

Online Body Shaming: analysis of cases and prospects of protection

Online Body Shaming: análise de casos e prospecção de proteção

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Abstract

Body shaming on the *web* and on *social media* is indeed a particular form of violence to the person, which targets the victim's physical characteristics which therefore are disregarded and denigrated, often with the purpose of arousing in that person a sense of shame about his/her physical appearance.

The protection of rights on the *web* is one of the issues mainly animating the legal debate and at the same time a matter characterized by objective difficulties not only as regards the classification of concrete cases within traditional abstract patterns, but also due to the intrinsic characteristics of the network, obstacles to the creation of a real and effective protection. The non-territoriality of the *internet*, or as part of the doctrine prefers, its "Omni-territoriality"¹, sets serious problems about the identification of the competent court and applicable law, as well as the recourse to anonymity often makes it difficult, if not impossible, to detect the real identity of the authors of illegal behaviours on the network injuring the rights of third parties

Keywords: Body shaming. Protection of rights on web. Non-territoriality.

Resumo

Body shaming na Web e nas mídias sociais são uma forma particular de violência contra a pessoa que explora as características físicas como forma de desconsideração ou diminuição, frequentemente com o propósito de provocar na pessoa uma sensação de vergonha sobre a sua aparência física. A proteção jurídica na Web é um dos assuntos que mais anima o debate jurídico e, ao mesmo tempo, é caracterizado por dificuldades objetivas não apenas considerando a classificação concreta dos casos aos padrões jurídicos abstratos, mas também devido a intrínseca característica da internet, obstáculos à real e efetiva proteção. A não territorialidade da internet, ou como prefere parte da doutrina a "Omni-territorialidade", direciona sérios problemas sobre a identificação da corte competente e da lei aplicável, tanto quanto ações anônimas, tornam difíceis, senão impossíveis, de detectar a real identidade dos autores de comportamentos ilegais na internet que provocam danos a terceiros.

Palavras-chave: Body Shaming. Proteção jurídica na Web. Não-Territorialidade.

1 FIORIGLIO, Gianluigi. *Il diritto alla privacy. Nuove frontiere nell'era di internet*. Bolonha: University Press, 2008.p. 58.

1 The case of body shaming: theoretical-juridical fundamentals

Recent alarming news cases² have drawn public opinion's attention to an increasingly growing phenomenon conditioning several people's and network users' lives, namely *body shaming* on the *web*. This phenomenon has its roots in the long-standing problem relating to the indiscriminate use of the tools offered by the network and to the limits it should instead be subjected, in order to guarantee their lawfulness and harmlessness towards third parties.

Body shaming on the *web* and on *social media* is indeed a particular form of violence to the person, which targets the victim's physical characteristics which therefore are disregarded and denigrated, often with the purpose of arousing in that person a sense of shame about his/her physical appearance. As indicated by the English expression itself, in fact, it is a behaviour described through a term deriving from the word "shame" (the verbal form "*shaming*" which derives from the term "*shame*"). The subject of scornful comments is very often obesity, but it can also include any real or imaginary physical connotation of the victim, which the author intends to denigrate, such as thinness itself or lack of attractiveness. The extent of the phenomenon is of particular importance because it can be seen as one of the new frontiers of the personal protection on the *web* and as one of the most subtle threats of what has long been defined as the "dark side of the *web*", without having, however, a full understanding and regulation from a legal point of view.

The protection of rights on the *web* is one of the issues mainly animating the legal debate and at the same time a matter characterized by objective difficulties not only as regards the classification of concrete cases within traditional abstract patterns, but also due to the intrinsic characteristics of the network, obstacles to the creation of a real and effective protection. The non-territoriality of the *internet*, or as part of the doctrine prefers, its "Omni-territoriality"³, sets serious problems about the identification of the competent court and applicable law, as well as the recourse to anonymity often

2 We refer in particular to the case of the model Armine Harutyunyan, hired for an advertising campaign by a well-known house, to propose an unconventional type of beauty, and object of heavy attacks and discriminatory insults on social media and on the network due to her physical appearance. See VINCI, Alessandro. Chi è Armine Harutyunyan, modella Gucci vittima di body shaming e foto taroccate. In *Corriere Della Sera*, 31 ago. 2020. Retrieved from: https://www.corriere.it/tecnologia/20_agosto_31/chi-armine-harutyunyan-modella-gucci-vittima-body-shaming-accusata-falsi-saluti-romani-024737bc-eb77-11ea-a81e-046321e92fb6.shtml. Access: 26 nov. 2020.

Previously the attacks suffered by the singer Lizzo for her weight had caused a sensation, to which she reacted publicly, soon becoming an icon of anti-body shaming and the so called "positive body". See LABANCA, Marisa. Lizzo contro i bodyshamer: "Sono bella, sono forte. In: *La Repubblica*, 11 jun. 2020. Retrieved from: https://d.repubblica.it/beauty/2020/06/11/news/lizzo_contro_il_bodyshaming_video_virale_tiktok-4742662. Access: 26 nov. 2020.

3 FIORIGLIO, Gianluigi. *Il diritto alla privacy. Nuove frontiere nell'era di internet*. Bolonha: University Press, 2008.p. 58.

makes it difficult, if not impossible, to detect the real identity of the authors of illegal behaviours on the network injuring the rights of third parties. The immateriality of the virtual space represented by the web is then another factor inevitably contributing to diversify the cases compared to the traditional ones, conceived for the *offline* context, often determining the inapplicability of the latter to the conducts implemented through the network. Precisely this complex of factors requires the use of *ad hoc* patterns, in order to guarantee a more effective protection of rights on the *web*, so the laws of the major Western countries are moving in this direction, where the freedom of access and use of *the internet* also represents an element of danger from which it is necessary to defend oneself, in view of the principles and values of the legal system. In fact, from this point of view, *body shaming* does not represent a novelty in an absolute sense in the context of the cases contemplated by the law, as it can be included in all those practices and vexatious conducts characterizing the phenomenon of bullying, defined as “cyberbullying”⁴ if referred to the *web* context.

For just over three years, cyberbullying in the Italian legal system⁵ has been a category comprehensive of a series of offenses already independently significant, but traced in the specific pattern in question as carried out with modalities and purposes defined by the legislator especially to give an answer to the growing phenomenon of oppressions and persecutions brought about through the network against and by minors and to improve the prevention system in order to defend the weakest subjects. However, the traceability of *body shaming* within the context of cyberbullying and, more generally, of *hate speech*⁶, does not allow to neglect the peculiarities and specificities characterizing this phenomenon, where the elements that usually characterize “bullying” behaviours don’t always correspond to those of *body shaming*. The element of psychological violence at the base of *body shaming* is characterized in fact in most cases by more contemptuous and derogatory words addressed to the victim, also showing discrimination since they refer to specific characteristics of the person damaged, connoting his/her psychophysical identity.

