**Drawing the Legal Line: Film Commentary and Criminal Liability in Vietnam, the UK, and the US**

**Abstract**

*In the digital age, film commentary has become a pervasive mode of expression that intersects cultural critique with legal accountability. As social media platforms amplify the reach and impact of such commentary, the challenge of delineating the boundary between lawful expression and criminal conduct becomes increasingly complex particularly in jurisdictions like Vietnam, where legal definitions remain vague and enforcement risks arbitrary interpretation. Drawing on a comparative analysis of legal frameworks in Vietnam, the United Kingdom, and the United States, this article examines the extent to which film reviews may infringe criminal law, especially under provisions relating to defamation, insult, and abuse of democratic freedoms. To clarify this legal threshold, the article develops a hybrid evaluative model combining qualitative and quantitative criteria including the degree of falsehood, intent, reputational harm, and dissemination scope mapped into a three-tiered scale (0–3) to assess potential legal violations. The proposed framework reflects international legal standards under Article 19 of the ICCPR while integrating insights from common law doctrines such as “actual malice” and “honest opinion.” It offers not only a method of legal risk assessment for content creators and prosecutors but also a pathway toward legal reform that ensures proportionality, transparency, and consistency in adjudicating expressive acts in the digital domain.*

**Keywords:** *freedom of expression; film commentary; criminal liability; honest opinion; actual malice; legal thresholds; evaluative scale; digital speech regulation*

**I. INTRODUCTION**

In the rapidly evolving digital landscape, the practice of reviewing films on online platforms such as YouTube, TikTok, and Facebook has grown exponentially, shaping public perception and significantly influencing cultural dialogue. Film reviews not only represent individual taste or artistic judgment but also hold substantial power to affect reputations, commercial outcomes, and social attitudes. Consequently, determining the precise boundary between lawful exercise of freedom of expression and criminal liability has become increasingly complex and contentious across jurisdictions, including Vietnam.

Freedom of expression is universally recognized as a fundamental human right, protected by international instruments, notably Article 19 of the International Covenant on Civil and Political Rights(United Nations, 1966) (ICCPR). Nevertheless, this right is not absolute and may be lawfully restricted to protect reputation, national security, public order, or the rights and freedoms of others. Such restrictions, as articulated by the Human Rights Committee's General Comment No. 34, must comply strictly with principles of legality, legitimacy, necessity, and proportionality within a democratic society(UN Human Rights Committee, 2011).

Despite these clear international guidelines, practical applications vary considerably across different legal systems. For instance, common law jurisdictions such as the United Kingdom and the United States have established legal doctrines such as the "Honest Opinion" defense under the UK's Defamation Act 2013(UK, 2013), and the "actual malice" standard from the landmark U.S. Supreme Court decision in *New York Times Co. v. Sullivan (1964)* providing robust protections for subjective expressions, even when controversial or offensive("New York Times Co. v. Sullivan, 376 U.S. 254," 1964). These jurisdictions clearly distinguish between legitimate critique and criminally actionable speech through well-developed legal standards and judicial precedents. In contrast, Vietnamese criminal law currently lacks precise statutory definitions or specific judicial guidelines addressing the nuances inherent in film criticism. The application of broadly-defined criminal offenses including: Insults to another person, Slander (Articles 155 and 156), Abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens (Article 331)(National Assembly, 2015). Consequently, this broad legislative framework generates significant uncertainty and heightens the risk of arbitrary criminalization, potentially stifling legitimate artistic expression and public debate.

Given this context, this paper employs a comparative legal approach to examine and clarify the permissible boundaries of film criticism under the criminal laws of Vietnam, the United Kingdom, and the United States. Through detailed analysis of legislative provisions, judicial precedents, and interpretive practices, this study seeks to develop clear, standardized criteria and evaluative scales to distinguish between protected speech and criminal offenses. Ultimately, the comparative insights gained from UK and US legal standards and case law aim to inform Vietnamese legal reform efforts, providing robust safeguards for freedom of expression while ensuring adequate protection against genuinely harmful speech.

In light of these unresolved legal ambiguities and in response to the growing need for principled and consistent evaluation frameworks, this study introduces a new theoretical contribution to the field of criminal law. I propose the Quantified Criminal Threshold Theory a normative framework designed to define, measure, and operationalize the threshold between lawful expression and criminal liability. This theory seeks to fill a critical gap in current Vietnamese criminal law by offering a hybrid model that combines qualitative and quantitative criteria to assess the social dangerousness and culpability of expressive acts. It also aims to guide prosecutorial discretion and judicial consistency in borderline cases, particularly in areas such as film commentary where the risk of arbitrary criminalization is high. This approach is grounded in the principle of structured discretion in criminal law theory (Ashworth, 2013), which emphasizes transparent, rule-guided decision-making to avoid arbitrary prosecution. It also draws inspiration from structured risk assessment frameworks in criminology and public policy, such as the actuarial models reviewed by Berk & Bleich (Berk & Bleich, 2014).

**Literature Review**

Freedom of expression, as protected under Article 19 of the ICCPR, plays a fundamental role in democratic societies by enabling individuals to exchange ideas, critique authority, and engage in cultural and political discourse. The Human Rights Committee’s General Comment No. 34 (2011) further clarifies that restrictions on this right are permissible only when provided by law, serve legitimate aims, and are necessary and proportionate in a democratic society (UN Human Rights Committee, 2011). Michael O’Flaherty (2012), analyzing the implementation of Article 19, emphasizes its foundational role in ensuring open public debate while acknowledging the risks of arbitrary limitations.

In his foundational work *Freedom of Speech*, Eric Barendt (2005) argues that while freedom of expression is vital(Barendt, 2005), it must be bounded by considerations of personal dignity, especially in areas such as defamation and hate speech. He posits that democratic systems must ensure balance, where protection of individual rights does not become a pretext for suppressing criticism, particularly in artistic or journalistic contexts. Complementarily, Andrew Ashworth (2013) highlights the concept of “structured discretion” in criminal justice, recommending transparent and objective criteria to prevent inconsistency and arbitrariness in speech-related prosecutions(Ashworth, 2013).

In the United States, the *New York Times Co. v. Sullivan* (376 U.S. 254, 1964) case established the “actual malice” doctrine, requiring public officials claiming defamation to prove that false statements were made with knowledge of their falsity or reckless disregard("New York Times Co. v. Sullivan, 376 U.S. 254," 1964). This standard offers broad protections for political and artistic commentary. In the UK, Section 3 of the *Defamation Act 2013* codifies the “Honest Opinion” defense, shielding defendants who express personal views based on factual context, even when controversial(UK, 2013). These legal doctrines have become pillars of speech protection in common law countries, particularly in contexts involving art, satire, and media.

By contrast, Vietnam’s legal framework remains underdeveloped in addressing speech in the context of artistic expression, particularly on digital platforms. Provisions in the 2015 Penal Code such as Articles 155,156 and 331 are broad and lack the precise thresholds and interpretive guidance found in UK and US law. Scholars such as Nguyen Ngoc Hoa (Hòa, 2022) and Le Cam (Cảm, 2005) have observed that the lack of statutory clarity creates legal uncertainty and may enable arbitrary enforcement, especially when authorities interpret critical expressions as violations without clear judicial standards.

