Civil Responsibility of Electronic Mediators in Iran Law System

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Abstract
The purpose of this study is to investigate the civil responsibility of companies that give internet services. This topic is important because even though the principles of civil responsibility has some things in common with the principles that have been mentioned in western law in Iran with different reasons, but some new discussion are possible in this domain. This topic has encountered the domain of exact recognition of the base and the domain of civil responsibility with challenges. The researcher in this project has taken into consideration the description of the topic by putting emphasis on natural issues. Some suggestions have been given toward approval of special rules in this regard at the end of the research.

Keywords: Civil responsibility, Internet service suppliers, Cyber space, Ruling law

Introduction
In today's world, the mass media such as newspapers, television, and computer, mobile… have a great role in progressing the human culture and civilization by transferring new information and knowledge and exchanging public ideas. Many scientists have called this period, the era of communication. The complexities of social life, national and international dependencies and solidarities, non-securities and crisis, evolution of social and political systems, changes in cultural principles, awakening of social conscience … all are factors that have made the human's need to economic development and consolidate the democracy principles and international agreement possible every day. But, here to what extent that the human tries to escape from the problems and makes everything easy at the same level it is added to the domain of his problems and troubles, because great presents usually need great expenses. One of the important issues that are related to the domain of cyber space and communication is the civil responsibility of the companies to give internet services. These companies should be responsive and responsible for keeping their users' privacy and secrets and the spiritual damages are also possible to compensate based on the law of civil responsibility. In fact, when a company that provides internet services does not protect its users sufficiently, it can be known as responsible for the damage based on civil law. It is important because even though the principles of civil responsibility in Iran has some things in common with the principles that are mentioned in the western law in some reasons, but some new discussions are also possible to be mention. This issue has encountered the domain of recognition and domain of civil responsibility with challenges.

Review of the literature

Civil responsibility
Civil responsibility means being responsible for paying the damage. Therefore, wherever a person is responsible for compensating the damage about another person, there is civil responsibility (Bahrami Ahmadi, 2009).

Civil responsibility has been defined by famous French lawyers as follows:
“Civil law is a responsibility that is given to an official authority to compensate the damages for others.” (Jordan, 2011). One of the famous French lawyer writes in this regard:

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“Civil law is a set of obligations on one person and is resulted from his/her activities if he hasn’t done any mistake.” Civil responsibility in Common Law means mistake or error and literally it means a legal fault that will result in the right of demand of damage for the person who has been damaged (Abbasloo, 2011).

Mohammad Jafar Jafari Langroodi writes in definition of civil responsibility:

“Responsibility for a damage that the person (or a person who is under the control of another person) or things under his or her protection give to others and also the person’s responsibility because of disobedient of doing obligations of the contract. Civil law is done against criminal responsibility and … (JafariLangroodi, 2006).

Theories about civil responsibility

Fault Theory

Fault theory says that somebody should be known as responsible for the fault that deserves blames for his/her behavior (Katoozian, 1995). In other words, according to this civil responsibility is based on fault (whether intentional or unintentional) and just the one can be known responsible who has committed the fault. The supporters of this theory that is considered a very important theory in western law explain it with moral concepts (Safayi and Rahimi, 2011).

Civil responsibility based on fault provides this possibility that it is adjusted to the conditions of fairness and justice regarding the special situations each quarrel, while pure responsibility doesn't have this capability (Badini, 2005).

Danger Theory

It is not mentioned in this theory that an action that has made damages to the person is true or not, but the important thing is to assign the damage to the called person.

The advocates of this theory say that everybody who does and action makes a dangerous environment around themselves. He takes advantages of this dangerous environment and everybody who takes advantage of something should stand its drawback, too. Some advocates of this theory know this theory exclusive to a place where a person considers a financial benefit in his activity and because of this some people know this theory as the theory of "danger against benefit".

Mixed theory

None of the theories of danger or fault can be the base for responsibility alone and be responsive to basic social needs in all areas, but in some cases running the theory of fault is suitable and in some other cases the theory of danger is good. But the final solution was in the case that they can use a mixture of these two theories in act. In fact, the ruling territory of each of these theories should be considered regarding the mentioned topic. At last, it should be said that even though the majority of lawyers have accepted both theories as the base for civil responsibility, however, in domain of actions and government, there are differences in the ideas in both theories and they haven't expressed clear and specific criteria to separate the cases of running theory of fault from theory of danger.