4 In the broad definition given by Law 71/2017, art. 1, cyberbullying must be understood as “*any form of pressure, aggression, harassment, blackmail, insult, denigration, defamation, identity theft, alteration, illicit acquisition, manipulation, unlawful processing of personal data to the detriment of minors, carried out through electronic means, as well as the dissemination of online content relating to one or more members of the minor’s family whose intentional and predominant purpose is to isolate a minor or a group of minors by carrying out a serious abuses, harmful attacks, or by ridiculing them.*”

5 The already mentioned law n. 71/2017, dealing exclusively with acts of bullying carried out via web and which exclusively concern minors, both as victims and as perpetrators of the conduct object of the purpose of contrast pursued by the law.

6 On the *body shaming* in the context of *hate speech*, see the different studies on the situation in Indonesia such as the following: FEBRIANA, Trisna; BUDIARTO, A. Twitter Dataset for Hate Speech and Cyberbullying Detection in Indonesian Language. In *2019 International Conference on Information Management and Technology (ICIMTech)*, 2019. Jakarta/Bali: IEEE, 2019. p. 379-382.

Just for this reason *body shaming*, similarly to what happens for cyberbullying in general and to an even clearer extent, escapes an univocal classification within the traditional cases, presenting typical elements of a plurality of figures mostly belonging to the field criminal law, which certainly includes private violence, defamation and insult which today is a relevant pattern only on a civil level due to the decriminalization carried out by the legislator in 2016.

However, *body shaming* is presented as a phenomenon that can also disregard the legal presuppositions normally integrating the crime patterns just mentioned, without still losing the element of violence aimed at arousing a feeling of shame and inadequacy in the victim.

2 Body shaming and the discipline of hate speech: the experience of the United States

In the almost general absence of *ad hoc* rules on *body shaming*, the identification of the rules applicable to the case *in question* requires to proceed by analogy connecting it to the operation field of the existing cases. In this regard, despite the unquestionable difficulty of such an operation, it is necessary to underline how *body shaming* can be traced back to the broader *genus* of *hate speech*⁷, as a comprehensive figure of all those conducts aimed at verbally attacking individuals or groups of individuals, simply because of their way of being. Typical examples of behaviours falling within this category, as known, are those consisting in the use of words of hatred and contempt towards certain individuals only due to their ethnic or religious belonging, or their sexual orientation. The element linking *body shaming* to other forms of *hate speech* is certainly represented by the use of verbal aggression that becomes a form of psychological violence sometimes subtle, but other times explicit and intentional, as well as capable of deeply intimidating the victim and of giving him/her a strong sense of discomfort.

In general, *hate speech* is characterized by all forms of communication denoting hatred or dislike for a person or a class of persons, while *body shaming* does not necessarily imply a radical externalization of hostile feelings towards the victim,

7 WALDRON, Jeremy. *The harm in hate speech*. Cambridge: Harvard University press, Cambridge, 2012. GAGLIARDONE, Iginio; GAL, Danit; ALVES, Thiago; Martinez, Gabriela. *Countering online hate speech*. Paris: United Nations Educational, Scientific, and Cultural Organization, 2015. WILLHOCK, Rita Kirk; SLAYDEN, David. *Hate speech*. Non Journal: California, 1995. GELBER, Katharine. *Speaking back: the free speech versus the hate speech debate*. Philadelphia: John Benjamins publishing Company, 2002. ROSENFELD, Michel. Hate speech in constitutional jurisprudence: a comparative analysis. *Cardozo Law Review*, New York, v. 24, p. 1523, 2003. ABBONDANTE, Fulvia. Il ruolo dei social network nella lotta all'hate speech: un'analisi comparata fra l'esperienza statunitense e quella europea. *Informatica e diritto*, Firenze, v. XXVI, n. 1-2, p. 41-68, 2017. PITRUZZELLA, Giovanni; POLLICINO, Oreste; QUINTARELLI, Stefano. *Parole e potere: libertà d'espressione, hate speech e fake news*. Milano: Egea, 2017.

since it can also consist of ironic and apparently harmless judgments which however inevitably reveal a more or less marked contempt for the victim and his/her physical characteristics. This element of contempt, like the hatred intrinsic in the various forms of *hate speech*, usually arises from the preconceived adherence to ideal models, which very often do not take into account the values of justice and equality, but are based on mere stereotypes and cultural prejudices capable of significantly affecting negatively the targeted people. From this point of view, *body shaming* shares with the phenomenon of *hate speech* in general the aspect linked to the psychological pressure carried out on the victim, which while in the *hate speech* in the strictest sense of the word leads to a state of fear and anguish, in *body shaming* tends to determine a deep sense of inadequacy and shame towards his/her own person, causing often tragic consequences on his/her life.

The traditional discipline of *hate speech* does not contemplate the regulation of the more recent phenomena like *body shaming*, being rather anchored to the model basically focused on the repression of forms of expression involving violence or discrimination against individuals or groups due to race, language, sex and any other characterization element. The traceability of *body shaming* to this category is therefore not the result of an automatic extension of the discipline envisaged for the latter to each situation, but must be ascertained on the basis of the effective transposability of its rules, with the limits of applicability provided for by the law, especially in relation to the safeguarding of counter-interests in a balancing relationship with the assets protected by the *hate speech* legislation.

In this regard, an emblematic case is represented by the law of the United States of America, where the great constitutional importance attributed to the freedom of expression constitutes a factor undoubtedly influencing the effective reach of the protection offered by the legislation on *hate speech* and, consequently, the possibility of defence against the phenomenon of *body shaming*. As known, in the United States the freedom of expression is characterized by the highest degrees of protection, being recognized and protected by the First Amendment of the Constitution⁸, which is one of the key US laws regulating the relationship between public authorities and private individuals. Indeed, it can be said that the protection of freedom of expression in the law of the United States is an element going beyond the formal data of its normative provision, establishing itself as a cultural factor capable of conditioning the citizens' lives even beyond the legal boundaries expressly established by the regulations in force. From this point of view, in which freedom of expression represents almost a sacred element, the work of balancing with other rights, even of the same rank, often sees the

8 The First Amendment of the United States Constitution states : “ *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* “.

latter undergoing a compression or sometimes an integral sacrifice as a consequence of the protection of the reasons connected to this freedom right.