Furthermore, international legal scholars have warned of the “chilling effect” that vague or overbroad laws can have on public discourse. Jack Balkin (2017) underscores how the rise of digital speech, coupled with poorly framed legislation, can lead to over-criminalization of legitimate expression, particularly in authoritarian or semi-authoritarian contexts(Balkin, 2017). Thomas Garton (2017) similarly stress that freedom of expression in the digital age requires legally precise safeguards, including narrowly tailored criminal laws that distinguish between harmful conduct and protected speech(Timothy Garton Ash, 2017).

The scholarly consensus suggests that while legal systems must address harmful speech, especially when reputational or public order interests are at stake, such interventions must be consistent with international human rights norms. The comparative experience of the United States and United Kingdom illustrates how clear statutory frameworks and developed judicial doctrines can protect artistic and critical speech while ensuring accountability in egregious cases. Vietnam’s legal system, in lacking such precision, faces ongoing risks of both under-enforcement and overreach in regulating film reviews and similar expressive acts in the online space.

**II. METHODOLOGY**

This article employs a comparative doctrinal methodology combined with normative legal analysis to investigate the boundaries between protected expression and criminal liability in the context of film commentary. The research proceeds in three interconnected stages:

First, it examines the legal frameworks governing freedom of expression in Vietnam, the United Kingdom, and the United States, with a particular focus on statutory language, interpretive doctrines, and judicial application. This stage includes detailed analysis of relevant criminal provisions (e.g., Articles 155, 156, 331 of Vietnam’s Penal Code), alongside key principles such as “honest opinion” (UK, 2013) and “actual malice” ("New York Times Co. v. Sullivan, 376 U.S. 254," 1964) (U.S. First Amendment jurisprudence). Legal sources include constitutions, statutes, case law, prosecutorial guidelines, and human rights instruments, notably Article 19 of the ICCPR.

Second, the research applies a functional comparative approach to identify doctrinal divergences and convergences across jurisdictions. Rather than merely cataloguing differences, the analysis emphasizes how each system balances expressive freedoms against competing interests such as reputation, public order, and institutional integrity. This comparative lens helps identify best practices and structural safeguards relevant to Vietnam’s legal reform.

Third, the study introduces an integrated evaluative model for assessing film reviews that may raise legal concerns. Drawing from criminal law theory (e.g., mens rea, social harm, culpability), international speech standards, and comparative regulatory experiences, the article constructs a three-tiered assessment scale (0–3) using both qualitative and quantitative indicators. These include variables such as falsehood, intent, dissemination, harm, and motive. The model does not replace statutory requirements but serves as a diagnostic tool for prosecutors, judges, and policymakers to assess borderline cases consistently and objectively.

This multi-method design doctrinal, comparative, and evaluative enables both legal clarification and normative critique. It supports the development of legal thresholds that are consistent with international obligations, fosters greater predictability in enforcement, and strengthens protections for artistic and cultural expression in the digital age.

**III. RESULT AND DISCUSSION**

**Legal Framework: International Norms, the United Kingdom, and the United States**

***International Legal Standards on Freedom of Expression***

Freedom of expression is one of the cornerstones of international human rights law and a fundamental prerequisite for the realization of other rights(Nowak, 2005). It is enshrined in Article 19 of the ICCPR, which affirms that “everyone shall have the right to freedom of expression,” including “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice” (UN, 1966, art. 19(2)). The ICCPR recognizes a broad scope of expression, including artistic and cultural forms, as it affirms the freedom to impart ‘information and ideas of all kinds’ through ‘any media’ and ‘in the form of art’. While it does not explicitly name satire or film commentary, such expressions can reasonably be understood as falling within the ambit of Article 19(2), provided they respect the permissible limitations under Article 19(3).” However, Article 19(3) allows for restrictions, but only under a narrow set of conditions: such restrictions must be (i) provided by law, (ii) serve a legitimate aim such as the protection of national security, public order, public health or morals, or the rights and reputations of others and (iii) be necessary and proportionate to that aim. These three conditions form what is commonly known as the “three-part test” for permissible restrictions under international law (General Comment No. 34, para. 2) .

The Human Rights Committee (HRC), in its authoritative *General Comment No. 34* (CCPR/C/GC/34), has clarified that freedom of expression is “a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights” (UN Human Rights Committee, 2011)(para. 3). It further emphasizes that the scope of protected expression includes political discourse, commentary on public affairs, journalism, cultural and artistic expression, teaching, and religious discourse (para. 11). Significantly, the Committee stresses that restrictions must not be overly broad, vague, or discretionary, and that the expression of critical, shocking, or disturbing ideas is protected especially when it pertains to matters of public interest (para. 11, 21, 25).

Importantly, the HRC has stated that laws criminalizing expression must comply with the principle of legal certainty (General Comment No. 34, para. 25). Vague concepts such as “disharmony,” “social disturbance,” or “offending morality” cannot be used to justify sweeping limitations on speech unless narrowly defined and applied in a non-discriminatory manner. For instance, in *General Comment No. 34*, the Committee underscores that “it is incompatible with paragraph 3 [of Article 19] to criminalize the expression of an opinion about historical facts” (para. 49) or to use defamation laws to protect abstract notions such as the “honor of the State” (para. 38–39). These comments reflect a deep concern about the misuse of criminal law particularly defamation, insult, or incitement statutes to suppress dissenting voices or artistic criticism under the guise of protecting national reputation or social cohesion.

From an academic perspective, numerous international scholars have emphasized the essential role of freedom of expression as a prerequisite for the realization of other fundamental rights. Michael O’Flaherty, a former member of the United Nations Human Rights Committee and a key contributor to General Comment No. 34, has extensively analyzed the intrinsic link between freedom of expression and the holistic development of individuals in a democratic society(O’Flaherty, 2012). He argues that this right is the “lifeblood of democracy” because it facilitates open discourse, policy critique, and public oversight of state power. In the digital age, however, freedom of expression faces emerging challenges. David Kaye, former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, has highlighted increasing threats such as online censorship, digital surveillance, and restricted access to information(Kaye, 2015). He warns that states must exercise great caution when applying restrictions, as unchecked measures may erode the very foundation of the rule of law. In his reports to the Human Rights Council, Kaye has urged that criminal sanctions should be used only in the most exceptional circumstances and must never be employed to penalize satire, parody, or artistic critique (Kaye, 2015). In contrast to the position advocating for the broadest possible protection of expressive freedoms, legal scholar Eric Barendt, in his seminal work *Freedom of Speech*, contends that freedom of expression should not be regarded as absolute. He insists that democratic states may and should impose clear and reasonable limits to safeguard other protected interests, such as human dignity, personal honor, and privacy. Barendt argues that harmful expression such as defamation, malicious falsehoods, or personal attacks should be subject to legal constraints even when they occur within the context of artistic or social discourse. He maintains that freedom of expression has genuine value only when exercised within a legal framework that also ensures the equal protection of other fundamental rights, including the right not to be vilified.

