragraph 5).

The ACHPR mandates briefly and clearly that “every individual shall have the right to express and disseminate his opinions within the law” (ACHPR, 1981, Art. 9, Paragraph 2). Article 46 of the Constitution of the Republic of Serbia restricts freedom of expression in the following cases:

“if [it is] necessary to protect rights and reputation of others, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society, and national security of the Republic of Serbia” (Constitution of Republic of Serbia, 2006, Art. 46).

It can be seen that though various instruments present restrictions to the right of freedom of expression differently, the common basis for a conclusion can be that freedom of expression is subject to certain limitations, such as libel, sedition, instigation to crime and disorder, obscenity, hate speech, incitement to violence or rebellion, and so forth.

#### *The limits of freedom of expression*

It must be noted that the present study by no means intends to detract the significance of blogs (as well as other Internet sites designed for communication and information sharing) for communication and the ability to exercise the right of freedom of expression. No one doubts the importance of blogs as a contemporary means of communication and, certainly, no one undermines the significance of the sacred right to freedom of expression. The question is whether there are limits of freedom of expression in blogs.

There are two main characteristics of blogs that are particularly relevant for the given discussion: (1) blogs are public, and (2) readers can communicate with bloggers. This leads to the conclusion that bloggers can influence their readers and even become their opinion leaders. The important thing is what opinions and messages bloggers can bring to the world and how the right of freedom of expression is being exercised in blogging. The following is just an example of one of the web hosts that suggest creating a blog:

“The team behind WordPress.com strongly believes in freedom of speech. Our service is designed to let Internet users freely express any ideas and opinions without us censoring or endorsing them. [...] However, you may also find the occasional blog that offends you. It might offend us as well, but while we are strict about shutting down blogs that violate our terms of service (no spam, personal threats, incitement of violence, etc.), we will not shut down blogs because they are offensive.” (<http://en.wordpress.com/freedom-of-speech/>)

Another example is the information posted by Twitter.com in relation to the blogs’ content:

“We do not endorse, support, represent, or guarantee the completeness, truthfulness, accuracy, or reliability of any Content or communications posted via the Services or endorse any opinions expressed via Services. You understand that by using the services, you may be exposed to Content that might be offensive, harmful, inaccurate, or otherwise inappropriate, or in some cases postings that have been mislabeled or are otherwise deceptive. Under no circumstances will Twitter be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any content posted, emailed, transmitted, or otherwise made available via the Services or broadcast elsewhere.” (<https://twitter.com/tos>)

We encounter texts such as the one cited above in practically all web hosts where creating a blog is possible. As shown, the limits of content acceptability are quite flexible. Certainly, all the web hosts do have some set of rules concerning acceptability of content (specific threats of violence against others, copyright infringement, privacy, using obscene or pornographic images, etc.). However, in each web host we can find the following or similar to the following text:

“All Content whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such Content. We may not monitor or control the Content posted via the Services, and we cannot take responsibility for such Content. Any use or reliance on any Content or materials posted via the Services or obtained by you through the Services is at your own risk.” (<https://twitter.com/tos>)

Thus, when an individual decides to post an entry or material in his/her blog that falls into a category of posts not welcomed by the web

host, he/she realizes that the web host does not monitor or control what material is being posted and that selecting the content to post is solely his/her responsibility. Who, then, sets the limits? One gets a feeling that everything is possible and permission is granted for everything. Everyone draws his/her own lines and bounds of decency. Can the society rely on the conscientiousness of every individual who keeps a blog?

Undoubtedly, the State laws pursue the offenders and we witness cases where various cyber criminals who publish offensive and indecent materials are punished by the law. But let us think about the ratio of the number of offences of this kind on the Internet in general, and in blogs in particular, to the number of cases in which justice caught up with them.

As it is stated in the World Summit on the Information Society (WSIS) Declaration of Principles:

“We reaffirm, as an essential foundation of the Information Society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; [...] It is central to the information society. Everyone everywhere should have the opportunity to participate and no one should be excluded from the benefits of the Information Society offers. [...] We further reaffirm that [...] in the exercise of their rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. In this way we shall promote an Information Society where human dignity is respected.” (WSIS, 2003, Art. A, Paragraphs 4 and 5)

Even though this declaration does set restrictions in the exercise of freedom of expression, it is questionable how many bloggers (not to mention the users of social networks and numerous fans who like to leave their eloquent comments on such video hosting sites as YouTube) would carefully consider “the just requirements of morality, public order, and the general welfare in a democratic society”. It is further questionable how many of them would bother themselves to think about “the purposes and principles of the United Nations” in order to respect “human dignity”?

