

## REVIEW PAPER

# DEFAMATION LAW AND MEDIA: CHALLENGES OF THE DIGITAL AGE

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## ABSTRACT

The fast-paced evolution of digital media and the internet has fundamentally changed how information is gathered and disseminated. This fact poses challenges to the legal aspect of understanding and recognizing defamation in the digital media age leaning on the normative and ethical theoretical approach it has in society. This paper examines the interplay between the legal concept of defamation and digital media, striving to understand the complexities that the development of digital media platforms introduced. The pervasive nature of online communication amplifies the potential reputational harm. Such a situation needs an evolving legal framework capable of balancing the protection of individuals' reputations and the principles of free speech. Therefore, this work examines difficulties in applying existing legal standards to a new digital environment including the issues of identification and liability of online publishers, as well as cross-border defamation cases and their jurisdictional problems. Through a comprehensive analysis of recent legal and academic writing, this paper evaluates the effectiveness of current defamation law. Hence, it examines the role of internet intermediaries and issues of their liability, emphasizing the need for clarity in legal responsibility, and adjusting to the new realities of the current media space. So, this paper seeks to contribute to developing a more robust and nuanced legal framework that can effectively address the complexities of defamation in the age of digital media. Ultimately, it calls for international collaboration and cooperation in developing innovative strategies to navigate the landscape of digital communication while maintaining fundamental rights and freedoms.

**Keywords:** Defamation, Defamation law, Digital media, Normative theory model, Ethical theory, Social responsibility



MAP EDUCATION  
AND HUMANITIES  
Volume 5

ISSN: 2744-2373 / © The Authors.  
Published by MAP - Multidisciplinary  
Academic Publishing.

Article Submitted: 05 September 2024  
Article Accepted: 31 October 2024  
Article Published: 01 November 2024



Publisher's Note: MAP stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.

## HOW TO CITE THIS ARTICLE

Zukić M., Zukić A. (2024). **Defamation Law and Media: Challenges of the Digital Age.**

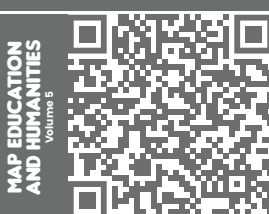
MAP Education and Humanities, 5, 98-109. doi: <https://doi.org/10.53880/2744-2373.2024.5.98>



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<https://doi.org/10.53880/2744-2373.2024.5.98>



MAP EDUCATION  
AND HUMANITIES  
Volume 5

### Introduction

In the digital age with the rapid evolution of media platforms, there is an evident transformation of processes in which information is created, shared, and consumed. This transformation presents new challenges for legal frameworks that protect individuals' reputations. A particular interest to this paper is defamation law. Traditionally, defamation law has aimed to balance safeguarding freedom of expression and protecting individuals from false and damaging statements. However, the possibility for instantaneous and global information dissemination that digital media provides complicates the mentioned balance. Unlike traditional media, which operates under strict editorial standards and legal oversight, digital media allows virtually anyone to publish content without prior restraint, leading to a proliferation of unverified and potentially harmful information. The internet's decentralized and borderless nature has raised complex legal questions about jurisdiction, accountability, and the application of defamation laws across different platforms and countries. Social media platforms like Facebook, X (formerly known as Twitter), and YouTube have become central to public discourse, enabling unprecedented levels of participation and interaction. While these platforms have democratized information dissemination, they have also become breeding grounds for misinformation and defamation, challenging existing legal frameworks as Gillespie (2018) and Suzor (2019) notice.

This paper explores the ever-evolving relationship between defamation law and media in the digital age, leaning on the works of lawyers and media professionals such as Bailey and Steeves (2017), Crook (2010), Dreibelbis (2021), Eltis, (2018), Kenyon (2018), Krotoszynski (2005) and many others that created the foundation for us to focus more on civil cases rather than criminal jurisdiction, which while prevalent in many states, is not the norm in most Western democracies. This paper also primarily examines the common law tradition, taking as examples U.S. law, while offering occasional comparative insights into other important legal jurisdictions. The unique challenges posed by digital media, such as the speed and reach of information dissemination, the permanence and archival nature of online content,

and the important role of online intermediaries in content moderation, are thoroughly analyzed. This paper also looks into how traditional media have reacted to the challenges in complex editorial processes to ensure accuracy and avoid potential litigation while leaning on a theoretical approach to media and communication based on normative and ethical theory as presented by McQuel (1987), Baran and Denis (2012) and Banjo and Dokunmu (2023). This work attempts to take a current legal literature review and note the changes that may bring more clarity concerning the future path of defamation law in cyberspace. We trust that this analysis furthers the debate on balancing reputation protection, the principles of free speech, and innovation in the digital era.