This reflects a balanced approach in academic discourse one that affirms the necessity of protecting democratic space while also recognizing the state’s legitimate interest in curbing abuse of expressive rights that inflict tangible harm or distort public opinion. Together, these perspectives illustrate the tension between liberal theories of maximal free speech and more communitarian or dignity-based models of legal regulation, each with distinct implications for legislative and judicial design.

The tension between two normative poles protecting individual freedom of expression and safeguarding the legitimate interests of the community has increasingly placed digital-era speech acts under close legal scrutiny. Film commentary is a prime example of this phenomenon. By its very nature, reviewing a film is a form of expression involving subjective judgment, evaluation, and interpretation of a cultural and artistic product, whether by individuals or communities. It often mixes factual information with emotional reactions, artistic critique, and social messaging. In many cases, film commentary functions as an open forum in which the public engages with artistic works outside of official or institutional channels. However, precisely because of its public and widespread nature, such expression can easily cross into legally sensitive domains: defaming individuals (e.g., actors, directors), harming business revenues (e.g., film distributors), violating copyright laws (e.g., quoting or displaying clips without permission), or inciting social prejudice through misleading or discriminatory language.

This raises a fundamental legal question: when does a film review constitute legitimate expression, and when does it exceed the boundaries that warrant legal sanction? According to international legal frameworks, the appropriate standard is the “three-part test” developed by the United Nations Human Rights Committee: (i) legality, (ii) legitimacy of aim, and (iii) necessity and proportionality. Any restriction on freedom of expression must be clearly provided by law, serve a legitimate purpose (such as protecting public order or the rights of others), and be necessary and proportionate to that aim.

Recognizing the universality of Article 19, international law does allow each state party a margin of appreciation in implementing this right. Nonetheless, such discretion is not unlimited. States are bound by the duty to ensure that their domestic legal frameworks whether civil, criminal, or administrative do not violate the essential guarantees of legality, legitimacy, necessity, and proportionality. This principle is especially important when speech restrictions are enforced through criminal law, as such sanctions have a heightened deterrent effect and risk creating a “chilling effect” on lawful, critical expression.

Thus, while national legal systems may vary in their doctrinal approaches and statutory frameworks, all states parties to the ICCPR including Vietnam, the United Kingdom, and the United States must ensure that any regulation of speech, particularly in the context of artistic and cultural expression, meets the rigorous standards set forth by international law. This forms the normative baseline for evaluating domestic laws that seek to criminalize public critique, such as film reviews, satire, or commentary on controversial works.

***Legal Framework of The United Kingdom***

The United Kingdom’s legal system provides a sophisticated model for balancing freedom of expression with the protection of individual rights and public interests. Although the UK does not possess a single written constitution, the right to freedom of expression is firmly entrenched through its incorporation of the ECHR via the Human Rights Act 1998. Article 10 of the ECHR, which is directly enforceable in UK courts, guarantees freedom of expression but also recognizes that it may be subject to restrictions that are prescribed by law and necessary in a democratic society for purposes such as protecting reputation, preventing disorder, or maintaining national security(UK Public General Acts, 1998).

At the statutory level, one of the most significant reforms in English defamation law is encapsulated in the **Defamation Act 2013**, which redefined the contours of civil liability for harm caused by speech(UK, 2013)(c. 26, s. 1). This legislative shift was driven by longstanding concerns that the prior framework disproportionately favored claimants, thereby exerting a chilling effect on legitimate public discourse, including journalism, satire, and artistic expression.

A key innovation of the Act lies in **Section 1**, which introduces a “serious harm” threshold. It provides that a statement is not defamatory unless it “has caused or is likely to cause serious harm to the reputation” of the claimant. In the case of **corporate claimants**, this threshold is even more stringent, requiring proof of “serious financial loss.” This provision filters out trivial or speculative claims, ensuring that only expressions with objectively significant consequences are justiciable.

A particularly significant feature of the UK legal regime is the statutory protection for opinion-based speech. Section 3 of the Defamation Act codifies the long-standing common law defense of “honest opinion,” which protects evaluative statements such as film reviews or artistic critiques provided that the opinion is genuinely held, is based on existing facts, and identifies the basis on which it is expressed.

This framework is directly relevant to film commentary, especially in cases where reviews may be sharply critical of specific individuals (such as actors or directors) or entities (such as production companies). While strong opinions may be emotionally charged or commercially unfavorable, they are generally shielded from liability unless a claimant can demonstrate real and substantial harm. For example, a sarcastic or scathing review that expresses subjective artistic evaluation absent malicious falsehoods is unlikely to meet the serious harm threshold. By establishing a robust evidentiary barrier to defamation claims, the UK model promotes a healthy space for cultural and artistic critique, which is essential in democratic societies. It implicitly affirms that freedom of expression, especially in artistic fields, should be preserved even when the content is unpopular, confrontational, or discomforting so long as it does not cross the legal boundary into reputational damage of a serious and unjustifiable nature.

This principle gains even greater significance in the broader domain of **cultural and artistic commentary**, where statements frequently combine factual references with subjective interpretation and rhetorical stylization. Courts have repeatedly reinforced this conceptual distinction in landmark rulings. In *Joseph v Spiller* [2010] UKSC 53, the UK Supreme Court clarified that the differentiation between statements of fact and opinion is fundamental, and that opinions particularly in contexts involving matters of public interest deserve heightened protection("Spiller and another (Appellants) v Joseph and others (Respondents) (UKSC/2009/0210)," 2010). Similarly, in *Lachaux v Independent Print Ltd* [2019] UKSC 27, the Court emphasized that the “serious harm” requirement under Section 1 of the Defamation Act 2013 is not to be presumed but must be substantiated by actual evidence("Lachaux (Respondent) v Independent Print Ltd and another (Appellants), (Case ID UKSC/2017/0175)," 2019). Claimants are thus required to demonstrate that the impugned statement has caused, or is likely to cause, serious reputational harm, rather than rely on general legal assumptions. This evidentiary standard strengthens the legal position of critics, journalists, and film reviewers alike by limiting liability risks for speech that may provoke, offend, or challenge but does not, in objective terms, inflict measurable damage to personal or corporate reputation.

Beyond the realm of civil liability, the UK applies a structured and restrained approach to criminal sanctions against expression. The Crown Prosecution Service (CPS), guided by the *Code for Crown Prosecutors*, employs a two-stage test before initiating prosecution: first, whether there is sufficient evidence for a realistic prospect of conviction; second, whether prosecution is required in the public interest(Crown Prosecution Service, 2018). This model commonly referred to in academic literature as “structured discretion” embodies a rights-based prosecutorial philosophy. As Andrew Ashworth (2013) has noted, such mechanisms are crucial in modern criminal justice systems to prevent overreach and safeguard fundamental freedoms(Ashworth, 2013). Not every offensive or controversial expression results in prosecution; instead, the context, intent, and social value of the speech are all considered before state intervention is justified(Ashworth, 2013).