Conditions of realization of civil responsibility

Harmful action

The existence of harmful action is of the columns of civil responsibility and when the harmful action is assigned to the agent he should be known as the one who is responsible for compensating the damage. So wherever a person is charged with doing something because of contraction and law and convention and refuse doing that and therefore causes damages to another person, so he will be responsible for it (Bahrami Ahamdi, 2009).
**Illegal action**

In addition to the necessity of doing harmful action from the person, the mentioned action should be done in an illegal and illicit way; it means that the action has made damages should be considered inelegant in the case of discipline and morality so that it is possible to assume civil responsibility for the person. In spite of the fact that this principle is obvious the substance no. 1 of civil responsibility to demystification and necessitate this condition expresses that: "everybody who causes injuries to life or health or property or freedom of reputation or business fame or any other right that is known for the people by law and makes spiritual and financial damages to them is responsible for compensating the damage resulted from his action."

**Existence of damage**

The first column of claims of civil responsibility whether it is conventional or compulsory, is the damage. Loss means damage to the person or his properties and one of the most important columns of civil responsibility is the loss. Generally, loss is divided into two groups of material and spiritual (virtual). By material or monetary loss it means the loss to the material benefits that are in the domain of the properties of the person who is having lost and includes deficit, extinct, waste or deformed owning and hurts to the human's health. Spiritual loss is to the virtual rights of the human that has to do with the individual personality of the person such as freedom of speech or freedom of action (Abbasloo, 2011).

**Undoubtedness of the loss**

One of the conditions of compensable loss is that the mentioned loss is certain and definite (Shahidi, 2003). It means that the loss claimant should prove definitely and certainly that he has received a loss. This is a crucial term in compensation of conventional or compulsory damage because basically, compensating the loss is impossible unless with certainty about happening of the damage. So, it is mentioned in the provision 728 of trail custom law legislated in 1318 that, "the court gives the verdict of damage if the claimant proves that he has received a loss." Regarding the verb used here in this phrase it can be said that the loss should be happened (in the past) and on the other hand, the claimant should prove it based on this verdict and what that has happened is lawfully a definite issue (Mehman Navazan, 2010).

**Directness of the loss**

The second term of the compensable loss is that the loss is resulted directly and without mediators from the called person action. In the case that the loss does not have direct causal relationship with the harmful action compensation of such action is not demanding and the agent if the harmful action cannot be sentenced.

There is no verdict about this term in the law of civil responsibility and civil law of Iran. But as it is mentioned in the start of provision 728 in the law of previous trial custom, the loss should be without mediator.

**The loss should not be compensated**

Another term of the compensable loss is that the loss is not compensated at the time of demand and request in any way. This condition in necessary because the issue of civil responsibility is to compensate the damage and if the loss and damage is compensated in any way, so the issue of civil responsibility that includes the necessity of compensation of the damage to the damaged person will be eliminated and therefore the verdict to compensate the loss will not be valuable anymore (Barikloo, 2008).

**Civil responsibility of internet service suppliers**

**The centers for giving internet services**

These centers can be defined as following:

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"The company that provides access to the internet. The supplier center provides you with a software package, password, username and a phone number to access the internet in exchange for paying some money monthly. You can enter the internet by using modem and search through it and send and receive e mails. In addition to giving services to the people, the internet supplier centers give services to the great companies, too. They provide a direct relationship among the company's networks and the internet network. These centers themselves are connected to other service suppliers of internet."

**Kinds of responsibility about internet service suppliers**

An ISP is considered responsible in a system based on deficiency if he outrages the people's rights intentionally. There are two separate levels in this system; real knowledge and constituent knowledge. Based on the real knowledge if an ISP knows that some cases are in the internet that outrages some people's rights, so the ISP is responsible. According to the second level of constituent knowledge, the law can identify that if the ISP has some cues or should assume logically that in some special cases some people's rights are outraged so the ISP is responsible. As it will be discussed later the responsibility system done by Rahnemood is closer to the second one. A deficient system with necessity of constituent knowledge.

**Copyright**

There was not any comprehensive law in this regard in the internal domain until 1969 about supporting the rights of authors and composers. In 1973, the bill of translation and reproduction of the books and newspapers and vocal works was approved and completed the law of 1959. After the Revolution, the author's right faced with juridical challenges and after Imam Khomeni in Tahrirolvasile that did not know the natural right as legal (Khomeini, 1996 of lunar year, p. 625) the ambiguity in legitimacy of the mentioned rules increased.