### Understanding Defamation as a Legal Concept

The definition of defamation naturally varies, but it is a concept that is broadly understood. It refers to a false statement, written or uttered by one party, which can cause reputational harm to another. Historically, it has been designed to protect "reputation", but it has also applied to other similar concepts such as "honor" or "good standing", many of which are still used today.<sup>1</sup> As Crook (2010) notes, reputation was indeed recognized as an immortal part of oneself, a sentiment echoed in Shakespearean literature, citing the words of Cassio in *Othello*. Defamation and its subcategories of libel and slander, are often defined as the written and spoken forms of defamation but have still developed in very particular circumstances (Encyclopedia Britannica, 2024). Thus, Crook (2010) points out that most cases that shaped our understanding of defamation law, particularly libel law, arose from political or social controversy. Regarding the context of English law, Keeton and Prosser (1984) explain that defamation has developed throughout history without a particular aim or direction. With common law courts taking no jurisdiction, defamation was left to the local courts, and later ecclesiastical courts which regarded it as a sin. Therefore, due to this haphazard and directionless development, the understanding of defamation law has shifted throughout the years. It was not of any help that in its later development in the US courts, it has been consistently limited, and thus new and more limiting definitions arose. Shifting to what Keeton

1 "The term "defamation" means any action or other proceeding for defamation, libel, slander, or similar claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person." (Office of the Law Revision Counsel, UNITED STATES CODE, 2024)

and Prosser (1984) have described as anything that tends to injure reputation, and diminish the esteem or confidence in which a person is held. The evolution of defamation law under these common law principles heavily influenced the modern legal framework, which is still undergoing development.

Defamation law can be divided into two categories: libel, which relates to a written declaration, and slander, which refers to a verbal or spoken remark. Cyber-libel is a phrase that refers to someone on the internet who makes an incorrect and detrimental comment about others on social media, blogs, chat rooms, individual websites, social networking sites, or other already released materials as Banjo and Dokunmu (2023) note. Content that disparages a person or business and is uploaded on a social media platform is referred to as: "social media defamation." This type of defamation is referred to as libel, internet defamation, disparagement, character assassination, cyberbullying, and other types of cyber harassment as Banjo and Dokunmu (2023) refer to (Duncan & Neil, 2009). It is enough to say that online defamation is different because of its participatory character, and its complete and immediate global ubiquity and accessibility that create the potential to damage people's and businesses' reputations. As a result, in Internet defamation cases, the form and extent of dissemination become important factors to examine. Frosio (2017) adds that modern legal systems continually grapple with intermediary responsibilities, which we will tackle in subsequent chapters. Therefore, Eltis (2018) highlighted the importance of restoring context in online defamation analysis, emphasizing that "truth-telling" without context can be misleading and damaging in the digital age. Out of these fundamentals of development, several key elements of defamation law are consistently recognized.

- First, a false statement is defamatory in situations when it is purported to be a fact. Consequently, an opinion does not fall under this definition.
- Second, defamation cannot be a communication between the first and the second party. A defamatory statement must be conveyed to a third party.

- The third element is the level of fault. A person who makes the statement does it out of negligence or malice. In cases involving public figures, the US Supreme Court has raised the standard even higher, requiring it to be proved that the statement was made out of "actual malice" or reckless disregard for the truthfulness. Through the *New York Times Co. v. Sullivan* case, the US Supreme Court established the "actual malice" rule, effectively broadening the scope of the First Amendment<sup>2</sup>, at least when it comes to public figures. Crook (2010) noted that this created a bifurcation between cases involving a public figure and a private individual. Therefore, Crook (2010) explains that for a private individual, the legal standard was lower, requiring only the proof of negligence of the person making the statement.
- Finally, it is required to prove that the false statement has caused reputational harm, as Keeton (1984) and Kenyon (2018) present in their works. This reputational harm can include social ostracization, where the individual becomes shunned by their community or has profound professional consequences, such as loss of employment or business opportunities. In the digital age, as Bailey and Steeves (2017) notice, the impact on young people is particularly significant, because of the quantity of their online social connections, highlighting the need for updated legal frameworks to address new challenges in reputation management online.