Although in the course of time an interpretative evolution has had a significant impact on the concretely applicable law, the discipline of *hate speech* in the United States continues to revolve around the elaboration of the *fighting words doctrine*⁹, according to which, pursuant to the First Amendment, only those forms of expression representing a direct and imminent threat to the subjected person or having an explicitly vulgar or offensive content are object of prohibition and sanction, both on a criminal and on a civil law level.

This approach, the actual reach of which has been modulated differently over time by federal jurisprudence, is based on a rather restricted notion of danger for the victim, as it corresponds to an imminent threat to the victim's life or physical integrity, which leaves out of the prohibition area of applicability a series of cases not contemplating this element, but whose detrimental charge, even potential, cannot be completely excluded. Subject of the US ban law comes to be, then, verbal violence consisting in offenses or explicit threats, or in direct incitement to commit acts of violence, while all those manifestations of thought without such explicit content remain outside the field of legal protection through the legislation on *hate speech*, although in fact they are no less damaging on a psychological level for the person suffering them.

This approach adopted by the US legal system is not in accordance with the need for full effective protection against *body shaming* in a multiplicity of cases, especially considering that *body shaming* does not often lead to explicit insult or threat, but consists of more subtle and veiled forms of violence, which do not seem to integrate the requisites of prosecution required by the doctrine in question.

The *fighting words doctrine* was born in 1942 on the occasion of the judgment of the Supreme Court on Chaplinsky's case¹⁰ in which for the first time the concept of illegal expression was specified and as such not covered by the protection offered by the First Amendment. In other words, this first formulation of the doctrine in question represents the first enunciation of the limits to which the operation of the First Amendment is subject and more generally the exercise of the right to freedom of expression. The importance of this landing place in contemporary US law is measured above all by taking into account the tendentious intangibility of the right to freedom

9 The birth of the *fighting words doctrine* dates back to the Supreme Court ruling on the Chaplinsky's case, in 1942 (see below in the contribution). On that occasion the Supreme Court stated that: "There are certain well-defined and narrow limited classes of speech, the prevention and the punishment of which have never been thought to raise any constitutional problem. These include the lewd and the obscene, the profane and the libellous and the insulting or fighting words (...) It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality".

10 *Chaplinsky v. New Hampshire*, 315 US 568 (1942).

of expression in the traditional view and largely still operating in the Anglo-Saxon legal world and in particular in the United States. The next development of the *fighting words doctrine* and its application of case law from the Supreme Court occurred in the principle of a regular dualism between permissiveness and interpretive rigor concerning the extent of non-punishment area, with results not always unambiguous and linear, although inspired by a balance between fundamental values set forth by the Constitution in force.

In Chaplinsky's case, the Supreme Court expressed the most restrictive orientation regarding the reach of a *fighting words doctrine*¹¹, asserting the *tout court* unlawfulness of certain defamatory expressions, regardless of their truth or falsity and because of their intrinsic harm. Subsequently, in the Beauharnais case¹², the Supreme Court attributed relevance to the falsity of what the agent affirmed and to the latter's awareness of the same falsehood, asserting the illegality under the First Amendment of the only untruthful statements made in the awareness of their falsehood by those who made them¹³. In other rulings, federal jurisprudence has taken into consideration further aspects, such as admissibility, of the prohibition of use limited only to certain types of *fighting words* on the basis of their content, or the identification of one or more specific persons undergoing hate speech or other acts of violence. As to the first aspect, the Supreme Court denied the possibility of making distinctions based on the content of the *fighting words*, reaffirming that all the categories identified in Chaplinsky's ruling must be considered as such, with the consequent illegitimacy of state or federal laws or judicial rulings, operating such a content discrimination, even when aimed at protecting goods for instance ethnic or racial origin, religious belief or sex. As to the second aspect, however, the Federal Court established to be in line with the First Amendment, the normative provision of aggravating penalties for crimes committed on the basis of racial and ethnic hatred whenever the offender intentionally chooses the person against whom directing his/her criminal action.

The Supreme Court thus sanctioned an extensive interpretation of the concept of *fighting words*, including every manifestation of abstract thought capable of generating violence even regardless of the possibility to identify specific people as their recipients. In this way, the First Amendment, while confirming itself as a fundamental norm as well as a general guarantee within the American legal system, was subjected to

11 On the *fighting words doctrine* cfr. NEVIN, William. Fighting words and the question criminally punishable racial epithets. *First Amendment Law Review*, v. 14, n. 3, 2018.

GARD, Stephen. Fighting words as free speech. *Washington University Law Review*, Washington, v. 58, p. 531, 1980. p. 114-128; WERTHEIMER, Aviva O. The First Amendment Distinction between Conduct and Content: A Conceptual Framework for Understanding Fighting Words Jurisprudence. *Fordham Law Review*, New York, v. 63, p. 793, 1994.

12 Beauharnais v. Illinois, 343 US 250 (1952)

13 STONE, Geoffrey R. Hate speech and the Us Constitution. *East European Constitutional Review*, Chicago, v. 3, p. 78, 1994.

balancing with the rights of the person affected by the same freedom of expression. In other circumstances, in this balancing the Supreme Court faced the delicate aspect of the limits to freedom of expression, with reference to racially and ethnically discriminatory speeches, pronounced in specially organized public demonstrations.

In this regard, in *Terminiello's case*¹⁴ the Supreme Court annulled the sentence of a former Protestant priest for having delivered a speech containing racist and highly polemical statements from a political point of view, perhaps reaching the culmination of the restrictive interpretation of *fighting words* concept and contributing to feed a never-dormant criticism by the counter-argument supporters underlying the opposition to an indiscriminate extension of the right to *freedom of speech*¹⁵.

Subsequently, as already pointed out, the Supreme Court¹⁶ established the illegitimacy of local laws and ordinances providing for the prohibition, as *fighting words* of certain forms of expression and conducted only for referring to certain aspects or topics and not to the general categories established by *Chaplinsky's* sentence, thus underlining the need for a uniform application of the rules to protect the freedom guaranteed by the First Amendment.

So outlined, the doctrine of *fighting words* constitutes an important reference to define the protection spaces offered by the American legal system also against phenomena, like *body shaming*, having their own peculiarities. Although it cannot be automatically applied to the discipline of *body shaming*, this doctrine in any case provides the guiding criterion for the interpretation of the limits to freedom of expression in the US legal system. In this regard, it should be emphasized that despite *body shaming* often consists of behaviours not contemplated by the *fighting words doctrine*, the latter offers an indispensable starting point as a first interpretative and applicative approach towards the conduct of *body shaming* and, more generally, of every form of expression implemented both in the material world and through the web.