With the advent of the Internet and availability of various service providers, keeping blogs has gained great popularity but has snowballed rapidly. People used to keep diaries long before the Internet become ingrained in our everyday lives. The difference is that, if this activity used to be of purely private and inward nature, the contemporary diarists, the bloggers, now aim to get their ideas and messages to the world, thus changing the whole nature of keeping a diary to being public and outward.

The Internet gives its users much more freedom of expression than any other means of communication. As Rebecca Blood stated: “Let me

propose a radical notion: the weblog's greatest strength – its uncensored, unmediated, uncontrolled voice – is also its greatest weakness” (Blood, 2002:118). Unfortunately, not all users perceive this freedom in a proper manner. Many of them, being intoxicated with its virtual environment and an illusion of permissiveness, misuse their right to freedom of expression. Frequently enough, bloggers artificially create one's own image and, hiding behind their computer screens, allow themselves to post radical opinions, extreme views, and offensive content of various kinds in order to attract as many readers as possible. They express in their blogs everything they would not dare to say publicly in real life. Among regular decent blogs there are so many blogs that organize clubs of suiciders providing bit by bit instructions of all possible ways of committing a suicide, communities of drug addicts giving advice and recommendations concerning various drugs, blogs for newcomer terrorists, blogs of fans of pornography including child pornography, blogs containing incitements of social, racial, national, ethnic, and religious hatred, etc. Despite the appearance of bloggers' ethics, its influence is still weak and insignificant. Therefore, though weblog ethics touches upon many subjects and issues such as accuracy of the information posted and observance of moral and ethical standards, the concept of weblog ethics is still in its development stage.

Today it is commonly believed that the Internet has become a big fence where anyone can write almost anything anonymously and with impunity. Thus, the concept of freedom of expression is replaced by permissiveness and irresponsibility. It should be understood that a message or a word posted in a virtual blog (or on the Internet generally) is no less important than what is said in a physical world. Freedom of expression should not be understood as freedom from responsibility and release of liability. On the contrary, the proper exercise of freedom of expression implies a high level of awareness and liability for the consequences. Therefore, Internet users in general and bloggers in particular should consider the consequences their “freely expressed” views and opinions as well as any other posted material can have since freedom of expression, if seen as a complete lack of restrictions, can have dangerous forms and irreversible effects. The concept of information safety should be cultivated together with the notion of freedom of expression.

In today's reality we should clearly define the boundaries between freedom of expression and incitement, violation of feelings of believers, extremism, pornography, violence, terrorism, lawlessness, suicide and drug propaganda, hate speech, intrusion upon one's privacy, breach of copyright, and so forth. It is necessary to differentiate between exercising freedom of expression of some and observing of rights of the others, since the true freedom of expression does not come into collision with other freedoms and rights and it is liable to existence only when the other rights are not trampled on. It has become the most essential to realize that

“there is a need to strike a balance between the right to freedom of expression and the harms that might result from a certain speech. [...] [T]he right to exercise free expression does not include the right to do unjustifiable harm to others” (Cohen-Almagor, 2006:13).

### *CONCLUSION*

Within a short period of time blogs have transitioned from a newly-invented Internet gimmick to a unique medium in which the audience itself creates and disseminates information. Based on the right to exercise freedom of expression, bloggers share their opinions, thoughts, ideas, and news with their readers through various types of multimedia messages, such as texts, music, photos, and videos. No doubt that freedom of expression is a fundamental human right

“which draws on values of personal autonomy and democracy ... and enables oneself an open debate about political, social and moral values, and encourages artistic and scholarly endeavour free of inhibitions” (Ovey & White 2002:223).

A problem arises when some Internet users, particularly bloggers, interpret freedom of expression as unrestricted permissiveness. In such cases freedom of expression can take dangerous forms and have harmful consequences for both the individuals and the society as a whole.