Previously mentioned requirements for Banjo and Dokunmu, (2023) in defamation cases may be difficult to prove. Their statement is based on:

- Truth or justification; where the writer/speaker who said a defamatory statement claims to be true and can back up the statement with facts.
- Absolute privilege; in situations where people's rights are protected and they are free to speak 'unedited', as in speeches in

2 The First Amendment of the United States Constitution: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.* (The Constitution of the United States of America: Analysis and Interpretation, 2024).

parliaments or courts, as evidence during a trial, an investigation, et. c.

- Other justifications are fair commenting and responsible communication on matters of public interest. Another example is when statements are not made maliciously but based on verifiable facts. When we highlight that online communication is impersonal and anonymous, but also fast, interactive, borderless, and far-reaching, we can expect a high possibility that the defamatory words will be accepted and believed. However, the most defamatory postings on Facebook, for example, are untrue and unjustifiable about individuals. Deletion of such posts did not affect copies that had been copied before the deletion. Individuals who shared the posts still have them because the originator's removal does not affect their posts. Another factor is the number of people who have seen the messages or posts on social media that could instantly reach numerous people, and cause serious and harmful consequences for individuals, businesses, personal well-being, financial capabilities, etc. Therefore, to avoid this situation, it is needed to impose harsh penalties on the offender(s) in cases when it is clear that defamatory words have been made.

While these elements are broadly recognized, their specific legal standards and interpretations can vary depending on the jurisdiction. For instance, Citron and Franks (2020) discuss the complexities introduced by Section 230 of the Communications Decency Act. Section 230 limits platform liability for online publishers and further complicates defamation law in a digital context, suggesting that reform is necessary. In the same direction, Mann and Belzley (2005) explore the evolving role of internet intermediaries in defamation cases, emphasizing their potential liability and the importance of clear legal standards.

### Theoretical Approach and Ethical Norming Media

As a preliminary orientation to the topic McQuel (1987) explains that, it is helpful to look at the relationship between personal media and mass media. The distinction between mass and personal communication is not clear anymore because the same technologies are used for both purposes. The

differences can only be understood by introducing a social dimension, relating to the type of activity and social relations. Instead of the term 'medium', Luders according to McQuel (1987) prefers the term 'media forms', which refers to a specific way to use the Internet. These media forms create freedom for every individual to express their opinion, whether benevolent or malicious. Such a public sphere requires that society protect its values and norms. At this point, not just media professionals but also personal users are required to be aware of legal consequences if their speech or posts are causing harm to others. Therefore, we can find theoretical explanations in normative and ethical approaches to this topic, following the pace of medium development and media forms.

While chronologically reviewing social and cultural history, freedom of speech stands out as an important concept for creating an atmosphere of social progress as we observe in the works of McHangama (2022) and Perry (1993). Nevertheless, it was always in some way limited by different norms, laws, various forms of censorship, or religious institutions to protect the honor of important individuals (such as royalty), institutions, morals, or religious teachings. Therefore, we can notice defamation laws as a continuously present social form of legal limitation of free speech which can be recognized and explained in different models of normative theory, but also as an ethical concept explained with ethical theories. Besides the previously mentioned theories, information manipulation theory offers a different approach to understanding deceptive messaging, and how sensitive information is managed and controlled.

Normative media theory explains the social contexts (libertarian vs. authoritarian) in which media is regulated while creating four models of different normative theories. They inevitably overlap, but they each have their internal logic. In such an approach, McQuel (1987), as well as, Baran and Davis (2012), states they can be summarized as:

- A liberal pluralist or market model based on the original free press (libertarian) theory, which identifies press freedom with the freedom to own and operate the means of publication without permission or interference from the state. It emphasizes individual needs and defines the public interest as what interests the public. The public sphere will be served as a 'free

marketplace of ideas'. Accountability towards society and other individuals is also achieved by the media market and some forms of minimal self-regulation, with a minimal role for the state.

- A social responsibility or public interest model, where the right to freedom of publication is accompanied by obligations to the wider society that go beyond self-interest. A 'positive' notion of freedom, involving some social purpose, is envisaged. Responsible media will maintain high standards by self-regulation but government intervention is not excluded. One of the ways the government intervenes is by defamation law.
- A professional model is based on the expectation that the guardianship of standards belongs to the model of the 'press' and the journalistic profession. Journalists are the inheritors of the fruits of struggles for freedom and democracy in past times and are still the best guarantors of the public interests. Therefore, their primary concern is serving the public's need for information and comment and providing platforms for expressing diverse views. In that case, the best guarantee of an adequate watch being kept on those in power is the institutional and professional autonomy of journalists.
- An alternative media model represents a range of non-mainstream media, with different aims and origins. Nevertheless, there are some shared values. The model rejects universal rationality and ideals of bureaucratic-professional competence and efficiency. It emphasizes the rights and values of subcultures and promotes understanding and a sense of community.