This discretionary model is underpinned by principles of proportionality and necessity, drawn from the jurisprudence of the European Court of Human Rights. In *Steel & Morris v United Kingdom* (2005, known as the “McLibel” case, the European Court ruled that the UK’s former defamation laws had failed to protect the applicants’ Article 10 rights, partly because they were denied legal aid and thus unable to defend themselves adequately("Case of steel and morris v. The united kingdom, App no. 68416/01 (ECtHR, 15 February 2005).", 2005). This landmark ruling accelerated legal reform in the UK and demonstrated how international human rights principles can directly influence national legal standards.

From a theoretical standpoint, the UK model reflects a liberal-pluralist orientation, where legal restrictions on expression must be narrow, justified, and demonstrably necessary. The system is grounded in the harm principle traced to John Stuart Mill and operationalized through evidentiary thresholds and clearly defined legal defenses. Crucially, the law distinguishes between factual allegations and subjective value judgments, the latter of which receive greater protection under the honest opinion doctrine. This distinction allows courts to uphold free expression in areas such as journalism, parody, satire, and film critique, without tolerating expressions that cause genuine, provable harm.

The advantages of the UK’s model are evident. First, it provides legal certainty: by codifying core defenses like honest opinion and requiring proof of harm, it minimizes subjective interpretation and arbitrary enforcement. Second, it supports democratic culture by explicitly protecting speech that engages public interest, including artistic and cultural expression. Third, it institutionalizes prosecutorial restraint, ensuring that criminal law is not used disproportionately against controversial or unpopular speech. In doing so, the UK legal framework offers a pragmatic yet principled structure that distinguishes clearly between expression that should be tolerated in a democratic society and speech that crosses the threshold into legal wrongfulness.

This model, combining legislative precision, judicial nuance, and prosecutorial discipline, offers valuable insights for jurisdictions like Vietnam, where vague criminal provisions and the absence of interpretive guidance risk criminalizing legitimate expression, particularly in the digital sphere. The UK experience illustrates that legal protection for free expression does not necessitate deregulation; rather, it demands thoughtful legal architecture that upholds accountability while preserving the foundational liberty to critique, question, and create.

***Legal Framework of The United States***

In the United States (U.S), freedom of expression is not merely a statutory right but a constitutionally enshrined guarantee, protected under the First Amendment to the U.S. Constitution. The First Amendment unequivocally states that “Congress shall make no law… abridging the freedom of speech, or of the press.” This provision has been interpreted by American courts, particularly the Supreme Court, to afford the broadest level of protection to speech, including controversial, critical, or offensive expressions, with very few exceptions. The prevailing legal doctrine in the U.S. thus places freedom of speech at the apex of constitutional rights, treating it as a foundational component of democratic governance and individual autonomy(Meiklejohn, 1948).

U.S. courts have consistently held that speech may only be restricted under narrow and well-defined circumstances, such as incitement to imminent lawless action ("Brandenburg v. Ohio, 395 U.S. 444 (1969)," 1969), true threats, obscenity ("Miller v. California, 413 U.S. 15 (1973)," 1973), defamation, and speech integral to criminal conduct. Even within these categories, the judiciary applies rigorous scrutiny to ensure that restrictions are necessary and not overly broad. The high threshold for criminalizing expression ensures that speech especially political, artistic, or critical speech enjoys near-absolute protection under federal constitutional law.

This heightened level of protection is particularly salient in the context of defamation law, which serves as a critical legal boundary for evaluating public commentary, including film reviews. Nowhere is this protective stance more clearly illustrated than in the law of defamation. The landmark decision in *("New York Times Co. v. Sullivan, 376 U.S. 254," 1964)* transformed American defamation law by introducing the “actual malice” standard for cases involving public officials. Under this doctrine, a defamatory statement about a public figure is not actionable unless the plaintiff proves that the speaker made the statement with knowledge of its falsity or with reckless disregard for the truth(Pannick, 1984). This doctrine was later extended to public figures more broadly in *("Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967)," 1967)* and to cases involving matters of public concern in *("Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).", 1974)*.

The "actual malice" requirement is a deliberately stringent test, reflecting the Supreme Court’s belief that robust debate on public issues may include vehement, caustic, and sometimes erroneous statements(Strossen, 2018). The Court’s rationale is that the fear of litigation must not deter individuals from participating in public discourse. As Justice Brennan famously wrote in *Sullivan*, “debate on public issues should be uninhibited, robust, and wide-open, and… it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”

This expansive protection of speech extends not only to political and public discourse but also to creative and artistic expression, including film criticism. In the realm of intellectual property, the United States' fair use doctrine plays a vital role in safeguarding critical engagement with copyrighted materials (See Campbell v. Acuff-Rose Music, 510 U.S. 569 (1994). Under United States copyright law, the doctrine of *fair use* serves as a crucial limitation on the exclusive rights of copyright holders, especially in contexts involving criticism and commentary. Codified in **17 U.S.C. § 107**, fair use is assessed using a four-factor balancing test: **(i)** the purpose and character of the use, including whether it is transformative; **(ii)** the nature of the copyrighted work; **(iii)** the amount and substantiality of the portion used; and **(iv)** the effect of the use on the market for the original work. Notably, film reviews and artistic critiques often qualify for protection, especially when the use adds new expression or meaning and does not substitute for the original.The courts have consistently affirmed the transformative value of commentary. In *("Bill Graham Archives, Plaintiff-appellant, v. Dorling Kindersley Limited, Dorling Kindersley Publishing, Inc. and Rr Donnelley & Sons Company, Defendants-appellees.docket No. 05-2514-cv, 448 F.3d 605 (2d Cir. 2006)," 2006)*, the Second Circuit emphasized that even commercial uses may qualify as fair if they significantly alter the original with new expression or meaning("Bill Graham Archives, Plaintiff-appellant, v. Dorling Kindersley Limited, Dorling Kindersley Publishing, Inc. and Rr Donnelley & Sons Company, Defendants-appellees.docket No. 05-2514-cv, 448 F.3d 605 (2d Cir. 2006)," 2006). Likewise, in *("Lenz v Universal Music Corp 815 F 3d 1145 (9th Cir 2016).", 2016)*, the Ninth Circuit held that copyright holders must consider fair use before issuing a DMCA takedown notice, reinforcing the procedural safeguards for critical speech("Lenz v Universal Music Corp 815 F 3d 1145 (9th Cir 2016).", 2016). These decisions underscore the protective role of fair use in fostering democratic debate and cultural critique, particularly in digital and audiovisual media. For film reviewers, this means that quoting, excerpting, or referencing parts of a copyrighted film when done for critical or educational purposes can be legally justified under U.S. law.