Freedom of expression that humanity has struggled to gain for so long has nothing to do with obscenity, permissiveness, and chaos. This human right should not push the limits of morality, human virtue, and canons of taste. Moreover, there is a need for guidelines for promoting socially responsible expression. Therefore, law and morality should govern our actions so that freedom of expression would aim to create rather than destroy our society.

When humaneness had governed the Internet, it later proved to be unprepared either for the Internet scale or for its consequences and effects. This created a situation of legal vacuum in which we have the Internet but do not have adequate rules and laws that can regulate and control it. Any healthy society should have mechanisms to protect itself from what it considers to be unacceptable. Statutory provisions that operate in real life should also be extended to virtual space and adapted for the current conditions and the distinctive features of Internet communication. Therefore, the balance between freedom of expression and respect for human rights should be one of the priorities of a democratic society. The issue is that mechanisms of responsibility should be imposed on the Internet simultaneously on several levels, such as website owners, information brokers, hosting services providers, access carriers, and general users.

Finally, it is necessary to take into account that the provided freedom of expression does not guarantee a truly free expression since there is an essential difference between two concepts: freedom of expression and free expression. Whereas the latter refers to the absence of negative consequences for expressing one's opinion, the former refers to the expression whose author is a truly free person capable of taking responsibility for his/her conduct and expressed content. As Spinoza put it,

“The last end of the state is not to dominate men, nor to restrain them by fear; rather it is so to free each man from fear that he may live and act with full security and without injury to himself or his neighbor. The end of the state, I repeat, is not to make rational beings into brute beasts and machines. It is to enable their bodies and their minds to function safely. It is to lead men to live by, and to exercise, a free reason; that they may not waste their strength in hatred, anger and guile, nor act unfairly toward one another. Thus the end of the state is real liberty.” (Spinoza, 1677, in Morgan, 2002, Ch. 20)

#### REFERENCES

- American Convention on Human Rights (ACHR). “Pact of San Jose”, Costa Rica, Organization of American States. Publication date: 22 November 1969, entry into force 18 July 1978.
- African Charter on Human and Peoples' Rights (ACHPR) (“Banjul Charter”). Organization of African Unity, publication date: 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M.58 (1982), entry into force: 21 October 1986.
- Baggetun, R. & Wasson, B. (2006). Self-regulated learning and open writing. *European Journal of Education*, 41(3–4), 453–472.
- Benkler, Y. (2006). *The wealth of networks: How social production transforms markets and freedom*. USA: Yale University Press.
- Bloggers' Rights. *Electronic Frontier Foundation (EFF)*, available at: <https://www.eff.org/bloggers> [accessed 18 July 2013].
- Blood, R. (2002). *The Weblog Handbook: Practical Advice on creating and maintaining your blog*. Cambridge: Perseus Publishing.
- Cohen-Almagor, R. (2006). Exploring the boundaries of freedom. *Ethical Space: The International Journal of Communication Ethics*, 3(1), 12–14.
- Constitution of the Republic of Serbia, National legislative Bodies. Publication date: 30 September 2006, Serbia, entry into force: 30 September 2006.
- Declaration of the Right of Man and the Citizen (DRMC). National legislative Bodies. Publication date: 26 August 1789, FRA-021.
- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as amended by Protocols Nos.11 and 14. Council of Europe, publication date: 4 November 1950, ETS 5, entry into force: 3 September 1953.
- General comment no. 34, *Article 19, Freedoms of opinion and expression*. UN Human Rights Committee (UN HRC), 12 September 2011, CCPR/C/GC/34.
- International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, publication date: 16 December 1966. United Nations, Treaty Series, vol.999, p.171, entry into force 23 March 1976.
- Joint declaration on freedom of expression and the Internet, 1 June 2011. Organization for Security and Cooperation in Europe (OSCE).