In 2000, "the law of supporting creators of computer software" was proved and the domain of national support of thoughtful ownership in Iran developed.

**Offense and defamation**

The action of print or publish or distribute or process causes responsibility; maybe it can be said that the publisher (organization), supervisor and author, all are the cause and based on provision 332 of civil law, the supervisor is basically responsible unless the stronger cause is from the supervisor. But this is not a simple condition, it is a recent condition that its effect goes back to the past and by happening it, the author's fault will be discovered. In other words, the author and publisher of a harmful issue to the third person has actually committed the fault at the time of writing that issue, but recognizing this fault depends on an external factor that is printing or processing. So, it doesn't seem difficult to impose the load of the responsibility on the creators of every elements of the cause (fault), therefore, the fault of each of the expedient creators at the terms of ignoring the intentional lack of them regarding the external status and the available conditions on that element should be evaluated independently and should be evident.

**Explaining kinds of departments**

**Borrowed responsibility**

One of the important departments related to civil responsibility in cyber space is the borrowed responsibility. The responsibility and the principles related to it are in relationship with the issues about controlling the communications. Challenges such as intervening in citizens' privacy is also mentioned in this regard. In one hand, the task of supervising can cause violation of secret and privacy of the people and on the other hand, lack of supervision can, by itself, cause some responsibilities different from the mentioned domain. The suppliers as the person who has the ability and right to control this information should do his task. Such task is also available in hosting
services; when these services give spaces to their customers to save the information they should control and search it so that they can delete or make inaccessible the criminal contents if they are found.

Internet and cyber space is an infinite environment in which it is impossible to control the information and data content that is transferred in it physically, but internet services suppliers can avoid accessing to illegal contents using technical control tools such as scanning and refinement robots and software. It should be said that it is not possible to search, scan and refine the loading or saved information in the computers of service suppliers, however it is possible to avoid distribution of illegal contents and accessing the users to them by installing automatic equipment for scanning and refining the data. In this case there is no problem of lack of physical ability in refining the illegal data by service suppliers.

Collective responsibility

This theory is important because it knows the people responsible due to facilitate criminal behavior. It can be reasoned that since internet services provide necessary filed to transfer or save the information for others so they cooperate in distribution of the data and supply others with the equipment to commit crimes, therefore they are responsible because of facilitating criminal behaviors of others.

Responsibility based on fault

According to this theory, the companies that provide internet services are responsible if they are aware of the given content by their customers and also they have responsibility about making it inaccessible or eliminating its transfer when they do not do anything.

So, regarding the subsidiary role and secondary cause of the mediators in committing the harmful action, their responsibility should be analyzed based on the theory of fault. For this reason, the courts in countries such as the U.S.A and England avoid issuing a sentence on cases where illegal action of the user is not clear for the mentioned mediator and only know the mediator responsible if the mediator have been aware of common activity of the user or based on conditions and situations it should have been aware.

Activity of mediators as distributors

Absolute responsibility

Against the system that subject the responsibility of internet service suppliers about information they give or activities they do in the interment to prove the fault or violate the standard behavior in order to avoid loss, so because of this law system and based on some lawyers' attitude and some votes of the courts in countries like Australia before approval of digital organizer law and in the U.S.A. service providers on the responsibility of those who make the internet services absolute whether about damages because of the given information of the service suppliers themselves and their performances or the loss resulted from the users in both civil or criminal responsibility, it was emphasized on the absolute responsibility of internet.

Compensating the damage in gamut of civil responsibility about giving internet services suppliers

1. Compensation of the loss because of violation of privacy

In our country's law system, the case 25 of constitutional law and provision 528 of Islamic criminal law shows prohibition of any kind of illegal eavesdropping, hears and monitoring of the telephone conversations and correspondence. So, as a general rule, it can be said that mediators of post and telecommunication relationships not only are not responsible for monitoring the content of conversations and letters and correspondence of the customers but also they are forbidden to do this. The statutory laws don't have a clear verdict on internet communications. Provision 1-3-5 of the
rulebook of units that give information and internet service of Rasa proved in the Supreme Council of Cultural Revolution says:

"Rasa Institutions and the users are responsible and responsive for the contents they upload on the network based on this rulebook."

Also provision 4-3-5 says:

"Responsibility of Rasa about accessibility to the given information by others is limited to creating the possibility and activities of establishing refinement in the network."

