

NEW MEDIA'S DAY IN COURT: RUSSIAN EXPERIENCE

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GLOBAL PERSPECTIVE

In any society, be it a Western democracy or an Islamic theocracy, once blogs and online forums grow influential enough, they start getting unfavorable attention from all sorts of parties, including authorities, courts, individuals and corporations, alleging some sort of wrongdoing and seeking for remedies. Both this attention and those remedies vary significantly, depending on local jurisdiction and legal tradition.

In totalitarian regimes bloggers would usually put themselves at risk by voicing unorthodox views, contradicting the ruling ideology, criticizing political and/or economic system, making irreverent comments on leaders and rulers.

In Western democracies bloggers need not worry about these risks, but they have other challenges to consider. As early as in 2004 a survey, conducted among US-based bloggers by MIT researchers, revealed that 12% of those surveyed did personally know other bloggers who had gotten in legal or professional problems because of things they wrote on their blogs. These problems were, obviously, related to all sorts of economic conflicts, such as copyright violations, breach of NDA, disclosure of proprietary information, both personal and corporate.



WHERE RUSSIA STANDS

As a matter of fact, in Russia the Internet enjoys an impressive degree of speech freedom, of which neither state-controlled TV channels, nor printed media can dream these days. Regulations range from lax to nonexistent. Russia has many laws, regulating expression of certain views, that could be applied to Internet forums and blogs, but so far it simply doesn't happen.

Therefore, Russian practice has very few examples of bloggers, online publishers and forum contributors/owners getting in trouble for their articles, posts or comments displayed on the Net. There have been probably not more than three dozen cases nationwide, ranging from students dismissed from colleges to mass media publications ordered shut by courts.

Given Russia's 26-million strong Internet audience (with 1,45 mln blogs written in Russian, as of today), 30 cases do not seem serious. And they're definitely dwarfed by the 12% bloggers, mentioned in MIT research.

Still, some of those cases do deserve examination, since any of practices already witnessed might become more common and widespread in the future.



WHO GETS PUNISHED



- ❑ Two students have been expelled from colleges and universities for posting criticism of their professors and institutions as a whole; in both cases, the wording of those criticisms was quite profane
- ❑ Forum owners have been sued for damages by entities criticized in forum posts
- ❑ A civil lawsuit was filed and lost by a journalist, whose ethics were questioned in comments to a private blog in LiveJournal
- ❑ A criminal case was opened against a journalist, who used strong language to criticize the governor of his region
- ❑ A forum regular was sent to a mental institution for posting racially charged remarks (prosecution upheld the suggestion to treat defendant for schizophrenia)
- ❑ An information agency was ordered shut by the Press Ministry because of one anonymous anti-Islamic comment on its online forum; the order was challenged in court
- ❑ Several racists were prosecuted for hate speech on their sites and forums (it's punishable under Article 282 of Russia's criminal code)
- ❑ Police opened an investigation into the origins of *torlopov.livejournal.com*

EXAMPLES OF STUPID OR LAWLESS RULINGS



- ❑ Physical destruction of a computer was ordered by a court, after the owner was found guilty of insulting president Putin. The judge simply didn't realize, that there are easier ways to remove offending information from a hard disk, than to scrap an entire CPU
- ❑ Two online media websites, in Komi and Altai regions, were ordered shut (and one even "confiscated") for lack of publishing license. In fact, Russian law does not require any website or individual to obtain such a license
- ❑ A consumer forum was fined 8.000.000 roubles (\$275.000) for an anonymous comment, critical of Troika-Stal steel trading company. Being unable to establish the author of the critical post, the company sued the forum's owners, and won on appeal
- ❑ A Ukrainian youth living in Novosibirsk is now on trial for racist remarks he made in a Ukraine-based forum; it might so happen, that his writings are indeed punishable under Russian law, but there was no legal way to start investigation in Russia about the contents of a foreign website, not required or expected to abide by Russian laws.

SOURCE OF THOSE PROBLEMS

- ❑ Applicable legislation was drafted with no regard to Internet specifics; carrier doctrine is not formulated anywhere; indemnity clauses are very flexible, and they get bent arbitrarily
- ❑ Judges are extremely illiterate in Internet and computer-related issues
- ❑ Local authorities have serious influence over both law enforcement and courts in various regions of Russia
- ❑ Neither Supreme Court of Russia, nor Appeals' courts were ever involved in litigations featuring online media, blogs or forums. Therefore, judges do not have any source to look for guidance, when they're clueless about the merits of the case they hear
- ❑ There is no clear-cut criteria for defining offensive speech, interpretation is arbitrary, as is the choice of experts supplying courts with opinions
- ❑ There is no system in place to educate either lawmakers or judges regarding Internet- and computer-related issues