Besides Normative theory models it is important to refer to the information manipulation theory that according to Banjo and Dokunmu (2023) contends that deceptive messages function by discreetly flouting the rules that govern interpersonal interactions. Speakers can exploit assumptions that appear in conversation. Thus, elements like quantity, quality, technique, and relevance of information could trick listeners. Information Manipulation Theory helps to resolve earlier differences in the characteristics of deceptive messages and also creates an approach for understanding how much sensitive information is managed and controlled.

Ethics theories represented in Banjo and Dokunmu's (2023) work are also connected with argumentation about the justification of limitations of free speech and sensitivity to the need to protect the honor and the public sphere from defamation. Ethics is always questioning morality by the way good and evil are understood. These terms overlap in Latin translations of the Greek word ethics, referring to moral character or tradition. Every culture over time developed its way of understanding ethics but today traditional ethics is questioned by postmodern ethics. So, truth, deception, misrepresentation, propaganda, hate speech, harassment, freedom of speech, justice, slenderness, and many others are reevaluated. Banjo and Dokunmu (2023) note that Aristotle as a scholar is associated with virtue and ethics considering that people should behave with moderation, honesty, and justice in their personal and public lives. Therefore, ethics is a human activity. Later, Roman Christianity, derived from Plato and Aristotle's earlier Greek philosophies of virtues such as courage, prudence, temperance, justice, etc. That shifted with Immanuel Kant, who set a system of moral reasoning based on duties and obligations rather than qualities, results, or feelings in the 18th century. Kant asserts that the categorical imperative is a general rule that underpins all ethics and states that one should always act according to the values that they would like everyone else to act by. Therefore, Perry (1993) explains that Kant's universal law is categorical because it has no exceptions under any circumstances, and it is imperative because it is the same for everybody. For instance, Kant contends that lying is morally unacceptable regardless of whether doing so would appear to advance a greater good, such as saving a life. Teleological ethics focuses moral judgments on the results of actions rather than on norms, duties, or virtues. Hence, Banjo and Dokunmu (2023) highlight in their work that people have an ethical duty to act in the interests of the largest number of people. Ethics theories argue about ethical egoism from an evolutionary perspective, emphasizing the genetic and biological benefits for the person, and also from a psychological perspective, emphasizing the emotional and social rewards of ethical activities to oneself. On the other hand, opponents defend ethical egoism in a direction in which personal benefit means benefit for society. Dialogic ethics puts ethics in the domain of interpersonal communication in a way Banjo and Dokunmu (2023) notice, that human experience is founded on the ethical relationship with the other. Therefore, Banjo and Dokunmu (2023) rely on the explanation that the most difficult issues in communication

ethics are not related to the words but rather the ethical context in which communication shapes people, societies, the public, and relationships.

### Defamation Law and Digital Media

The transformation of digital media ensures easier and more information dissemination. So, research in the United States population, shows that the majority get their news from digital devices, including 86% of adults in 2023. About half of US adults say they get their news directly from social media. This development should not be surprising to anyone, given that 83% of US adults reported using any type of social media, while the number globally is around 62% (Pew Research Center, 2023). The instantaneous nature of information sharing by billions of users worldwide makes it almost inevitable that users will start using these sites to get news. Social media platforms make it possible to instantly publish and share content, changing the nature of public discourse, especially as Suzor (2019) points out, platforms like Facebook, Twitter (now known as X), Instagram, and YouTube. They independently make decisions that influence the way these sites operate. Traditional media sources have strict and extensive editorial standards and processes so, it is not a surprise that their publication process is slower. These standards and processes are in place for good reason, to allow for fact-checking, verifying information, and legal vetting. A strict editorial regime has developed over time, first as a self-regulatory process and was later ratified into law. In such media context, Crook (2010) explains, there is a distinction between primary media law and secondary media law, the former relating to statutes and directives and the latter emanating from governmental oversight bodies, such as the Federal Communications Commission (FCC) in the United States. On the other hand, with the rapid development of the internet and digital technology, priority was placed on instant access to information and the development of new technologies. Gatekeeping roles of the publishers and broadcasters were significantly weakened as Gillespie (2018) explains, since anyone and everyone could publish and disseminate information instantly, and that it could be received instantly. Such complexities of handling defamation on social media explore Dreibelbis (2021), describing them as the “new legal frontier” in an increasingly chaotic digital environment. The reality of rapid information sharing and lack of editorial oversight characteristic of social media amplify the risk of defamatory statements being made and