Pursuant to this approach, the denigration of others' body through words and expressions of a violent nature or instigating violence will certainly be prohibited, and as such, both civilly and criminally punishable, while it cannot be subject to immediate censorship, based on a *prima facie* assessment conduct characterized by the use of expressions not overtly violent or aggressive. Even the use of these expressions, however, which may include irony or jokes, cannot in many cases be free from judicial

14 *Terminiello v. City of Chicago*, 337 US 1, 3-4 (1949)

15 WEBER, Theophile J. *New limits to the clear and present danger doctrine*. *Wioming Law Journal*, *Laramie*, v. 4, n. 2, p. 130, 1949.

16 *R. AV v. City of St. Paul*, 505 US 377 (1992). On that occasion, the Supreme Court analyzed the case of the definition of *fighting words* of acts consisting in the burning of wooden crosses addressed to African-American citizens. The sentence declared the illegitimacy of the ordinance St. Paul city which prohibited such demonstrations, as the particular reference to the case in question as the object of the sanction, was in contrast with the principle of non-discrimination based on content and therefore with the value General of the First Amendment.

treatment, especially if characterized by repetitiveness or systematic approach over time, as well as by reference to multiple agents. The peculiarity of *body shaming* and other forms of non-standardized psychological pressure, is indeed evident not only in cases of overt aggression carried out through offensive and violent language, but also through expressions seemingly milder but in reality equally implying an offense, as well as a discriminatory content towards the recipient. The irrelevance to the field of protection envisaged by the *fighting words doctrine* does not therefore imply the automatic lawfulness of the conduct carried out, but requires the implementation of further assessments of the actual violation of the person's rights, although there are no specific legal criteria for judgment for the case in question.

The reach of the doctrine in question has obviously been called into question as a result of the digital revolution and the spread of new forms of communication made possible by new technologies. The universality of *the internet* and new technologies, beyond the obvious advantages in terms of efficiency and immediacy of communications, is a strong risk factor for the protection of rights and particularly personal rights, precisely due to the substantial uncontrollability of the circulation of information. This particular insidiousness of the *web* regarding personal rights implies the need for interventions offering an immediate response to human rights violations, whereas the remedies offered by traditional legislation do not provide a suitable support to the peculiarities of the context in which these types of offenses occur.

For this reason, in the US legal system, the protection against new forms of offenses against the person, such as those falling within the phenomena of *hate speech* and cyberbullying, including *body shaming*, is mainly entrusted to the self-regulation of the subjects involved in the transmission of information through the *web*¹⁷. In particular, given the importance assumed by *social media* in the current communicative landscape of new technologies, it is above all on these subjects that the responsibility for the protection of the rights of users or injured subjects falls, although it is necessary to keep in mind the general non-collectability of an obligation of general surveillance by *Internet Service Providers*¹⁸. From this point of view, the action of the ISPs can never be resolved in a generalized preventive control activity on the contents entered by the users of the spaces made available by them, due to the evident excessive burden that this would entail for the ISPs, as well as for the strong risks to freedom of expression and communication that would ensue. The theme is closely linked to that of ISP liability, which is recognized within narrow margins by the European legislation and even within the US system¹⁹. However, this does not change the indispensable role

17 RING, Caitlin Elizabeth. *Hate speech in social media: an exploration of the problem and its proposed solutions*. 2013. A dissertation submitted of the requirement for the degree of Doctor of Philosophy Journalism and Mass Communication, University of Colorado, Colorado, 2013.p. 113-115.

18 Art. 17 leg. D. 70/2003.

19 See R. Petruso, *La responsabilità degli intermediari della rete telematica. I modelli statunitense ed*

played by ISPs in remedying the offenses committed through the *web*, so from a legal point of view the profile of the imputation of an obligation to respond in the strict sense for the latter cannot be separated from that pertaining to an operational accountability of the same through the adoption of behavioural models favourable to the protection of rights from a preventive perspective and limiting as much as possible the effects resulting from the offenses.

3 The online person's protection in European countries

The difficulty of identifying, *de iure condito*, a discipline applicable to *body shaming* is observed not only in the context of the US and Italian legal systems - which will be discussed in the next paragraph - but also in the context of the legal systems of other European countries. Even within these systems, in fact, the legislation applicable to the phenomenon in question can only be investigated in that concerning the person's protection in cyberspace with particular reference to the related phenomena of *hate speech* and *cyberbullying*. Even with regard to the latter cases, there is however a certain lack of normative determination and above all of content uniformity among the regulations in force in the Union area countries, which is an obstacle to the implementation of the principles of legal protection effectiveness and equality in the territory in question.

As a matter of fact there is no legislation strictly adopted by the EU institutions in relation to the disciplines of *hate speech* and *cyberbullying*, but mostly programmatic and political documents, such as the Convention on Cybercrime, entered into force in 2004²⁰, and the related Additional Protocol on racist and xenophobic crimes committed through the *web*. Precisely these last two phenomena constitute the main object of the commitment undertaken by the Council of Europe in the field of *hate speech*²¹, which takes the form of an obligation to foster collaboration and interaction between the various states in order to counter the manifestations of hatred on a racist and xenophobic basis appearing on the *web*. A document, this one, which is the particular application to *online hate speech* of the non-discrimination principle, one of the cornerstones of the European Union judicial system, as a particular expression of the values of equality and solidarity. However, the legal framework for the protection of *hate speech* and *cyberbullying* at the European level must be investigated in the European Convention on Human Rights, in particular in the rules pursuant to art. 10 and 17 which respectively regulate the right to freedom of expression and the

européo a confronto, Torino, 2018.

20 Budapest Convention, 23 November 2001, ETS No. 185.

21 FALLETTA, Pietro. *Il contrasto all'hate speech*. In MENSI, Maurizio; FALLETTA, Pietro. *Il diritto del web*. 2. ed. Padova: CEDAM, 2018.p. 177 ss.

prohibition of abuse of the right²². The fight against *hate speech* is conducted, also in the context of the jurisprudence of the European Court of Human Rights, on the basis of the combined application of the two aforementioned norms. In this perspective, art. 17 is interpreted as a limit to the exercise of the rights of freedom and of freedom of expression, acting as a source of illegitimacy of *online hate speech*. From this point of view, therefore, the different perspective of the European system emerges from that of the United States, since, unlike the second one, it does not envisage a pre-definition of prohibited conducts except in very general terms such as those linked to the non-discrimination principle.

