

The Application of Soft Law in We Media Governance

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Abstract: The we media is in a dilemma of management under the influence of online rumors, vulgar pornography and false propaganda. In such a situation, soft law provides a practical way to manage the disorder of news media. This paper focuses on the application of soft law in the governance of we media through literature review, and provides a practical way with soft law through the latest achievements of soft law in current legal profession, as well as comprehensive analysis of the situation of China's we media industry.

Keywords: we media; soft law governance; hard law; industry self-regulation

1. Introduction

With the continuous development of the Internet, traditional media such as newspapers and TV are gradually compromising to, and replaced by online media, such as Wechat, Weibo, and TikTok, which indicates that the media is changing from traditional media to new media and media modernization. Undeniably, the rapid development of online media has broken the limitations of time and space, making each person the subject of cultural exchange. This has greatly facilitated the transmission of information. However, due to the lack of strict regulation and controls, the cost of spreading rumors and vulgar videos is gradually declining, which in turn leads to confusion in online media. For a long time, the legal regulation of online infringement in academic and legal circles has been conducted from the perspective of hard law, so it lacks the construction of a soft law management model for online platforms, as well as the correct integration of soft law and hard law for online platforms. In the network society, soft law plays the most basic role of order, so in the Internet era, it needs to be managed by "soft law".

2. Soft Law

Soft law is used as a symmetry to hard-law. In most cases, the soft law is discussed by scholars referring to the definition of soft law made by Francis Snyder in 1994, that is, soft law is a rule of conduct that is not binding in principle but has practical effect [1].

The most basic system of the law is to provide a way for human behavior to become less free and disciplined. Therefore, in order for this behavior to be carried out, it needs to be accompanied by a constant and stable punishment system.

Both law and social norms belong to the category of norms and coordinate the actions of the population by means of rules in order to achieve a certain social order and social consensus. However, as the number of partners increases dramatically, there is necessarily a compulsory public right.

Although formal justice is aimed at the pursuit of substantive justice, it also gives rise to formal justice.

"Soft law" is a social effect that can be achieved without the government's compulsory guarantee. According to Luo, the extension of soft law is divided into three major types: first, legal instruments of declaratory, call and encouragement; second, outlines, plans and methods formulated by the government, and the third is the self-regulatory documents formulated by "communities", such as the and "Management Regulations of the Weibo Community". In addition to the self-regulatory documents of network companies, the proposals issued by relevant social organizations are also civil soft laws, such as the "Initiative to Protect Miao" issued by Wuhan New Media Industry Federation. These self-regulatory codes first define the interests of individuals and thus form an important force to maintain the order of public opinion [2].

As a whole, the innovation ability of soft law is not enough. From the perspective of administrative law, it turns to national legislation and other areas without enforcement capacity, and replaces social norms with "soft law". Thus, it challenges the traditional legal theory and defines the "soft law" category..

3. We Media Governance

3.1. Concept

Academic research on online media mainly focuses on three aspects: infringement of copyright by online media and online platforms, including copyright issues related to manuscript laundering and plagiarism, infringement of reputation rights, and privacy rights; value orientation of public opinion in news media; and governance structure and strategies of news media.

Hu pointed out that a multi-dimensional and multi-level government management system should be built on four levels: government, media platform, society, and individual citizens [3]. Wang proposed the concept of "degeneracy", which means that one thing lags behind another in the process of social change and was used to demonstrate the high disconnect between the current media management model, and information and media technology [4]. For a long period of time, the government's remedial media management model for emerging problems has been both delayed and inefficient, which depletes the government's credibility. Lian analyzed the current dilemma faced by the press and advocated "soft law governance" approach, which means strengthening the regulatory function of industry organizations [5].

The news media industry is often governed by many parties, including the government, society, and individuals. Therefore, media governance requires needs to improve laws and regulations, and also needs to fully mobilize all parties of society to participate in the governance process.

3.2. New Changes in the Self Media Governance Environment

Capital involvement.

Content misconduct in we media is not a new problem. Super public opinion platforms, such as Weibo and Wechat, have been unsurprisingly serving as pressure relief valves for the public, strange arguments, scoldings and even lies circulating. However, with the power of capital, we media has rapidly transformed from a grassroots expression channel to a public opinion business. Due to low threshold and high profit, a large number of people have joined the industry of we media communication industry by "we media entrepreneurship". "Making numbers", "100,000+" and "headline party" has become the main content of their work. Since the income of the online platform is directly related to the number of readers and comments, most of we media outlets publish articles that violate public order to draw attention. So far, the logic of we media communication has changed fundamentally, from the spontaneous expression of opinions to traffic-oriented business [6].

Internet communication basic logic change.

The most visible manifestation of online media chaos is information that violates public order and morality of society. This is because of the bad content released by the authors of we media accounts and the ineffective management of the platform.

Driven by Internet technology, the initiative for information production and dissemination has shifted from specialized media organizations to social media. Although not completely transformed, the monopoly of mass media information has been broken. One of the biggest changes is the change of the subject of network communication, that is, the decentralization of network communication. As a result, the role of traditional government control has been weakened, further resulting in the dual effect of "failure" and "loss of control" [5].