circulated. So, it is needed to start the discussion that Dreibelbis (2021) begins, about recent case law and legal reforms aimed at addressing these challenges emphasizing the need for laws that reflect the new realities of mass social media. A clear suggestion, from these discussions, is that legal systems ought to consider the development of specialized defamation laws intended only for social media, with a higher degree of focus on the speed and reach of digital communications. Dreibelbis (2021), also advocates for greater accountability for social media platforms, urging them to implement effective content moderation policies and collaborate with legal authorities to prevent and address defamatory content more quickly and effectively. Therefore, legal frameworks designed for traditional media as Schellekens (2006) and Cate (1996) notice, are often ill-suited and outdated for the digital landscape, where the boundaries between publisher, broadcaster, and individual user blur. While in traditional media editors and legal teams typically review content before publication comprehensively to mitigate the risk of a defamation lawsuit. On platforms like X or Facebook, users can post potentially defamatory content instantly without any review, making it challenging to hold these individuals accountable under existing defamation laws. In addition to that, the sheer volume of content generated on digital platforms would further complicate the enforcement of any defamation law. This leads us to Gillespie’s (2018) statement that the role of digital platforms as intermediaries in moderating content is both crucial and highly contentious. These platforms employ certain content moderation systems that are supposed to remove harmful or defamatory material. Yet, as it is notable, the scale of user-generated content means that such systems are often reactive rather than preventative and that a lot of such content does slip out. Dreibelbis (2021) and Banjo and Dokunmu (2023) further emphasize that the digital age has amplified the reach and impact of defamatory statements because many individuals speak their opinions and submit comments on media platforms, but it is as if they were publishing them on the front page of a widely circulated newspaper or broadcasting it on the news. Although some websites and social media platforms screen comments for offensive or illegal content, screening algorithms are not made to examine every comment for defamatory material, so many defamatory statements end up online. The vast and global nature of digital media adds another layer of complexity to defamation

law. The fact that content published online can, cross international borders instantly, complicates jurisdictional issues. Different countries have varying standards and protections for freedom of speech and defamation, which makes it incredibly difficult to apply a consistent legal framework across platforms. A notable example is the right to be forgotten in the European Union, which allows individuals to request the removal of information about them from search engine results under certain conditions. This right highlights the tension between privacy, free speech, and the permanence of online information. Additionally, Eltis (2011) argues that the digital age challenges traditional notions of free speech, especially in the context of hate speech, which would necessitate a reevaluation of the “marketplace of ideas”. The complex and at the same time, international social context of digital media and social networks is largely explained in a comprehensive and thorough study that Bailey and Steeves (2017) published about challenges for young users of digital media in cases of defamation law. Their research highlights that the ubiquitous nature of social media and online platforms has significantly altered how young individuals interact with information and communicate with each other. Thus, this demographic often lacks awareness of the legal implications of their online activities. Such a situation can make them susceptible to both perpetrating and falling victim to defamation. The study also emphasizes the need for improved digital literacy as a tool to empower young people to understand their rights, as well as their responsibilities online. Bailey and Steeves (2017) argue that legal systems must adapt to the realities and face the fact that young users are at the forefront of digital communication. Therefore, it is not enough only to revise existing laws and ensure that they better reflect the digital landscape but also to consider the development of youth-friendly legal resources and support systems, proposing that legal education should become an integral part of school curricula, helping to bridge the gap between young people’s digital lives and the legal frameworks that govern their online behavior. Understanding these circumstances helps to create more effective legal strategies in addressing the nuances of defamation in the digital realm. This needs collaboration between lawmakers, technology companies, and civil society to ensure at the same time a balanced approach that respects both the need for free and open communication and the protection of an individual’s reputation