This commitment to uninhibited public discourse carries profound implications for artistic and cultural expression, including film commentary, where sharp criticism, satire, and provocative opinions are often central to the medium. Within this context, the “actual malice” standard developed in *New York Times Co. v. Sullivan* operates as a powerful safeguard, enabling reviewers and commentators to engage in fearless critique even when such expression is discomforting or unpopular without facing undue legal liability. The United States thus occupies a distinct position among liberal democracies, offering broader protection for cultural and artistic commentary than is typically permitted under international or European human rights standards. This strong protection was reaffirmed in *("Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988).", 1988)*, where the Supreme Court held that even deeply offensive satire aimed at public figures remains constitutionally protected, provided it cannot reasonably be understood as stating actual facts. For film reviewers, this precedent affirms that exaggerated, sarcastic, or hyperbolic critique absent malicious falsehood enjoys constitutional shelter.

The U.S. model does not rely on statutory definitions to regulate speech but rather on constitutional adjudication through doctrines such as content neutrality ("Ward v. Rock Against Racism, 491 U.S. 781 (1989)," 1989) and viewpoint discrimination. Criminal sanctions for speech are exceedingly rare; many states have repealed criminal defamation laws, and civil liability remains constrained by high evidentiary thresholds and constitutional protections. Rooted in a libertarian legal tradition shaped by Milton, Jefferson, and Meiklejohn, this approach views expressive freedom as the cornerstone of democratic governance and truth-seeking, where the state must not police dissenting or controversial views. While some scholars argue that this model may render it too difficult for harmed individuals to obtain redress especially amid viral misinformation and social media abuse the American system remains the most speech-protective legal framework globally. It provides a critical reference point for resisting the overcriminalization of dissent and cultural critique, particularly in domains like film commentary that often operate on the edge of provocation and public debate.

***Legal Framework of Vietnam***

In its process of international integration, Vietnam has gradually embraced and committed to complying with universal human rights standards, especially the right to freedom of expression. A pivotal development in this journey was Vietnam's accession to the ICCPR on 24 September 1982. Article 19 of the ICCPR articulates that everyone shall have the right to hold opinions without interference and the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds. Nevertheless, paragraph 3 of the same article permits states to impose restrictions, provided these are established by law and deemed necessary for respect of the rights or reputations of others, or for the protection of national security, public order, public health, or morals (United Nations, 1966)

Vietnam has reiterated its commitment to the ICCPR in successive Universal Periodic Reviews (UPR) before the United Nations Human Rights Council. In the third cycle (2019), for instance, the Vietnamese government affirmed that reforms to the 2015 Penal Code were implemented to better align with international human rights standards to which the country is a party (UPR Vietnam, 2019)

While Vietnam has made important international commitments such as ratifying the ICCPR its domestic legal framework operates under a dualist model, in which international treaties do not have direct effect unless incorporated into national legislation. Article 6 of the 2013 Constitution affirms the State’s obligation to honour international agreements, yet the implementation of specific human rights, including freedom of expression, remains contingent upon domestic legal enactments(National Assembly, 2013). Article 14(2) of the Constitution provides that human rights and citizens’ rights may only be restricted by law in cases deemed necessary for national defense, security, social order and safety, public morality, or public health. This reflects a rights model in which freedoms are granted and conditioned by the state, as opposed to the liberal tradition where state power is constrained by pre-existing, inalienable rights.

In Vietnam, the right to freedom of expression is recognized as one of the fundamental rights of citizens and is enshrined in Article 25 of the 2013 Constitution. According to this provision, citizens have the right to freedom of speech, freedom of the press, access to information, assembly, association, and demonstration, in accordance with the law. This represents a significant step in the constitutionalization of human rights in Vietnam and demonstrates the State’s commitment to safeguarding freedom of expression within the framework of a socialist rule-of-law state. However, this right is not recognized as absolute; it is consistently conditioned upon the requirement that it be exercised “in accordance with the law,” meaning it may be restricted for the protection of public interests, national security, social morality, and the rights and legitimate interests of others. These limitations are concretized through sector-specific legislation. Notably, the Penal Code contains provisions that may be applied to acts of film commentary, including the following offense (See Table 1)

**Table 1. Criminal Offenses Potentially Applicable to Film Commentary under Vietnamese Law**

|  |  |  |
| --- | --- | --- |
| **Offense** | **Legal Provision** | **Applicable Scenario in Film Commentary** |
| Insults to another person | 155 | Posting false information in a review that seriously harms the honor or reputation of others |
| Slander | 156 | Using derogatory or offensive language in a video or written review |
| Abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens | 331 | Using film commentary to propagate anti-State rhetoric or distort historical facts |

*Source: Penal Code 2015’ Vietnam(National Assembly, 2015)*

Therefore, determining whether film commentary constitutes a criminal offense must be assessed based on each specific offense, as follows:

**First**, film commentary may infringe upon the honor, dignity, and reputation of individuals such as actors, directors, or producers, or may harm public order and information security; these are special legal interests protected under Vietnam’s criminal law. Specifically, under Articles 155 and 156 of the Penal Code, the protected legal interests are the personal rights of individuals, including honor, dignity, and reputation. Under Article 331, the protected interest is the proper functioning of the State apparatus, as well as the lawful rights and interests of organizations and individuals, which may be violated by acts of abusing democratic freedoms to distort, defame, or incite negative public opinion.

**Second**, a commentary may be deemed to exhibit criminal elements if its content whether expressed through speech, images, or text disseminated via social media or public platforms contains elements of insult, fabrication, defamation, or distortion of facts. Under Article 155, the act must involve serious affronts to the honor and dignity of another person in a direct manner, such as through degrading language, disparaging metaphors, or humiliating comparisons. Under Article 156, the conduct must involve the dissemination of false information, fabrication, or knowingly spreading untrue statements intended to damage another’s honor or reputation. Under Article 331, the act must involve abuse of freedom of expression (in this case, through film commentary) for the purpose of infringing upon others’ legitimate interests for example, inciting unrest, undermining the credibility of public authorities, or threatening social stability.

**Third**, a person who comments on a film may only be held criminally liable if they possess criminal responsibility capacity and meet the statutory age requirement (i.e., 16 years or older, or 14 years old for certain serious offenses listed in Article 12 of the Penal Code. However, the offenses discussed above typically require the person to be at least 16 years old).

**Fourth**, offenses related to speech are generally established on the basis of *intentional fault*, meaning the commentator is fully aware that their content is insulting, fabricated, or harmful, yet proceeds to publish it often motivated by retaliation, the desire to harm others, or to attract attention. Notably, for offenses under Articles 156 and 331, it is necessary to determine the offender’s awareness of both the falsity of the content and its potential consequences.

From a thorough analysis of the constituent elements of these offenses, it can be affirmed that not all acts of film commentary constitute criminal offenses; only those that satisfy the legally defined conditions of criminal liability may be prosecuted. However, it is precisely at this point that shortcomings emerge in both the legal framework and its practical application in Vietnam

Vietnamese law lacks a coherent conceptual framework for distinguishing between legitimate artistic criticism and unlawful personal attacks. This legal gap is systemic in nature, arising from the absence of quantitative criteria to assess the content of expression and the lack of unified judicial guidance or binding precedents. For instance, Article 331 of the Penal Code criminalizes the “abuse of democratic freedoms” that results in “infringement upon the interests” of the State, organizations, or individuals, yet it provides no measurable threshold for evaluating the degree of harm, the actual consequences, or the limits of permissible expression. Such vagueness invites discretionary interpretation and raises serious concerns about the potential overcriminalization of dissent, particularly in contexts where film reviews serve as vehicles for social or artistic critique(D.G, 2025; Lawer Nguyen Thuy Han, 2023; Thuong, 2023).

