

Anonymous commenting under threat in the EU? (guest blog)

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On 10 October, in what was seen as a setback for the practice of allowing anonymous comments on websites in Europe, the European Court of Human Rights [upheld](#) a national ruling in Estonia that found a news portal liable for offensive comments posted by users on its website. LSE MSc student Emma Goodman reports.

The Estonia ruling referred to a 2006 case in which “highly offensive or threatening posts” were posted below an article about a ferry operator on the news portal Delfi, the ECHR explained in its judgment. The owner of the company sued the portal, and an Estonian court found Delfi responsible for the defamatory comments. Delfi appealed to the ECHR on the basis that this breached its right to freedom of expression.



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Index on Censorship [described](#) the judgment as “alarming,” and “truly troubling” for website operators and moderators. The details of the case not necessarily be particularly worrying in themselves: the fine that Delfi was required to pay was small and this judgment doesn’t call for any further steps to be taken.

Issues of Concern

However, there are two potential issues of concern that emerge. One is that Delfi’s liability appeared to be higher because the commenters were anonymous, and secondly, the judgment specified that:

Given the nature of the article, the company should have expected offensive posts, and exercised an extra degree of caution so as to avoid being held liable for damage to an individual’s reputation.

Delfi and its sister papers allow users to post anonymously or with their name, but most choose to be anonymous, a representative from the portal’s parent company said when interviewed for [a recent study into how news organisations manage online comments](#), which I authored while working at WAN-IFRA. An algorithm looks for blacklisted keywords, but after that the portal relies on its audience to point out offensive comments: readers can give a ‘thumbs up’ or ‘thumbs down’ to comments as well as reporting them directly.

Anonymous comments vs real name policies

Anonymous commenting is a contentious issue. Many believe that requiring real names to comment is a way to ‘elevate’ the quality of conversation on the site (as well as shrinking it in terms of number of participants). But others believe that allowing anonymity is essential in order to offer the chance for free expression.

The WAN-IFRA study found no consensus among news organisations around the world whether it’s preferable to enforce registration or not. Out of the 91 sites who gave information about their registration systems, only 18 didn’t require any kind of registration at all.

Gawker operates an interesting ‘all or nothing’ registration process where users can either log in through a social network – a key way that news organisations verify someone’s identity – or opt for total anonymity through a ‘burner’ method where users are given a 16-character key for a one-time only login. Gawker doesn’t store the key or any other information about the user, including their IP address.

The majority (53) of the sites interviewed required registration but didn't enforce real name policies. Commenting software provider Disqus has found that the 'best' comments came not from commenters who used their real names, but from those who used pseudonyms. Several news organisations interviewed agreed that pseudonyms generate more 'robust' discussion.

Allowing users to comment without registering did, in Delfi's case, seem to be a contributing factor in the ECHR's decision to hold the news portal liable for the comments. "The identity of the authors would have been extremely difficult to establish," the judgment read. This kind of ruling might make more sites wary of allowing users anonymity when commenting, which would inevitably discourage some from contributing and limit discussion of sensitive topics.

Liability for reader-moderated comments

The judgment's suggestion that the portal should have been looking out offensive posts is particularly notable because relying on readers to highlight undesirable comments is a strategy used by many news organisations, partly because of a lack of resources, but also because in many countries this is seen as the 'safest' way to avoid legal liability.

In the European Union, intermediary liability is regulated by the Electronic Commerce Directive 2000/31/EC, which declares sites or service providers exempt from liability for third party content as long as they play a passive role as a conduit of information. (This is in contrast to the US, where news organisations as intermediaries are protected from liability for third-party content even when they do take editorial action.)

This judgment, however, implies an obligation for news sites to take a more active role in comment moderation and suggests that this belief that they are better protected the less they interfere may be ill-founded. Many sites do watch particularly controversial articles closely, or even close them to comments, but as Index on Censorship noted, it is not always possible to predict when or where offensive comments might appear. The alternative is to moderate pre-publication, which is not only resource-intensive, but also slows down the conversation between readers.

Will this judgment have a significant effect on news organisations' approaches to online commenting? How important is the ability to comment anonymously for the public's right to free speech?

This article by Emma Goodman, LSE Dept of Media and Communications

[The report on how news organisations moderate online comments, including best practices, is available to download free [on WAN-IFRA's website](#)]

You can access a Polis LSE report on the [moderation of news websites here](#)

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