However, in many cases the assumption of abuse of rights does not act well as a criterion for selecting legitimate manifestations of thought with respect to those prohibited with specific reference to *body shaming*, as it implies an assessment of the purposes of the expression employed, not necessarily in contrast with those pursued by the legal system, in order to concretely cause injury to the recipient. An example is given by expressions pronounced towards a person or group of people, justified by the aim of attracting the public opinion's interest on the negative effects of particular living conditions such as those linked to obesity and in such cases the approach based on the abuse of the right may not be suitable for providing adequate protection to the offended persons, on the contrary it could significantly limit or even exclude it.

In France, the problem of the person's *online* protection in relation to the freedom of expression right has arisen in recent years, especially with reference to the activity of terrorist propaganda. To this purpose the episodes relating to Charlie Hebdo were significant, since they dramatically showed the real limits to freedom of expression and, equally, the need to stop the spread of terrorist violence, also through restrictions on communications occurring on the network and the consequent repression of the most harmful forms of expression. In general, the phenomenon of *hate speech* and, therefore, of related *body shaming*, are substantially regulated by the penal code²³ which prohibits any offense or defamation directed at a person or group of persons on the grounds of ethnic or racial belonging or religious or sexual orientation, while punishing any private incitement to discrimination, hatred or violence based on the same reasons. However, in the absence of *ad hoc* regulations, the criminal law approach of protection against *hate speech* and cyberbullying in all their forms presents the most obvious limits, where it is considered that these phenomena very often concern almost exclusively minors both as agents and recipients of harmful conducts. This data strongly influence the protection efficacy and effectiveness, where it is considered that in most legal systems minors are mostly non-imputable subjects or

22 FALLETTA, Pietro. *Il contrasto all'hate speech*. In MENSI, Maurizio; FALLETTA, Pietro. *Il diritto del web*. 2. ed. Padova: CEDAM, 2018.p.181.

23 Articles R. 624-3, R. 624-4, R. 625-7.

imputable only in part, so penal actions cannot be exercised on them and the possible penalties are different and reduced compared to the ones inflicted on adults.

On the other hand, in the United Kingdom the approval of the *Equality Act* in 2010 has given organicity to the discipline of the person's protection against discriminatory acts, providing above all criminal penalties for the violations of the prohibition of discrimination. Similarly, the *Public Order Act* punishes all the acts causing, or simply assuming the causation of episodes of hatred and violence. Therefore, the discipline of *online hate speech* also falls within this framework, which therefore assumes importance in the United Kingdom law where it materializes in discriminatory behaviours or incitements to violence and in this regard *body shaming*, as usually implemented, certainly falls within the field of such behaviour. However, while the *Public Order Act* is aimed at regulating and sanctioning any behaviour likely to prejudice the public order, in the sense of disturbance of the community's peace and order, the *Equality Act* goes towards the protection of individual rights and, to that extent, is the reference standard in most cases of *body shaming* and cyberbullying regarding events affecting individual lives.

Also in Germany the approach to the person's protection with reference to freedom of expression is purely criminal in nature. The recognition of freedom of expression contained in the German Constitution (Article 5)²⁴ is in fact balanced with the protection of the person's dignity, the violation of which gives rise to a series of crimes, as well as hate speech and discrimination. The onset of a system expressly recognizing the person's dignity as a value is extremely significant for a country in which in the past movements and currents of thought were definitely contrary to the principles and values of men's equal dignity. From this point of view, the recovery of the meta-juridical value of dignity is a prerequisite for the recognition of the person's protection also against *online body shaming* and cyberbullying, which, moreover, just propose again, on a reduced scale, the same need to face the violation of fundamental rights experimented during the twentieth century with National Socialism.

4 The Italian position before and after the law n.71/2017 and the recent law proposal n. A .C. 1524-A of 31st January, 2020

The issue of personal rights protection on the *web* in Italy has been characterized by the substantial absence of specific rules²⁵ to appeal in order to prosecute the offenses

24 The norm in question in paragraph 1, states: "1) *Everyone has the right to freely express and disseminate his/her opinions in words, writings and images, and to obtain information without hindrance from sources accessible to all. Freedom of the press and information are guaranteed through radio and cinema. No censorship can be established*".

25 Without prejudice to some sector regulations such as l. 23 December 1993 n. 547 and l. 18 March 2008 n. 48, on cybercrime, the second ratification of the 2001 Budapest Convention, all mainly concerning

committed online both from a civil and a criminal point of view. This almost total absence until recently has represented a real gap, since the possibility of obtaining protection against offenses committed *online* has long been entrusted exclusively to the matching between the cases regarding traditional communications and the new generation's ones marked by the digital revolution. However, as stated before, the peculiarities of the network context make it difficult, if not impossible, to automatically apply the patterns of civil and criminal liability designed for the context of the physical world. In this regard, in fact, it is necessary to underline the practical inapplicability of patterns regarding causal nexus and its verification, since the mechanisms governing the relationship between cause and effect in the network virtual world, are different compared to those of traditional communications.

In this regard, the question of the responsibility of ISPs is exemplary in relation to personal data processing, especially with regard to the activity of search engines. Until the Google Spain sentence by the European Court of Justice²⁶ in fact, this responsibility was completely excluded, on the ground that search engine business was based primarily on the automatic devices not allowing search engine managers to have effective power of intervention on the data collected and returned by the engine itself. From this point of view, rather, it was completely denied that search engine activity could be qualified as personal data processing²⁷, thus causing for search engine managers the exclusion of the fundamental prerequisite for the application of the legislation on liability for personal data processing. With the Google Spain sentence of 13th May, 2014, new perspectives of protection spread in Europe, since the thesis of non-interference with the data available through search engine by its operators was overcome, whose activity was thus expressly redeveloped as the personal data processing. In this way, the "right to be forgotten *online* " was recognized²⁸, which more properly represents a new right to data deletion, already provided for previously, namely the right to data de-indexing. In reality, the achievement of the European Union jurisprudence through the Google Spain sentence had in some way been anticipated by a similar position of the Italian jurisprudence, with the judgement of the

the criminal law system.

26 Judgment CJEU 13 May 2014, Case c 131/12, in <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A62012CJ0131>

27 This thesis was supported by the same Advocate General of the Court of Justice, who had asked for the rejection of the raised question of legitimacy of the European legislation which had been the subject of a preliminary reference before the Court of Justice. See MARTINELLI, Silvia. *Diritto all'oblio e motori di ricerca. Memoria e privacy nell'era digitale*. Milão: Giuffrè, 2015. p. 161.

28 The Google Spain ruling introduced *from scratch* the right to de-index information from the search engine results obtained from the insertion of the name of individual interested parties. This ruling extended the scope of the obligations imposed on search engines as network intermediaries, constituting a first overcoming of the thesis of the neutrality of the activity of search engine operators.