Provisions such as Articles 155 and 156 of the Penal Code, alongside other normative instruments, also fail to establish a clear distinction between lawful cultural commentary and unlawful defamation or humiliation. Vietnamese law tends to evaluate the boundary between criticism and insult based on the subjective perception of those targeted or the discretionary judgment of law enforcement bodies, without any formal mechanism to objectively assess the legality of expression according to freedom of speech standards(Law Library, 2025).

Furthermore, there is no dedicated legal mechanism in Vietnam to safeguard artistic expression as a distinct constitutional right. While Article 41 of the 2013 Constitution acknowledges the right to enjoy and create culture, this provision has yet to be operationalized through sector-specific legislation that could protect individuals engaging in artistic expression, including film commentary. A related institutional gap lies in the absence of self-regulatory frameworks within Vietnam’s creative content community. In many jurisdictions, digital platforms, journalist associations, and film boards implement ethical codes of conduct to regulate commentators' behavior, thereby mitigating harm through non-penal measures. By contrast, Vietnam’s regulatory response remains overly reliant on administrative and criminal sanctions, lacking intermediating institutions for dispute resolution or constructive public engagement. This regulatory orientation risks promoting self-censorship and undermines the critical deliberative function that freedom of expression is meant to serve in a democratic society.

In the absence of such protective mechanisms, critical but non-malicious film commentary may be at risk of criminal prosecution. This chilling effect reduces the vibrancy of public discourse and constrains the creative space an outcome that Article 19 of the ICCPR explicitly seeks to prevent. As Vietnam navigates the realities of digital communication and instantaneous content dissemination, it is essential for lawmakers to adopt precise evaluative criteria for determining whether film reviews amount to defamatory or unlawful speech such as the level of criticism, the degree of personalization, and the existence of demonstrable harm. Equally important is the development of interpretive guidelines for speech-related offenses, as well as the issuance of guiding case law by the Supreme People’s Court to delineate the boundary between protected expression and criminal conduct.

**Comparing Institutional Safeguards for Expressive Rights**

To critically assess the limitations of Vietnam’s current legal framework on freedom of expression especially in the context of film commentary it is useful to compare its statutory and institutional design with models in jurisdictions that offer stronger protection. The United Kingdom and the United States represent two influential systems grounded in common law traditions that incorporate balancing principles and constitutional safeguards, respectively (See Table 2).

**Table 2. Comparative Framework of Legal Approaches to Freedom of Expression and Artistic Commentary in Vietnam, the UK, and the US**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Legal Feature** | **Vietnam** | **United Kingdom** | **United States** | **Comparative Commentary** |
| Legal Tradition | Statutory positivism; state-centric | Common law system; guided by the ECHR | Common law; First Amendment-based constitutionalism | Vietnam lacks interpretive flexibility inherent in common law traditions |
| Model of Free Speech Protection | Conditional and vague (e.g., “abuse of democratic freedoms” under Article 331 Penal Code) | Proportionality-based balancing test (Article 10 ECHR) | Strict scrutiny for content-based restrictions; near-absolute protection | Vietnam allows broad limitations, while UK/US provide structured and narrow limits |
| Protection of Artistic/Critical Expression | No specific legal recognition or protection | Protected within reasonableness under freedom of expression | Strong protection including satire, parody, and offensive content (*Hustler v. Falwell*) | Vietnam lacks legal definition or recognition of “artistic criticism” |
| Enforcement Mechanism | Criminal sanctions dominate (Articles 155, 156, 331 Penal Code) | Civil litigation; courts serve as rights-balancing actors | Civil liability with high constitutional thresholds; criminal sanctions are rare | Vietnam relies heavily on punitive criminal law; UK/US favor civil remedies |
| Role of Judiciary | Limited judicial interpretation; no binding precedents | Active judicial balancing of interests | Supreme Court as final constitutional arbiter | Vietnam lacks a tradition of constitutional adjudication and stare decisis |
| Key Legal Instruments | Penal Code 2015 (Articles 155, 156, 331); lack of sectoral legislation | Human Rights Act 1998; ECHR Article 10 | U.S. Constitution; First Amendment jurisprudence | Vietnam needs clearer statutory or constitutional basis for artistic expression |

The comparative table underscores fundamental differences in legal philosophy, institutional safeguards, and enforcement mechanisms that directly impact the treatment of film commentary and artistic expression in each jurisdiction. Vietnam’s framework is characterized by a state-centric, statutory approach where the scope of protected speech remains vague, and key terms like “abuse of democratic freedoms” (Article 331) or “insulting” and “defaming” (Articles 155–156) are undefined or broadly worded. This vagueness creates significant enforcement discretion for public authorities, leading to legal uncertainty and the potential for arbitrary criminalization of critical speech, including artistic or satirical reviews.

By contrast, the UK adopts a more balanced approach through the proportionality framework of the European Convention on Human Rights (ECHR). Courts in the UK assess restrictions on speech based on necessity and proportionality, ensuring that any limitation must pursue a legitimate aim and be the least restrictive means available. This judicial balancing enables room for artistic or cultural criticism to be protected even if it causes offense, provided it contributes to public debate or reflects a legitimate creative purpose.

The United States represents the most speech-protective model, grounded in First Amendment constitutionalism. Under the “strict scrutiny” test, any regulation of content-based speech must serve a compelling state interest and be narrowly tailored. Furthermore, legal doctrines such as the “actual malice” standard in *New York Times v. Sullivan* and protection for parody in *Hustler v. Falwell* ensure that even offensive or controversial artistic commentary is shielded from both civil and criminal liability unless it falls within narrowly defined categories like incitement or true threats. This reflects a deep commitment to the “marketplace of ideas” theory, where robust public discourse is deemed essential to democracy(Chemerinsky, 2019).

Crucially, unlike Vietnam, both the UK and the US incorporate judicial doctrines that evolve through case law and set precedents, providing clarity and consistency in the interpretation of expressive rights. Vietnam’s legal system, by contrast, lacks binding precedent or a robust tradition of constitutional adjudication, which limits the judiciary’s role in protecting fundamental rights. This institutional weakness contributes to a chilling effect on free expression, particularly in fields like film criticism that inherently involve subjective judgment and potential controversy.

**Enhancing Legal Clarity and Safeguards: Recommendations for Vietnam**

In the context of digital transformation, film commentary especially content with strong critical tones has increasingly raised legal debates concerning the limits of freedom of expression. To determine when a film review crosses the legal threshold and constitutes a criminal offense under the Vietnamese Penal Code (Articles 155, 156, and 331), it is necessary to develop an integrated quantitative–qualitative assessment system. Such a framework would help measure both the degree of social danger posed by the act and the culpability of the speaker.