### Media Responsibilities in the Digital Era

Media outlets in the digital age face the challenges of maintaining accuracy amidst the pressure for speed. Traditional media organizations maintain editorial and fact-checking to ensure the reliability of their reporting and avoid legal issues. However, in the fast-paced digital media environment, the line between traditional journalism and user-generated content is often blurred, making it difficult to maintain the same level of scrutiny (Schellekens, 2006). As digital platforms serve more and more as primary news sources, there is a need for them to adopt more rigorous standards to verify information before publication. This includes employing dedicated fact-checkers and utilizing technology to detect misinformation and potentially defamatory content. Gillespie (2018) argues that platforms must take proactive steps to ensure that content shared on their sites is accurate and not misleading. With the implementation of a system of robust verification, digital media can uphold its responsibility to provide truthful and reliable information to the public. The democratization of information through the rise of the internet and digital media has raised important ethical questions about the balance between freedom of speech and the potential harm of false information. While digital platforms provide a space for diverse voices and perspectives, at the same time they also have a responsibility to prevent the spread of defamatory content. Gatekeeping of information and implementing policies that address misinformation and hate speech while respecting freedom of expression for Suzor (2019) is the main role of digital platforms. This involves setting and enforcing clear community guidelines to ensure consistent protection of the users and prevent harm. These fundamental principles can be applied to content that may be defamatory, and the responsibilities of digital platforms remain the same. It is a big challenge for digital media platforms, as Gillespie (2018) noticed because they must navigate the challenges posed by algorithms that put engagement over accuracy. Algorithms designed to maximize user interaction can amplify sensationalist or misleading content, undermining the platform’s commitment to responsible information dissemination. Media platforms must recognize their role in shaping public discourse and strive to balance commercial interests with ethical obligations, even without a direct legal obligation. This may require a re-evaluation of algorithms that put informative and accurate content as a priority, rather than simply engaging. So ethical

algorithm design as Kenyon (2018) argues, is crucial for maintaining public trust in digital media, as it influences what information users encounter and how they perceive it. In addition to addressing misinformation, digital media platforms must also take responsibility for protecting user privacy and data security. The vast amount of personal information collected by these digital platforms necessitates stringent data protection measures to be put in place to prevent misuse and unauthorized access. Data collection transparency for Schellekens (2006), ensures that users are informed about how their information is used and stored, and provides them direct control over their data. Furthermore, Kreiss and McGregor (2019) highlight that safeguarding user data is a legal obligation and an ethical imperative for fostering a trustworthy digital environment. It is important to be aware that the global reach of digital media presents both opportunities and challenges for media responsibility. Digital media platforms, as Suzor (2019) points out, must be sensitive to local laws and norms while upholding universal human rights principles. This requires collaboration with international organizations, governments, and civil society to develop frameworks that promote responsible media practices on a global scale.

This situation leads us to understand how necessary is to create transnational regulatory approaches that respect cultural differences while ensuring consistent standards of accountability (Gillespie, 2018). The concept of intermediary responsibility is a great challenge for Frosio (2017), who raises it as a question and tries to examine how digital platforms should navigate their roles as facilitators of content. He argues that while intermediaries should not be held liable for all user-generated content, they should bear some responsibility for preventing and addressing harmful content, including defamation. Frosio (2017) advocates for a balanced approach that encourages platforms to implement effective content moderation systems without overburdening them with excessive legal liability. He also suggests that the shift from liability to responsibility involves recognition of the proactive role that platforms can play in managing online content. This atmosphere includes the development of advanced algorithms and moderation tools that can identify and address harmful and defamatory content before it causes reputational damage. He also emphasizes the importance of transparency and accountability, urging platforms to establish clear policies and communicate them effectively to users. The

digital era fundamentally transforms media responsibilities, requiring a nuanced approach to accuracy, ethics, and user protection. As digital platforms continue to grow and evolve, they must embrace their role as information managers and take proactive steps to ensure their practices align with the truth, fairness, and accountability. By doing so, digital media can contribute positively to society and maintain public trust in an increasingly complex information landscape.