The development trend of we media platforms

The Internet is the main communication channel of we media, Microblogs, WeChat, Crypto, and Jitterbug are all we media that have developed rapidly in the last two years in China. The development of online communication allows democratic rights to be realized in new ways. Everyone is a news disseminator, so the regulation of public power will become stricter and stricter. The diversification of the organizational structure of the platforms also increases the expansion of the we media platforms, which is mainly reflected in the plurality of users and the diversity of media. However, because of the nature of the information itself, its fragmented approach makes it fast and complex to disseminate. This fragmented and incomplete presentation can easily cause misunderstanding among the public and create great obstacles to the management of online media [6].

3.3. Reviewing the Dilemma of Hard Law Regulation

Currently, China's legal documents on the governance of we media platforms include the General Emergency Response Plan for National Public Emergencies, Opinions on Deepening the Openness of Government Services and Strengthening Government Services, Interim Provisions on the Administration of Internet Publishing, Provisions on the Administration of Internet News Information Services, Provisions on the Administration of Internet Electronic Announcement Services, and Decision of the Standing Committee of the National People's Congress on Safeguarding Internet Security. In stark contrast to the rapid development of we media platforms, China has not yet formulated laws and regulations directly regulating we media [7].

Due to the low level and insufficiency of the regulations above of China's legislative, most of legislations only consider the convenience of management in the sector, resulting in a narrow scope of application of the law and the management measures imperfect. Moreover, the lack of adequate consultation during the formulation process is likely to lead to legal confusion, which will result in a non-uniform legal system.

Secondly, the current legal documents are not clearly targeted and the legislative language is ambiguous. Compared with traditional network expressions, online media is richer in content and more complex in form, which requires unique legal language and legal boundaries. However, in practice, there are still some ambiguities in the specific provisions for online media in the laws and regulations that are in place.

4. The Role of Soft Law in We Media Regulation

4.1. The Functional Advantages of Soft Law

Compared with traditional media, network media has a new characteristic, which is the virtual nature of network media makes the spatial distance between users shorten. The openness of online media makes the role of "gatekeeper" played by traditional media in information transmission greatly diminished, and everyone can become a "news publisher". Moreover, the speed of dissemination, the

network media can produce and disseminate instantly, which is incomparable to the traditional paper media and TV media.

Strict legal regulation of we media platforms by government coercive means alone is bound to produce legal vacuums and regulatory loopholes due to its inherent lag and the cumbersome formulation process. As a kind of soft law regulation in the form of self-regulatory conventions, it has shown good adaptability in regulating self media infringement because it has fully considered the flexibility of self media platforms from the very beginning, leaving a certain space for flexible treatment when it was formulated and referring to the governance measures in related fields [8].

4.2. The Limitations of Soft Law System

Inadequate soft law making procedures

Private soft law is often developed by private institutions, which has little credibility and lack rigidity. Self-regulation by industry bodies carries the "risk of being captured by regulatory interests", a "risk" that can benefit industry and the profession rather than serve the public interests. Without the intervention of public authority, companies and firms that may dominate the market may be in a position of absolute superiority to establish rules that benefit themselves to the detriment of vulnerable users, without truly achieving self-regulation and without defending the interests of those who truly deserve to receive protection [9].

Immaturity of the soft law regulatory path

Since most of the current media platforms have not yet established a dispute resolution mechanism, the handling of disputes is usually a passive attitude; they usually do not take the initiative to deal with disputes; on the other hand, people still have doubts about the credibility of the law and the results lack credibility.

Currently, the lack of regulation of soft law in China when formulating soft law has led to conflicts between soft law and hard law. For example, the exclusion clauses entered into by online media platforms to reduce tort liability can contradict the Law of the People's Republic of China on the Protection of Consumer Rights and Interests and other relevant regulations. There is also the question of whether the power of civil soft law to punish industry groups is legal and whether it violates the provisions of the Law of the People's Republic of China on Public Security Administration Punishment [9].

4.3. Soft Law Governance Path for Self Media Platforms

The greatest strength of soft law is its broad participatory power, and its legitimacy has often received a great deal of attention. In practice, soft law often becomes a means to protect the interests of a private interest group. This requires procedural rationality in the formulation of soft law. This paper proposes to build a mechanism of "professional consultation" and "public participation" based on the principles of "hard law". In addition, government officials and university scholars can be encouraged to form advisory groups to provide practical evidence for the formulation of soft law.

Moreover, while the traditional hard law system is based on the government as the lawmaker, the concept of "soft law" breaks with the idea that only a government can be the lawmaker. This requires a proper approach to government intervention and soft law making. Soft law should follow the autonomy of citizens and focus on the supporting role of the government. The government should achieve regulation of laws and regulations through communication and consultation with we media platforms and industry associations, thus preventing direct government interference in law-making.

In addition, the formulation of soft laws and regulations should be more open and democratic, while the we media platforms and industry associations should promptly publish the legal texts of "soft laws" through websites, newspapers and other media, and solicit feedback from the public.

Furthermore, the democratization and public formation of soft law can guarantee its rationality, but it still has to follow the legality of the law without violating the hard law. Therefore, it is necessary to construct a system of soft law registration review. Some punishment systems can be established to maintain the order of press and public opinion by timely correcting those soft laws with private preferences and against public interests through warnings and interviews [10].

5. Conclusion

Nowadays, public communication has entered a new era, but it also brings unprecedented challenges to the government's management of communication media and information security. Cyberspace is not a place outside the law, and it is important to deal with the chaos of online media based on both "hard law" and "soft law" to provide a flexible operating mechanism for the media. This paper argues that the current soft law management model should be reformed to promote the soundness of soft law in the online media.

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