- Morozov, A. (2005). *Minding the gap: An ethical perspective on the use of weblogs in journalistic practice*. AEJMAC, Media Ethics on the Digital Frontier, August 10-13, 2005, San-Antonio, Texas.
- Ovey, C. & White, R. (2002). *Jacobs & White: The European Convention on Human Rights*, fourth ed. Oxford University Press.
- Recommendation R (2000) 7, On the right of journalists not to disclose their sources of information, 8 March 2000, Compendium of the legal instruments of the Council of Europe concerning media, Committee of Ministers, Council of Europe.
- Sinico, S., (2013). Blogs still aid global freedom of expression. *Deutscher Welle*, available at: <http://www.dw.de/blogs-still-aid-global-freedom-of-expression/a-16846154> [accessed 27 June 2013].
- Соколов, А. В. (2002). *Общая теория социальной коммуникации*. СПб.: Изд-во Михайлова В. А.
- Spinoza, B. (1677). Trans. Morgan, M.L. (ed.) (2002). *Spinoza: Complete Works*. Cambridge: Hackett Publishing Company.
- Universal Declaration of Human Rights (UDHR), UN General Assembly, publication date: 10 December 1948, 217 A(III).
- World Summit on the Information Society, "Declaration of Principles", WSIS-03/GENEVA/DOC/4-E, 12 December 2003.

Еља Елвира Гордон, Универзитет у Крагујевцу, Факултет за хотелијерство и туризам, Врњачка Бања

## **СЛОБОДА ИЗРАЖАВАЊА И ЊЕНЕ ГРАНИЦЕ У БЛОГОВИМА КАО СРЕДСТВИМА САВРЕМЕНЕ КОМУНИКАЦИЈЕ**

### **Резиме**

Током шеснаест година свог постојања, блогови су постали један од нај-популарнијих интернет сајтова, осмишљени да помогну људима у комуникацији и социјализацији, јединствени медиј који својим корисницима служи као суштински алат за остваривање слободе изражавања. Слобода изражавања, као интегрални део грађанских права и слобода, јесте основно људско право, које укључује право на слободно изражавање мисли и мишљења и на дељење тих информација кроз различите канале комуникације. Она се помиње у бројним међународним инструментима и документима од глобалног и локалног значаја и признања, па је стога неопходан елеменат демократског друштва и важан фактор уставног темеља сваке државе. Подржавајући индивидуално достојанство и самоактуализацију на индивидуалном нивоу, слобода изражавања омогућава учествовање јавности у доношењу државних одлука.

Пошто је позната јавна приступачност блогова и могућност читалаца да комуницирају са блогерима, постаје јасно да блогери могу да утичу на своје читаоце и да чак постану њихови лидери мишљења. Блогерска анонимност омогућава аутору да се изражава слободно и дели вербалне информације и мулти-медијалне поруке. Ова скоро неограничена слобода и независност у изражавању различитих идеја и мишљења често доводи у питање коришћење права на слободу изражавања.

Концепт слободe изражавања не треба схватити у апсолутном смислу, пошто је слобода изражавања ограничена и своди се на изражавање мисли, мишљења и намера које нису забрањене законом. Правни инструменти који гарантују право на слободу изражавања, у исто време постављају ограничења у интересу националне и јавне безбедности, поштовања права и угледа других, итд.

Мада нико не сумња у важност блогова као суштинског алата за остваривање слободe изражавања, важно питање је где су границе слободe изражавања у блогovima? Ова студија показује да иако сви веб хостови имају извeстан скуп правила која се односе на прихватљивост садржаја блогова, у пракси постављени материјал скоро да се не надгледа и не контролише, тако да одабир садржаја који ће бити постављен постаје искључива одговорност самог блогера. Стога је нецензурирана природа блоговања, која је његова највећа предност, у исто време његова највећа слабост, пошто су бројни случајеви када концепт слободe изражавања бива замењен неограниченом попустљивошћу и неодговорношћу. У таквим случајевима слобода изражавања може да добије опасне форме и да има штетне последице и по појединце и по друштво у целини.

Стога треба да признамо да је наша неприпремљеност на овакве интернет последице и ефекте створила ситуацију правног вакуума, која се карактерише одсуством адекватних правила и закона који могу да их регулишу и контролишу. У том случају, јасно је да је неопходна равнотежа између слободe изражавања и поштовања људских права, и да она треба да буде један од приоритета демократског друштва. Стога, законске одредбе које постоје у реалном животу треба проширити и на виртуелни простор, прилагодити их текућим условима и актуелностима, као и специфичности комуникације путем интернета. Ове механизме одговорности треба активирати симултано на неколико нивоa, као што су власници сајта, информациони посредници, провајдери хостинг услуга, носиоци приступа и општи корисници.