Controversial Legal Issues in Cases of Dissemination of Information Discrediting Honor, Dignity and Business Reputation

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Abstract	Original Research Article

The article examines the phenomenon of defamation, which is widespread both in fiction and in mass media in many countries around the world. Dissemination of negative information in relation to a person, which degrades the honor and dignity, or in relation to an organization, where its business reputation is diminished, is punishable by law in any civilized nation. Based on the Russian and foreign sources as well as legal and expert linguistic practice of the article author, the consequences of the dissemination of negative information, due to which the object of this information suffers, are analyzed. It also points out the need to distinguish between the concepts of "defamation" and "slander".

Keywords: Defamation, Fiction, False Information, Slander, Linguistic Examination, Mass Media, Yellow Press

INTRODUCTION

Every year, authors from all over the world delight their readers with best-selling books of various categories: fiction, comics, manga and many others. An ordinary reader, having picked up one or another new book, rarely thinks about the prototypes of the characters taken as a basis in the literary work. If the work is read by the reader not for the purpose of the analysis of literary studies, but simply to obtain new interesting information, then the very process of writing the text by an author remains closed to a reader.

However, each author's characters do not arise spontaneously. An author contributes a part of his worldview into one character; in another - there are traits of people who inspire an author, in a third - those qualities that repel an author[1]. A character, by its definition, is generated by the verbal outline of the text. The final image has both a physical appearance and a "psychology", whereby physical and psychological components interact with each other. When analyzing a character's image, both an astute researcher and an average reader, focusing the current attention on textual models, determine what information is reported about a character, who is the source of this information, and how this information relates to other data, including the data from open sources.

Among all the diversity of literature, there are works that an author himself defines in the preface as fiction ("In this novel I will tell ..."), however, the main character or characters turn out to be real people with real-life situations that happened to them, which, to the point of confusion, becomes similar to a journalistic feuilleton, and not to a fiction.

Indeed, is there anyone who doesn't have such a friend in his life, whose life is filled with events of intriguing content? And if you decorate this life in the lines with bright allegories, epithets, metaphors, the plot will become even more attractive. The birth of a new plot is always shrouded in a cloud of uncertainty - will the reader appreciate it? And the existing plot has a kind of predictability of the desired effect, so the authors simplify their work, forgetting about the ethical and legal frameworks.

In many countries, the concepts of

"defamation" and "slander" are defined as synonymous, but in reality, they have differences at the stage of the formation of an author's motive, which prompted him to disseminate this information.

Analysis Procedures

According to the Gramota.ru portal [2], defamation is defined as the dissemination of information that discredits or disgraces someone. Black's Law Dictionary[3] defines defamation as the public dissemination of information that disgraces someone, humiliates the honor, dignity, or diminishes business reputation.

In our opinion, one should distinguish between defamatory and slanderous information.

In both cases of dissemination of negative information, it is unreliable (false), that is, an author, both in the case of defamation and in the case of slander, disseminates knowingly false information. That is to say, based on John Austin's [4] speech act theory, there are no any differences between defamation and slander. The speech act in both cases is aimed at discrediting. But if the person, who disseminated the defamatory information, has the intention of gaining fame, high ratings and possible financial gain, such information is defamatory; in the case of slander, the distributor of negative information aims to discredit and disgrace another person due to personal hostile relationships, where, therefore, an author carries out his retribution for some action on the part of the object, which an author considered unacceptable

Let's analyze three cases.

1) In 2003, the "The Da Vinci Code" novel by the writer Dan Brown was published. The novel was a tremendous success, and today it is one of the most preferred books to read. However, few people know that in 2006 a conflict situation arose, which gave rise to dissonance in "Opus Dei" religious society of the Catholic Church. As a preface, the author Dan Brown mentions that in the novel there are no distortions of historical evidences and religious cults, which are described in detail in the work, and thus, an author introduces factuality to the narrative. The main complaint against an author from Opus Dei was unreliable, defamatory description of this church organization in the book text, where members of Opus Dei were presented as murderers, liars, committing various immoral acts, ritual suicides, who at the same time believed that these actions were justified by God's intentions[5].

2) The personal lives of media personalities rarely remain unaddressed, especially when it concerns the lives of the religious leaders. This is exactly what happened in one of the requests for conducting linguistic research from the practice of this article's author. The defendant author in this case chose one of the leaders of the Buddhist religious organization as the main character of his literary work. In this work, an author did not change either the leader name himself or his family members, as well as led a plotline around the religious activities of this character, that is, as a prototype, an author chose a real-life person, his family and professional activities for his work. In one of the chapters, the defendant author describes the process of incest between the main character and his daughter, which became the judicial matter.

3) After a quarrel between the editor-in-chief of one of the newspapers and the director of a large holding organization, the former disseminated information in his newspaper that the latter was engaged in illegal withdrawal of funds to offshore companies. According to the results of the tax audit, this information was not confirmed, but it caused many problems for the director of an enterprise.