Court of First Instance in the Google/Vivi Down case²⁹, afterwards not confirmed in following degrees of judgment³⁰. On that occasion it was established the responsibility of the search engine, based on the legislation relating to *privacy*, due to the publication by third parties of a video showing acts of bullying against a disabled boy. This orientation was then abandoned on appeal and in the Supreme Court, with the prevalence of the traditional thesis excluding the qualification of holder and responsible for the treatment within the search engine providers.

With the law n. 71/2017, the category of cyberbullying officially entered the Italian legal system, subject to a specific regulatory definition as well as the provision of specific control and contrast tools. In the norm in question, however, cyberbullying³¹ did not emerge as an independent case neither from the civil point of view nor from the criminal one, but rather as a phenomenon defined by referring to a series of typical behaviours, each constituting a crime and as such still disciplined. Therefore, the law in question was not aimed at introducing a new crime figure, but only at identifying some prevention and reaction tools relating to behaviours put in place in particular ways as well as by and against particular subjects, namely minors³². The definition in question in fact mainly considers, for the purposes of traceability within the sphere of cyberbullying, only the conduct carried out by and towards minors³³. This choice definitely matches with the most common expressions of cyberbullying, but it has the limit to exclude from the discipline provided for therein all behaviours carried out against non-minor persons, but for this reason not unworthy to be punished.

The law in question also favours the prevention and contrast of the phenomenon in school environments, which translates into a set of forecasts applicable to a well-circumscribed context and without general relevance, despite the transversality of the phenomenon also outside the school world.

29 Criminal Court of. Milan, February 24, 2010, n. 1972.

30 Milan Claim No. 8611/2013; criminal cassation 5107/2014.

31 COLANGELO, Riccardo Michele. La legge sul cyberbullismo. Considerazioni informatico-giuridiche e comparatistiche. *Informatica e diritto*, Firenze, v. XXVI, n. 1-2, p. 397-418, 2017.

32 GRANDI, Ciro. Le conseguenze penalistiche delle condotte di cyberbullismo. Un'analisi de jure condito. In *Annali online della didattica e della Formazione Docente*, Ferrara, v. 9, n.13, p. 40-58, 2017.

33 Art. L 71 1/2017, which states that “*This law aims to counter the phenomenon of cyberbullying in all its manifestations, with prevention measures and with a careful strategy, protection and education towards the minors involved, both as victims and as perpetrators of offenses, ensuring the implementation of the interventions without distinction of age within the educational institutions.*”

2. For the purposes of this law, “*cyberbullying*” means any form of pressure, aggression, harassment, blackmail, insult, denigration, defamation, identity theft, alteration, illicit acquisition, manipulation, unlawful processing of personal data in damage to minors, carried out electronically, as well as the dissemination of online content relating to one or more members of the minor’s family whose intentional and predominant purpose is to ridicule, or isolate a minor or a group of minors by engaging in serious abuse or a harmful attack.

Consequently, this legislative policy essentially kept unchanged the framework of the penalties applicable to offenses committed against adults and partially amended those relating to conducts directed against minors. Among the remedying protection tools, both in a preventive and subsequent key and non-sanctioning in the strict sense, the extension of the right to report harmful content on the *web* to children under the age of 14 was provided, who may therefore ask for the removal or obscuring of the content itself directly to the *website* or *social network*³⁴. Moreover, the institution of the warning provided for the crime of *stalking* was extended³⁵ also to cases of cyberbullying, while on the level of the legislative policy pursued it was intended to place school at the centre of the fight against the phenomenon, providing for the mandatory development and implementation of special prevention and contrast programs by managers and professors.

This regulatory framework is interesting especially with reference to the right to obtain obscuring, removal or blocking of offensive content directly from the host *website* or *social network*, which represents an original element in the field of protection of rights on the *web*. Indeed the operation of the instrument is recalled in part by the US *notice and takedown* model, in which the *web* site manager is bound to remove content supposedly infringing the copyright, according to the simple request of the supposed holder, without the possibility, in the first instance, to examine the validity of the request. This mechanism of the US law provided for by the *Digital Millennium Copyright Act*, which governs the *online* protection of copyright³⁶, is based on a type of anticipatory and presumptive protection, in which the cross-examination with the author of the supposed violation is possible and deferred with respect to the removal or obscuration.

Unlike the provisions of the US law, however, the Italian law does not compel the operator to provide for the removal, obscuring or blocking on the basis of the request received alone, but it admits its discretion of choice³⁷, at least as long as an authoritative measure by the Guarantor Authority for the protection of personal data takes place, which the interested ultra fourteen or each parent or legal parental responsible can

34 Art. 2 l. 71/2017.

35 Art. 7 of Law 71/2017.

36 DMCA, Section 103

37 In this sense, it seems possible to interpret article 2 of Law 71/2017, which literally provides that “*If, within twenty-four hours following receipt of the request referred to in paragraph 1, the responsible party has not communicated to have provided for the obscuring, removal or blocking requested, and within forty-eight hours has not done so, or in any case in the event that it is not possible to identify the data controller or the manager of the website or social media, the interested party can send a similar request, by means of a report or complaint, to the Guarantor for the protection of personal data, who, within forty-eight hours from the request receipt, provides pursuant to articles 143 and 144 of the aforementioned legislative decree 30 June 2003, n. 196.*” This provision contemplates a coercible obligation only following a provision of the Guarantor Authority, issued following the failure of the site or social network operator to intervene.

apply through notice or complaint in case of refusal or inaction by the aforementioned manager. The positive feature of this protection mechanism is to be potentially suitable for offering the injured party immediate and prompt protection, an aspect of crucial importance in cases where the damage is connected to the dissemination of the content via the *web*, since in the network context, where the circulation of data and information are tendentially uncontrollable, the only tool capable of effectively interrupting, although not in an absolute sense, the chain of dissemination of information is their elimination or unavailability from the source sites; in this key, anticipatory and presumptive protection is even more decisive when it is necessary to protect fundamental human rights, as in cases of cyberbullying.

The Italian Law on Cyberbullying has been object of a recent proposal to amend, the AC 1524 -A of 2020, approved of the Chamber of Deputies on 31st January 2020³⁸, which contains a series of relevant innovations in terms of discipline and classification of the case within the legal system. In fact, the proposal in question, unlike the original legal text still officially in force, provides for the introduction of a real sanctioning regime for conducts falling within the scope of cyberbullying, as well as the extension of the entire discipline dictated by law. 71/2017 not only to *online* bullying, but also to those acts occurring in the real context not linked to the *web*. This proposal certainly goes towards a more global protection against the phenomenon of bullying as a whole and its clearer classification in the context of criminal offenses. From this point of view, the equivalence of bullying with the case of *stalking* is undoubtedly significant not only for the definition of the conduct, but also as regards the applicable sanction, which is directly taken from the provisions of art. 612 of the Criminal Code, thus also including the prison sentence up to four years.