In principle, Banjo and Dokunmu's (2023) research shows that liability for defamatory content posted on social media is not limited to the author. It may be extended to an internet service provider (ISP), the website operator, or an employer. While it may be tempting to sue the host or ISP who made the defamatory statement, the ISPs may have more money to sway decision-makers than the defamed person. Again, the Communications Decency Act exempts website hosts and Internet service providers from most defamation actions. Another way is to ask that such defamatory materials be removed from social media platforms right away. Once the instances have been demonstrated, courts can adjust to the new realities of social media and defamation. People who make defamatory comments about others can now be held accountable for their comments, and this may affect not only the originators of such posts but also those who share the defamatory statements or materials because no post or shared post can be held anonymous during the process of proving that defamation has occurred. Active social media users are supposed to be educated and informed about using social media, communicating, and spreading information on these viral platforms. It is also obvious that social media users should take precautions to avoid being held liable for statements made, commented on, and shared on the many social media platforms available. This is because, in this fast-paced world where technology has advanced greater communication capabilities, the old-school legal principles of defamation have stayed true while being fundamentally more convoluted and amplified in the social media age. Therefore, a blogger or anyone who wants to post or comment on social media should double-check that all facts about the subject matter are correct or gathered before posting or submitting comments because once the send button is pressed, the message has gone viral. In such moments it is not possible to easily or quickly retrieve content before anyone sees or receives it.



### Legal Boundaries and Policy Considerations

Defining legal boundaries and Policy Considerations is challenged by the rapid expansion of the internet and digital media. Initially, a prominent school of thought relying on the Libertarian tradition argued for the internet to remain unregulated, often called “cyber-anarchism.” Proponents highlighted the Internet’s decentralized nature, hoping it would lead society to a new era of free speech and unmediated communication. However, this vision proved overly optimistic in several aspects. The initial expectation of disintermediation understood as the removal of intermediaries in information dissemination, did not occur as expected. Instead, the internet witnessed a sharp rise in intermediation via search engines, internet service providers (ISPs), online marketplaces, and portals. These entities became indispensable in helping users navigate the available online content, making them effective gatekeepers. This was a necessary shift to reduce transaction costs associated with identifying relevant information and assessing its reliability. As Kreiss and McGregor (2017) note, these intermediaries now play a critical role in filtering and organizing content, challenging the notion of a completely unregulated digital space.

The U.S. legal framework, as an example, in cases of defamation, places significant emphasis on the principles of safe harbor and intermediary immunity as Park (2015) states. That situation contrasts with the more restrictive approaches seen in other jurisdictions. In that context, Riordan (2013) stressed the need for a balanced approach when it comes to internet intermediaries, they still need to protect free expression while addressing defamation at the same time. The second approach is the idea of the internet as some sort of “Wild West”, free from regulation was soon put to bed. Despite its global nature, online activities were mediated by powerful facilitators capable of acting as gatekeepers for various civil wrongs (Suzor, 2019). Those facilitators have shown their power to control content and enforce their rules. In those circumstances Kenyon (2018) points out that the digital environment has increasingly mirrored offline legal principles, requiring accountability and adherence to established norms. Moreover, most online wrongdoing was not new but a continuation of existing issues, such as defamation, privacy violations, and copyright infringement, albeit in a new medium (Gillespie, 2018). These problems persisted

and called for legal frameworks that handled them effectively. Governments and regulatory agencies have attempted to extend existing laws into the digital context while developing new regulations for handling emerging challenges.

For example, the European Union’s General Data Protection Regulation (GDPR) is a comprehensive attempt to address data privacy concerns in the digital age (Schellekens, 2006). Therefore, Cate (1996) in “Law in Cyberspace,” provides one of the first but most astute analyses of the developing legal issues surrounding the new digital medium. The mentioned research showed, for a mid-90s publication, a remarkable amount of foresight into many of the problems still posed today by jurisdictional complexities, enforcement across digital borders, and shifting privacy. Cate advocates a flexible legal regime that can keep pace with the changing technology of cyberspace. Hence, traditional legal regimes are inefficient in tackling the new challenges of the Internet and need new legal principles that match the dynamic character of the digital environment. Cate’s analysis remains relevant today as it underscores the foundational challenges of regulating cyberspace. The worldwide and borderless spans of the Internet and posted content present complications for applying national laws. So, it is suggested that cooperation and coordination at the international level of legal systems are necessary if they are going to have a sense of cyberspace problems, legal frameworks must evolve with technological innovation to remain effective and relevant.

One of the key concepts for understanding Internet regulation is territorial fragmentation of content. In this regard, geolocation and filtering technologies enable intermediaries to handle liability under disparate censorship regimes of countries and, therefore avoid access to content that may violate local laws, like contempt of court or copyright infringement (Kreiss & McGregor, 2017). Territorial localization ensures that the rule of law is maintained, even in the digital realm. However, scholars acknowledge that intermediaries must be shielded from some liability that conventional offline rules might impose (Suzor, 2019). This has built a long history of debate around how far intermediary liability needs to be treated with regulation, with some advocating for stricter regulations, to hold platforms accountable (Gillespie, 2018).