Although the current Vietnamese criminal law system does not require a specific quantitative scale to determine criminal liability, the author argues that such analytical tools are essential for thoroughly examining the nature of criminal elements and assessing the evidentiary basis in criminal proceedings. According to Article 8 of the Penal Code, an act is only considered a crime if it is "socially dangerous to a degree warranting criminal prosecution," meaning that not every unlawful act qualifies for prosecution. It is the responsibility of criminal procedure authorities to prove all four elements of a crime: the subject (offender), object (protected interest), subjective element (intent or negligence), and objective element (act and consequence). In principle, if these conditions are fully demonstrated, a conviction may be rendered without relying on any supplementary assessment scale, in accordance with the provisions of the Penal Code. Legal practice shows that the boundary between administrative violations and criminal offenses is not always clearly defined, especially in the realm of public speech such as film commentary where the right to freedom of expression constantly collides with legal limits. Therefore, the author proposes a three-tiered evaluative scale, with values ranging from 0 (no violation), 1–2 (minor to moderate violation), to 3 (potential criminal liability). This scale is not intended to substitute statutory provisions but serves as a tool to standardize legal perception and promote consistency in law enforcement. Such a framework is particularly necessary in the context of digital transformation and the viral nature of online speech, where an inaccurate or provocative expression may cause unintended serious consequences but does not always satisfy the elements required for criminalization. The dangerousness of speech in the digital environment lies not only in its content but also in the context of expression, audience reach, and social impact factors which the current legal framework leaves largely unquantified.

From a comparative legal theory perspective, several advanced judicial systems including those of the United Kingdom and the United States have adopted assessment frameworks that classify conduct into three legal zones: (i) a non-liability zone, (ii) a zone subject to administrative measures or diversion/probation, and (iii) a criminal prosecution zone. Although the tripartite structure may not be formally codified, the practical functioning of both systems reveals a shared logic of differentiated legal responses to expressive conduct. While neither the UK nor the US explicitly formalize a three-tiered legal threshold, both systems operate with practical zones of criminal responsibility ranging from non-prosecution, civil or administrative handling, to full criminal prosecution. Drawing on these operational models, this paper proposes a three-level evaluative framework (0–3) to guide prosecutorial discretion and judicial consistency in Vietnam’s criminal handling of expressive conduct such as film reviews.

The scholarly advantage of the three-tiered evaluative framework lies in its ability to establish a clear 'threshold point' a score that marks the transition from an administrative violation to a criminally prosecutable offense. This clarity enhances the framework’s practical applicability in legal assessments, the development of checklists, and the analysis of borderline cases. Moreover, it facilitates the codification of data in empirical research, allowing for the systematic and scientific quantification of film commentary without resorting to formalism or subjective speculation (See Table 3)

**Table 3. Scale for Determining the Degree of Legal Violation**

|  |  |  |
| --- | --- | --- |
| **Scale Level (0–3)** | **Interpretation Based on the Scale** | **Interpretation Based on Legal Provisions** |
| 0 | No legal violation | Not subject to any legal sanction |
| 1 | Subject to administrative sanctions | Governed by the Law on Handling of Administrative Violations |
| 2 | At risk of criminal prosecution | Conduct shows signs of a crime but may be exempted from criminal liability under Article 29 of the Penal Code |
| 3 | |  |  | | --- | --- | | Constitutes a criminal offense | | |  | | Subject to criminal prosecution |

To determine whether a film review constitutes a criminal offense, it is essential to develop clear criteria (standards) and evaluative indicators (metrics), grounded in specific legal provisions particularly the Penal Code and informed by criminal law doctrines on culpability, consequence, and social harm. The following section outlines a hybrid quantitative–qualitative framework of criteria and indicators for assessing when a film review crosses the threshold into criminal liability

**Table 4. Qualitative Criteria for Assessing Criminal Liability in Film Reviews**

|  |  |  |
| --- | --- | --- |
| **No.** | **Criterion** | **Explanation** |
| 1 | Degree of Falsehood | Does the review contain false, distorted, or fabricated information? Can the information be objectively verified? |
| 2 | Subjective Intent (Mens Rea) | Did the reviewer act intentionally (knowingly and willingly) or was the act unintentional due to lack of understanding? |
| 3 | Degree of Harm to Dignity and Reputation | Does the review use offensive language? Does it violate moral norms or traditional cultural standards? |
| 4 | Scope of Dissemination | Was the video/post widely shared? What are the view counts or shares? Does it have an inciting or inflammatory nature? |
| 5 | Commercial Element | Was there unlawful profit gained through the review (e.g., monetized YouTube content, advertisements)? |
| 6 | Degree of Social Harm | Does the review promote violence, hatred, ethnic division, or anti-state sentiment? |

**Table 5. Quantitative Criteria for Assessing Legal Violations in Film Reviews**

|  |  |
| --- | --- |
| **Variable** | **Specific Measurement** |
| Number of views/comments | More than 10,000 views may be considered "widely disseminated |
| Number of offensive words | More than 5 defamatory or obscene expressions → high probability of constituting "insulting another person |
| Percentage of original content used | More than 15% of the film excerpted (based on U.S. Fair Use practices) → risk of copyright infringement[[1]](#footnote-1) |
| Frequency of shares/media coverage | Featured in major social media or press outlets → indicator of high social impact |
| Degree of actual harm | Evidence of reduced box office revenue or personal reputation damage → strengthens the consequence element |
| Revenue from the infringing act | More than 5 million VND earned via YouTube/Facebook → grounds to determine unlawful profit |
| Number of individuals offended | More than one individual or organization filing a formal complaint → indicates a clearly identifiable victim(s) |

To enhance transparency and reduce subjectivity in score assignment, a crosswalk table is proposed below. This table maps each qualitative criterion to specific, measurable indicators that justify the assigned weight. The crosswalk enables evaluators to trace each score back to observable facts, thereby grounding the model in empirical and legal reality. However, the assignment of specific thresholds such as “5 offensive expressions” or “10,000 views” must be justified through either empirical studies or analogies with legal practice. Without this justification, such thresholds risk appearing arbitrary. Comparative research on the virality and impact of digital speech, such as Balkin’s (2017) work, underscores the importance of contextual indicators in assessing the spread and harm of online content(Balkin, 2017).

**Table 5A. Crosswalk Table Linking Qualitative Criteria with Quantitative Indicators and Assigned Weights**

|  |  |  |
| --- | --- | --- |
| **Qualitative Criterion** | **Quantitative Indicator** | **Assigned Score (Weight)** |
| False or Fabricated Content | The review includes 5 or more objectively false or unverifiable statements | 3 |
| Offensive or Insulting Language | The review contains 3 or more defamatory, obscene, or abusive expressions | 2 |
| Commercial or Destructive Intent | Evidence of monetization or profit exceeding 5 million VND from platforms like YouTube | 3 |
| Wide Dissemination | Video or post receives over 10,000 views or is shared virally across social media | 2 |
| Actual Harm or Damage | There is documented economic loss, reputational damage, or victim complaint(s) | 3 |
| Provocative Public Impact | The content incites public anger, instability, or online outrage (e.g., >500 comments) | 2 |

*Note: This table serves as a reference for assigning scores in the preliminary criminal liability scoring model presented in Table 6.*

While thresholds such as “10,000 views” or “5 million VND” are illustrative and not legally codified, the use of such metrics may be informed by broader regulatory principles such as the proportionality of harm and administrative accountability outlined in laws like the Law on Cybersecurity 2018(National Assembly, 2018) and the Law on Administrative Violations 2012 (as amended in 2020)(National Assembly, 2012). Although these laws do not define specific quantitative benchmarks for speech-related conduct, they emphasize the need to assess the scope, consequences, and intent of an action when determining its legal implications.