Similarly, the law provides for the extension of the provisional powers of the Juvenile Court with regard to “irregular by conduct or character” minors referred to in the Royal Decree Law no. 1404/1934, also to those responsible for bullying. This is a series of powers towards the phenomenon of bullying both as tools of prevention and of repression in the strict sense, as they consist in the possibility of providing for the submission to educational projects both towards minors showing generally inappropriate attitudes towards people, animals or things, and towards minors already perpetrators of actual bullying.

In line with the spirit of law n. 71 /2017, it is rather the overall approach of the proposed reform to the phenomenon of bullying not only as strictly repressive but also

38 https://documenti.camera.it/apps/commonServices/getDocumento.ashx?sezione=lavori&tipoDoc=testo_pdl_pdf&idlegislatura=18&codice=leg.18.pdl.camera.1524.18PDL0044650.

The proposal, after being approved in the Chamber of Deputies on 31st January, 2020, has reached the Senate, where it is still waiting to be discussed, also due to the delays in parliamentary activity caused by the health emergency linked to the covid -19 epidemic.

and above all in connection to prevention and education. These last functions emerge from the provisions aimed at strengthening the role of school leaders in implementing the guidelines for the prevention and countering of bullying and cyberbullying, with the assignment of tasks for the promotion and coordination of educational projects aimed at raising awareness for respect and solidarity.

With regard to the civil aspects of the protection to invoke against cyberbullying and *body shaming* in particular, it is necessary to consider that these phenomena, already difficult to classify within the scope of the existing criminal cases in the absence of specific regulatory typing, are even less decipherable in the field of law and civil liability³⁹, which notoriously requires greater rigor at proving the prejudice actually caused compared to what happens instead in the field of criminal law, more firmly anchored to the element of illegality in itself of the conduct. Nonetheless, it is necessary to underline how for long time the doctrine and jurisprudence have recognized the protectability of personality rights also with respect to the injuries resulting from the use of the *web* and in particular of *social networks*, although the most relevant problem is represented by the identification of the subjects responsible for the offenses committed in the context of the network⁴⁰. According to this premise, the honour and reputation of the person are assets that find and must find legal protection also and above all in the context of communications occurring through the *web*. This statement, though obvious at first sight, is the result of an elaboration that had to provide a legal framework for the cases connected to the use of the *web*, which result to be so different from those concerning traditional means of communication. In reference to the other personal rights, such as *privacy* rights, the European legislation and case law on protection in the field of *web*, are based in fact on the principle of *household exemption*, according to which the publication of other people's personal information on a *chat* or a *social network* does not violate the right to *privacy* if it takes place in the context of sessions or discussions restricted to a limited number of people. This approach starts from the premise of the exclusion of a predefined globality of the *web* as a means of communication, giving instead importance to the possible restrictions applied case by case to the distribution of the information entered.

However, this orientation does not seem to duly consider the practical impossibility of controlling the actual compliance with the restrictions defined by users and consequently the effective scope of diffusion of information within the *web*, also

39 According to recent jurisprudence on the merits, (Juvenile Court of Caltanissetta, 16.7.2018) the parent, in the exercise of his/her general responsibility, is required to give an appropriate education to his/her children and to supervise their use of new technological means, responding to the damage caused by the latter for acts of cyberbullying both for *culpa in educando* and for *culpa in vigilando*.

40 Criminal cassation Section V, no. 23010/2013; criminal cassation N.12546 / 2018; criminal cassation No. 42630/2018; Cass. N.13161 / 2016; Milan Court no. 12623/2017; app. cassation Milan, 27/01/2014; civil cassation. 5525/2012.

due to the phenomena of interception and theft of data already very frequent. In this general framework of reference, *body shaming* is a phenomenon capable of affecting honour both in a subjective and an objective sense, so that the problem of the effective scope of diffusion of data or information circulating on the *web* assumes only partial relevance, paying particular attention to the protection of honour in an objective sense, that is to the holder's image perceived by others.

According to the approach in question, it results *a contrario* that the publication on *Facebook* wall of messages harmful to the honour and reputation of others integrates the crime of defamation as it involves a message addressed to the generality of *Facebook* users⁴¹ and as such plausibly suitable for being known by a significant multiplicity of people. However *body shaming*, especially when not expressed through directly offensive or explicit expressions, but repeatedly over time, is a practice specifically affecting the victim's feeling of self-esteem and therefore his/her honour in a subjective sense, as an image that the same holder has of himself/herself. In any case, the real existence of the offense and its scope, as established by the Supreme Court⁴², must necessarily be related to the personality of the offender and of the offended person and to the context in which the expressions are pronounced. From this point of view, therefore, an offense aimed at a minor appears to have a greater potential for damaging, as minors tend to have a more precarious psycho-physical balance compared to an adult person, due to the personality development still not matured.

The juridical treatment of *body shaming* is certainly not exempt from this general criterion, which is a phenomenon that can be fully attributed to acts damaging the person's dignity and reputation. In several concrete cases, *body shaming* acts can also be part of the broader and more deleterious phenomenon of cyberbullying and *stalking* crime, when they are characterized by repetitiveness over time. In this regard, from a strictly statutory point of view, the jurisprudence expressed on the point, affirmed the responsibility of the parent of the minor perpetrator of bullying in a broad sense towards peers for *culpa in educando* and *culpa in vigilando*⁴³, providing that the civil penalties deriving from this reconstruction had to necessarily be accompanied by those that the law provides for the minor author of the acts in question and aimed at his/her re-education.

In conclusion, as it often happens with the problems connected to the use and abuse of the *web* tool, the approach of the legal system appears rather slow and fearful in the name of freedom of expression which perhaps for a long time has been compressed. The web is a tool of great convenience offering opportunities unknown

41 See. Court of Campobasso, 11/28/2019, n. 577; the previously criminal cassation, n.8482 / 2017, stated that defamation through Facebook configures the hypothesis of a crime aggravated by the means of advertising.

42 Criminal cassation, no. 44401/2015; criminal cassation, N. 46488/2014

43 Sulmona Court, 9/4/2018.

until a few decades ago but, at the same time, causing problems instantly chronic and, to use a term newly coined in the globalized era, *viral* (italics of the A.) so it would be preferred, *de jure condendo*, the possibility of regulatory interventions through accelerated procedures since technology escapes the slowness of the standard which, where approved, is once more already inadequate.