Provision 15-3-5 also has prohibited the illegal accessibility of expressive institutions (Rasa institutions) to the users' private information. So in the law system of Iran by assumption of accepting the validity of the law for the resolution of the Supreme Council and regarding the case 25 of constitutional law and applying the provision 528 of Islamic criminal law, the electronic mediators lack the general task of controlling and monitoring the content, but the only task predicted for them is to give general information of the users and internet activities bank of the users to the ministry of communication and information technology and also to provide necessary actions to use refinements in their networks so that they can act toward eliminating the contents containing illegal issues based on the rules and regulations.

2. Compensation of the material damage resulted from violating the compiling right and trade marks

Provisions 28 and 29 of the supporting law of artists and authors' rights approved in 1348 can be known as kind of civil administration guarantee against violation of the creators' rights. Provision 28 says in this case that:

"Whenever the offending person of this law is a legal person, in addition to criminal chase of the real person that the crime is resulted from his decision, the damages of private claimant of the properties of the legal person will be compensated and if the legal person's properties is not enough alone the difference will be compensated from the committed person's properties."

Provision 28 has expressed the doubt about possibility of compensating the damage from legal people with the phrase "everybody". Because it is clearly in the provision 28 that "whenever the offending person of this law is a legal person". On the other hand, there is also attention to the possibility of punishment of real person who is responsible for the legal person who has committed the crime.

Of the important aspects of guarantee of civil administrations on violations against thought ownership rights, are the activities that are done on the purpose of stopping the damage and loss to the creator and restoration of his /her exclusive rights. In this case, provision 29 of the law in 1348 says:

"The judicial officials can give the necessary orders to the mediators' right to avoid distribution of the cases under complain and recording them, while investigating the private complain."

As it is clear from this provision, the order that the court gives in this case is kind of temporary order that has emergency and its goal is to prohibit the illegal exploitation of art or literary works and stopping the continuity of assaults to material or spiritual rights of the creator. This provision has publicity and applicability regarding the time of its distribution and includes publishing and distributing and delivering and generally violating the rights resulted from thought ownership in cyber space by the companies that give the internet services.

Research hypotheses

1-Civil responsibility of the internet mediators is sometimes based on fault and sometimes based on error.

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2-The companies that directly give the services to the users have the most responsibility.
3-The law of civil responsibility in 1960 is not responsive to the needs in cyber space about mediators and there should be a special law in this gamut.

**Conclusions and suggestions**

The companies that give internet services in the world have opened a new door to the lawyers of private law by means of evolution in the concept of technology and science domains. In fact, the most important topic in this regard is that whether it is possible to investigate meeting the needs in cyber space with traditional principles defined for civil responsibility or some new principles are needed in this domain. The other topic is that in some law systems like Iran, there is the public law of civil responsibility and it is just cited to that public law in all areas in spite of variation in the number of existing expertise.

Answering to each of these questions needs to write thesis and books and independent professional articles and it is not possible to mention the topic generally. Each domain should be discussed separately in this space and each of them should be evaluated carefully based on the needs of the society. It seems that regarding the specialization of science and technology at first they should search for a solution to codify and cite the special rules in each domain of civil responsibility such as cyber space and civil responsibility of companies that give internet services. On the other hand, the old principles of civil responsibility in all areas will not be responsive and they should be discussed by Referring to the defined principles in European countries and international organizations.

In law system of Iran following the Roman-German system and at the top the country of France, the civil responsibility is also formed in a general framework and plan. Therefore, forming specialized commissions in the parliament about cyber space that a big part of every society including Iran is involved in it seems necessary.

These commissions can be temporary and approve special rules and regulations by consulting specialized organizations such as the Center of Researches of Parliament of Islamic Council or other professional teamwork in this area.

According to the mentioned principles of the companies, considering the civil responsibility based on fault is in contradiction to the people's rights. In these conditions, proving the fault of company or its employees is difficult in Iran because most of the internet service providers are state organizations and the government that takes into consideration the lack of responding to the citizens can abuse these conditions. On the other hand, considering the responsibility based on danger is more reasonable. Even though the companies have obligations to give services to the citizens but the citizens' information and documents that they directly give to the supplier companies should be protected.

On the other hand, considering the collective responsibility was also mentioned that seems to be closer to the justice principles but proving it in this space is difficult and will face with the problem of reasoning. In the author's idea, privatization of this part can release the government from the load of responsibility and also from collecting information suddenly that protecting it is difficult for the government and the companies that give internet services.

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