The debate over intermediary liability remains at the center of policy considerations in

digital media. While one side argues for holding platforms more accountable for the content they host, another side advocates for limited liability, to preserve the openness and innovation that characterized the development of the Internet. The Communications Decency Act (CDA) Section 230 in the United States is a pivotal piece of legislation in this regard, and it has shaped this discourse by granting immunity to online platforms from liability for content generated by its users. However, since its inception, this legal shield has been subject to scrutiny and calls for reform, especially in light of concerns about misinformation and harmful content. Very important to mention is a critique of the myths surrounding Section 230 of the Communications Decency Act as Citron and Franks (2020) note. It grants broad immunity to online platforms from liability for user-generated content. They advance further and say that such legal protection is often misinterpreted as absolute protection that allows digital platforms to shirk their responsibility for a plentitude of harmful content, which includes defamation. So, a culture of unaccountability in digital social media ensures that companies can continue to put profit over safety. The authors advocate for reforms that would make platforms more liable for the content they host, without undermining the freedom of speech provided by the internet. The authors propose a balanced approach to reforming Section 230, suggesting that digital platforms should be incentivized to adopt more proactive measures in content moderation and transparency. Including implementing a robust system to identify and mitigate harmful content at the outset and establishing clearer guidelines for content removal. While thinking in the same direction, Citron and Franks (2020) emphasize that the reform of Section 230 should aim to align legal incentives with public interests, encouraging platforms to act responsibly without stifling innovation or free expression. Balancing regulation with innovation is a complex task for policymakers.

The need for a nuanced approach is highlighted in Gillespie's (2018) works reminding us to consider the unique nature of digital media while safeguarding public interests. This would involve encouraging policies for transparency, accountability, and user empowerment without stifling technological advancement. Later in his works, Suzor (2019) emphasizes the importance of involving diverse stakeholders. This means cooperation between governments, civil society, and industry players to ensure equitable and

effective regulations. Therefore, the need to adapt traditional legal principles to a rapidly evolving digital era shaped the legal boundaries and policy considerations. The initial vision of an unregulated internet has passed and given way to a more structured approach, where intermediaries play a crucial role in managing content and upholding legal standards. As digital media continues to evolve, policymakers navigate the complexities of regulation to ensure that the internet remains a space for innovation and free expression while still managing the protection against harm and ensuring accountability. The future of digital media regulation will likely involve ongoing dialogue and collaboration among various stakeholders to address emerging challenges and opportunities.

### Conclusion

As we navigate the complexities of the digital era, the interplay between defamation law and media will continue to evolve through challenges and opportunities for legal systems worldwide. The rapid dissemination of information and the rise of user-generated content on digital platforms have altered the landscape of public discourse at its core. As these developments democratized and expanded access to information, they have also increased the potential for the spread of defamatory content, posing significant challenges to traditional legal frameworks. Throughout this paper, we have explored the transformation of defamation law in response to the unique characteristics of digital media. In particular, we looked at the decentralized nature of the Internet and the global reach of social media platforms that have complicated jurisdictional issues and highlighted the increasing need for adaptable legal mechanisms. As legal literature presented, existing laws often struggle to keep pace with technological advancements, necessitating ongoing reforms and international cooperation to address cross-border defamation. Even though traditional media, with its established editorial processes and legal oversight, serves as a benchmark for ensuring accuracy and accountability in reporting and information sharing more broadly, digital media's unregulated environment demands a reevaluation of how defamation is addressed in a world where any person can publish endless amounts of content with minimal oversight. The role of intermediaries, such as social media platforms and search engines, is pivotal in this context, as they have emerged as the new gatekeepers of information, with incredible power to influence public discourse and mitigate

the spread of defamatory content. Looking to the future, it is crucial to balance between protecting individuals' reputations, preserving the fundamental principles of free speech, and innovation that were always at the core of the internet. This process requires ongoing dialogue and collaboration among legal experts, policymakers, technology companies, and civil society to develop nuanced approaches that consider diverse legal traditions and cultural contexts of different jurisdictions. Therefore, defamation law in the digital age is a dynamic and evolving field, that demands an adaptive legal framework. It needs to balance the requirement of strong protection for reputation with the imperative of freedom of speech because of the special challenges of digital media. By fostering a comprehensive understanding of the legal, social, and technological factors at play, and through international collaboration and innovative legal strategies, we can work towards safeguarding individuals' reputations while promoting a vibrant and open digital landscape.

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