There are too many cases of tragedies consumed as a result of *sexting*, *cyberbullying* and *hate speech* to allow new categories like *body shaming* not to be ruled in the bud where the *web* context is already known for its pervasiveness and diffusion.

On the basis of the said considerations, it is difficult to be able to put an end to the problems highlighted, hoping on the one hand for a faster and more incisive action of the legislator and on the other hand promoting the adoption of self - responsibility models that may exercise preventive control through the adoption of coding and recognition algorithms of keywords integrating potentially harmful cases and as such to be blocked before their introduction and diffusion on the network. This does not mean reintroducing the institution of censorship but simply guaranteeing a *freedom of speech* in line with the values it promotes.

References

- ABBONDANTE, Fulvia. Il ruolo dei social network nella lotta all'hate speech: un'analisi comparata fra l'esperienza statunitense e quella europea. *Informatica e diritto*, Firenze, v. XXVI, n. 1-2, p. 41-68, 2017.
- COLANGELO, Riccardo Michele. La legge sul cyberbullismo. Considerazioni informatico-giuridiche e comparatistiche. *Informatica e diritto*, Firenze, v. XXVI, n. 1-2, p. 397-418, 2017.
- CORTESE, Anthony. *Opposing hate speech*. Nova York: Praeger, 2006.
- FALLETTA, Pietro. Il contrasto all'hate speech. In MENSI, Maurizio; FALLETTA, Pietro. *Il diritto del web*. 2. ed. Padova: CEDAM, 2018.
- FEBRIANA, Trisna; BUDIARTO, A. Twitter Dataset for Hate Speech and Cyberbullying Detection in Indonesian Language. In *2019 International Conference on Information Management and Technology (ICIMTech)*, 2019. Jakarta/Bali: IEEE, 2019. p. 379-382.
- FIORIGLIO, Gianluigi. *Il diritto alla privacy. Nuove frontiere nell'era di internet*. Bologna: University Press, 2008.
- GAGLIARDONE, Iginio; GAL, Danit; ALVES, Thiago; Martinez, Gabriela. *Countering online hate speech*. Paris: United Nations Educational, Scientific, and Cultural Organization, 2015.
- GARD, Stephen. Fighting words as free speech. *Washington University Law Review*, Washington, v. 58, p. 531, 1980.
- GELBER, Katharine. *Speaking back: the free speech versus the hate speech debate*. Philadelphia: John Benjamins publishing Company, 2002.
- GRANDI, Ciro. Le conseguenze penalistiche delle condotte di cyberbullismo. Un'analisi de jure condito. *Annali online della didattica e della Formazione Docente*, Ferrara, v. 9, n.13, p. 40-58, 2017.
- LABANCA, Marisa. Lizzo contro i bodyshamer: "Sono bella, sono forte. In: *La Repubblica*, 11 jun. 2020. Retrieved from: https://d.repubblica.it/beauty/2020/06/11/news/lizzo_contro_il_bodyshaming_video_virale_tiktok-4742662. Access: 26 nov. 2020.
- MAIETTA, Angelo. *Il diritto della multimedialità*. Torino: Giappichelli, 2018.
- MARTINELLI, Silvia. *Diritto all'oblio e motori di ricerca. Memoria e privacy nell'era digitale*. Milão: Giuffrè, 2015.
- MENSI, Maurizio; FALLETTA, Pietro. *Il diritto del web*. Padova: CEDAM, 2018.
- MERAVIGLIA, Marinella Fumagali. *Diritto alla riservatezza e progresso tecnologico. Coesistenza pacifica o scontro di civiltà?*. Napoli: Editoriale Scientifica, 2015.
- NEVIN, William. Fighting words and the question criminally punishable racial epithets. *First Amendment Law Review*, v. 14, n. 3, 2018.
- PETRUSO, Rosario. *La responsabilità degli intermediari della rete telematica: I modelli statunitense ed europeo a confronto*. Torino: Giappichelli, 2018.

PITRUZZELLA, Giovanni; POLLICINO, Oreste; QUINTARELLI, Stefano. *Parole e potere: libertà d'espressione, hate speech e fake news*. Milano: Egea, 2017.

PIZZETTI, Franco. *Internet e la tutela della persona: Il caso del motore di ricerca*. Firenze: Bagno a Ripoli, 2015.

RING, Caitlin Elizabeth. *Hate speech in social media: an exploration of the problem and its proposed solutions*. 2013. A dissertation submitted of the requirement for the degree of Doctor of Philosophy Journalism and Mass Communication, University of Colorado, Colorado, 2013. Retrieved from: <https://scholar.colorado.edu/downloads/n870zr009>. Access: 26 nov. 2020.

ROSENFELD, Michel. Hate speech in constitutional jurisprudence: a comparative analysis. *Cardozo Law Review*, New York, v. 24, p. 1523, 2003.

SICA, Salvatore; ZENCOVICH, Vincenzo Zeno. *Manuale di diritto dell'informazione e della comunicazione*. Padova: CEDAM, 2015.

STONE, Geoffrey R. Hate speech and the Us Constitution. *East European Constitutional Review*, Chicago ,v. 3, p. 78 ,1994.

VINCI, Alessandro. Chi è Armine Harutyunyan, modella Gucci vittima di body shaming e foto taroccate. In *Corriere Della Sera*, 31 ago. 2020. Retrieved from: https://www.corriere.it/tecnologia/20_agosto_31/chi-armine-harutyunyan-modella-gucci-vittima-body-shaming-accusata-falsi-saluti-romani-024737bc-eb77-11ea-a81e-046321e92fb6.shtml. Access: 26 nov. 2020.

WALDRON, Jeremy. *The harm in hate speech*. Cambridge: Harvard University press, Cambridge, 2012.

WEBER, Theophile J. *New limits to the clear and present danger doctrine*. *Wioming Law Journal, Laramie*, v. 4, n. 2, p. 130, 1949. Retrieved from: <https://scholarship.law.uwyo.edu/wlj/vol4/iss2/11>. Access: 26 nov. 2020.

WERTHEIMER, Aviva O. The First Amendment Distinction between Conduct and Content: A Conceptual Framework for Understanding Fighting Words Jurisprudence. *Fordham Law Review*, New York, v. 63, p. 793, 1994. Retrieved from: <https://ir.lawnet.fordham.edu/flr/vol63/iss3/4>. Access: 26 nov. 2020.

WILLHOCK, Rita Kirk; SLAYDEN, David. *Hate speech*. Non Journal: California, 1995.