

刑法應用於網路誹謗案例之分析*

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摘要

近年來，我國網路誹謗案例迅速增加，而法院如何將刑法有關誹謗罪的規定應用在網路案件中，成為重要的課題。為探討此一課題，本文首先介紹美國相關的規定與案例。其次，再探討我國刑法上對於誹謗罪的相關規定，並將台灣與美國對於誹謗罪規定的差異進行簡要的比較。在對誹謗罪有相當認識之後，本文蒐集 2006 年 1 月之前的網路誹謗案例，並依照以下構成要件或相關規定進行分析：「散布於眾」、「需指摘或傳述具體事實」、「針對特定或可推知的人」、「告訴期」、「ISP 責任」。透過案例分析後發現，我國法院已經逐漸建立起網路誹謗的審判原則，此外法官在審理網路誹謗案件時，也會將網路媒體的特性納入考量。

關鍵詞：刑法、案例分析、網路犯罪、網路誹謗、誹謗

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An Analysis of Libel Cases on Internet under Criminal Law

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ABSTRACT

The cases of libel on Internet rapidly increased in recent years. Therefore, how judges apply the libel provisions under criminal law to the cases on Internet become an important issue. This article first introduces the rulings and cases in the United States, and probe into the rulings of libel under criminal law in Taiwan. Then, the difference of libel law between Taiwan and the U.S. would be compared. The libel cases on Internet before January 2006 was collected and analyzed according to the components of libel, including publication, defamatory content, identification, the statute of limitations and ISP liability. The results show that the courts in Taiwan have gradually established some rules, and the judges have taken the media character of Internet into consideration.

**Keywords: libel, cyber crime, defamation on cyberspace,
criminal law, case study**