All three examples presented demonstrate the dissemination of negative information, but its motives are different. The first example indicates an author's desire to raise rating of the work he wrote, heightening a reader's interest in it. The second example contains signs of both defamation and slander (in the event that an author had hostile relations with this religious figure). The third one is a vivid example of the dissemination of slanderous information. In any case, that what served as the motive for disseminating information will be determined by the court and not by a forensic linguist.

Giving freedom to the authors to publish almost any story threatens the privacy of both representatives of the establishment and ordinary citizens who can become the main characters of a fiction with the addition of bright artistic techniques. To add an increased level of documentation, an author indicates in the preface

that the work he wrote is based on a true story[6].

In August 1979, Penthouse Magazine published the article dedicated to the intimate details of Kimberly Jane Pring, one of the contestants of Miss America Competition. Three months after the article was published, Kimberly Pring filed a lawsuit against the magazine. In the lawsuit, she referred to the fact that the published article contained her name, information from her life, and also contained false defamatory information regarding her sexual promiscuity[7]. Thus, in 1980, a jury awarded Kimberly Pring $26.5 million as a compensation for moral damage in her lawsuit for disseminating defamatory information against Penthouse Magazine.

The legislative approach to defamation cases in the USA and Great Britain is interesting: in England, the defendants in a defamation case are considered guilty until they prove otherwise, that is, there is a presumption of guilt of the defamatory text author; in the USA, on the contrary, the burden of proving the unreliability of facts lies with the plaintiffs, who must prove unreliability of the information published about it, that is, here the presumption of innocence of the defendant, namely, an author of the publications, is declared. Such discrepancies in the legislation have led to numerous international disputes. Some reviewers of the British Defamation Law, being sympathetic to the accused, argue that London has become a center for "libel tourism" - foreigners come here to file defamatory lawsuits against them, even when the plaintiffs and defendants are outside the country[8].

Before this case, defamation was not recognized as an offense in literature. Let us note that in different countries, the "Yellow Press" has been popular relatively recently, where various unreliable information, rumors and speculation were published. Historically, the first mass media outlet in Russia to publish information not based on the facts was "Moskovsky Listok", the XIX century newspaper. The owner of the newspaper initially had the goal of attracting the attention of a mass audience, rather than a narrow circle of the intellectual readers. Due to the simplified narrative style, even illiterate people became familiar with such a press.

For this problem, it is essential that in publications characters are often named indirectly, for example, using only their first or last names. A.N. Baranov, a linguistic examination specialist, notes that the use of an incomplete nomination may be a conscious strategy of the journalist writing an article, who pursues the goal of avoiding possible prosecutions in the future[9]. When they become defendants in a lawsuit regarding the dissemination of false information, they appeal to the fact that the article implied a completely different person than the one they thought about. This issue is sent for research to forensic linguists, which is decided on the basis of linguistic and extralinguistic aspects[9].

As part of the court cases for the protection of honor, dignity and (or) business reputation, in many countries the information that has the following set of characteristics is considered as defamatory information:

(1) negatively characterizing a certain person;

(2) statements of facts expressed in a linguistic form that allows information to be verified for consistency with reality;

(3) not consistent with reality.

If the determination of characteristics (1) and (2) can indeed be attributed to the competence of forensic linguists, the determination of a characteristic (3) through the verification of information goes beyond the scope of its special competence and falls within the competence of the court verifying information within the framework of the adversarial proceedings. In particular, the competence of a forensic linguist does not include the assessment of any evidence presented by the parties of the consistency or inconsistency of the information disseminated by the defendants with reality.

The qualification of information as defamatory is thus considered in the linguistic examination as legal.

As information relevant to the settlement of questions posed to experts, and other information potentially relevant to establishing circumstances that may be important for resolving a given court case, to be identified in the controversial text, an expert considers information, contained in the controversial texts, that is negative in relation to a plaintiff, and other information that affects the interpretation of

statements containing such information. In our opinion, when identifying in fiction texts the information about persons that is confusingly similar to the real people, it is always necessary to adhere to the norms established for cases of the protection of honor, dignity and (or) business reputation.

Thus, in our opinion, the term "defamation" is appropriate to use in cases of dissemination through the publication of fiction and media texts with false information that humiliates the honor and dignity of an individual or diminishes the business reputation of a legal entity in order to increase an author's rating or financial gain. And the term "slander" is defined as the dissemination of knowingly false information that discredits the honor and dignity of another person or damages his reputation, when one person has the goal of discrediting and disgracing another person due to personal or other hostile relationships.

CONCLUSION

We have analyzed the negative impact of the dissemination of defamatory information. Now let's look at the other side, the author's one. The fiction authors express concern about an increasing number of the court cases regarding the dissemination of false information. They refer to an author's right for his artistic expression of opinion. On the one hand, this is indeed the case: for writers, there are almost no frameworks that limit their imagination (we do not take into account censorship). However, in our opinion, when creating a work where the prototype of a character and the character himself are absolutely identical based on the multiple criteria, the authors should take into account both ethical and moral standards, and legislative norms on the private life of a citizen. In particular, the main character should be denominated (his name should be changed). The text authors for mass media are initially limited in their range of the artistic techniques; therefore, such texts must reflect the objective situation and contain a minimum of subjectivity and

speculation. An era of the Yellow Journalism must end forever.

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