**Table 6. Proposed Preliminary Scoring Model for Assessing Criminal Liability in Film Review Cases**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No.** | **Criterion** | **Weight** | **Violation (0 or 1)** | **Score** |
| 1 | False or fabricated content | 3 |  |  |
| 2 | Offensive or insulting language | 2 |  |  |
| 4 | Profit-driven or destructive intent | 3 |  |  |
| 5 | Wide dissemination | 2 |  |  |
| 6 | Actual resulting harm | 3 |  |  |

To calculate the score and determine potential criminal liability based on the four assessment tables proposed above, the following formula is applied:  
Score = Weight × Degree of Violation (0–1) (see Table 4: Preliminary Scoring Model).

Maximum total score:

The maximum possible score is the sum of the highest weights assigned to each criterion:  
Total Maximum Score = ∑ (Maximum weight per criterion) = 3 + 2 + 2 + 3 + 2 + 3 = 15.

The result is then matched against the following evaluation scale:

**Table 7. Scoring Thresholds and Legal Implications for Film Review Conduct**

|  |  |  |  |
| --- | --- | --- | --- |
| **Achieved Total Score** | **Preliminary Assessment** | **Corresponding Scale (Table 3)** | **Legal Implication** |
| 0–4 points | No violation | 0 | No legal action required |
| 5–8 points | Administrative violation | 1 | Subject to administrative sanctions under the Law on Handling of Administrative Violations |
| 9–11 points | Consideration for criminal liability | 2 | Subject to administrative sanctions under the Law on Handling of Administrative Violations |
| 12–15 points | Criminal liability | 3 | Constitutes a criminal offense; subject to criminal prosecution |

*Note: It is acknowledged that the proposed scoring thresholds (e.g., 12–15 points = criminal liability) are at this stage hypothetical and require further empirical validation. The model functions as a conceptual prototype, inspired by the logic of structured decision-making models in forensic psychology and comparative criminal law. The scoring system is designed not to declare culpability but to suggest a measurable framework for analyzing case severity(Berk & Bleich, 2014)*

Once the scoring system and corresponding weights are established, the key question becomes how to operationalize this tool in assessing specific instances of conduct. In its initial application, calculating a composite score based on pre-determined criteria offers a feasible and methodologically sound approach. Evaluators are required to assess each criterion such as “false content,” “insulting language,” and “profit-driven motives” to determine whether the conduct violates that element (assigning 0 for non-violation and 1 for violation). The score is then multiplied by the assigned weight, reflecting the significance of each criterion in constituting a criminal offense. The total score across all criteria provides a preliminary basis for identifying the appropriate legal liability threshold.

For example, a film review video that contains false information, uses defamatory language, is monetized through YouTube advertising, and has gone viral on social media but causes no demonstrable harm or copyright infringement might be scored as follows: 3 points for false content, 2 points for insulting language, 3 points for commercial motive, and 2 points for dissemination scope, totaling 10 points. According to the established scale, this falls within the second threshold zone suggestive of potential criminality but not definitively constituting an offense. In such cases, criminal liability may be waived under Article 29 of the Penal Code, particularly where mitigating circumstances or voluntary remedial actions are present.

However, this scoring model should not function in isolation. It must be cross-validated against both qualitative and quantitative criteria to ensure legal accuracy. The qualitative standards (outlined in Table 2) play a critical role in evaluating subjective intent, motivation, and the extent to which dignity or public order is affected key elements that shape the "mens rea" and "actus reus" components of criminal liability. Simultaneously, the quantitative indicators (Table 3), such as view counts, percentage of copyrighted material used, number of individuals harmed, or demonstrable economic loss, are essential for assessing social harm and dissemination, thus supporting determinations of dangerousness.

From both academic and legislative perspectives, this approach offers distinct advantages. First, it standardizes the legal assessment of film reviews, thereby minimizing arbitrary applications of law especially in the grey areas between protected expression and unlawful conduct. Second, the model exemplifies a modern criminal law trend in which criminality is not determined solely by statutory interpretation but also by the actual and perceived danger posed by the conduct, measured through structured indicators. Third, the model is adaptable and expandable, allowing for the integration of contextual variables, digital platform dynamics, and victim response mechanisms.

The combined use of quantitative and qualitative criteria is not merely a technical method; it represents a methodological solution to the persistent gap between legal doctrine and its application. As expressive conduct such as film reviewing becomes increasingly prevalent and socially influential, identifying the boundary between legitimate free speech and criminally sanctionable behavior presents a serious challenge for prosecutors, legislators, and the broader legal community. This hybrid assessment approach helps quantify seemingly indeterminate factors such as “social dangerousness,” “subjective intent,” “spread of impact,” “extent of harm,” and “falsity of content,” thus providing a more objective reference framework for investigation, prosecution, and adjudication.

In the current context of Vietnam’s Penal Code particularly Articles 155, 156, and 331 which still contain broadly worded provisions and lack detailed interpretive guidance, there is a real risk that criminal law may be misapplied to controversial yet non-criminal forms of expression. The absence of clear evaluative benchmarks may result in arbitrary or overly subjective enforcement, heavily influenced by personal judgments of those involved in the proceedings.

Conversely, institutionalizing these semi-structured criteria contributes to greater legal predictability and transparency, aligning with the principles of a modern rule-of-law state. It ensures that any restrictions on human rights including the right to freedom of expression are “prescribed by law,” “pursue a legitimate aim,” and are “necessary in a democratic society,” in full conformity with Article 19 of the ICCPR.

The lack of clarity in legal criteria may generate a chilling effect, whereby individuals engaged in film commentary fear arbitrary criminal prosecution. Developing and publicly articulating clear evaluative standards can mitigate this psychological burden, thereby encouraging lawful and constructive artistic critique. Based on the quantitative findings presented, the author recommends the promulgation of a Joint Circular issued by the Supreme People's Court, the Supreme People’s Procuracy, the Ministry of Public Security, and the Ministry of Information and Communications. This Circular should serve to unify interpretative approaches and enforcement practices regarding film review conduct that may present legal violations. In addition, the author proposes that the Judicial Council of the Supreme People’s Court issue a guiding Resolution on adjudication, clearly delineating: (i) which scenarios shall not be criminalized; (ii) the specific elements required to constitute relevant offenses; and (iii) how to distinguish between critical or satirical artistic expression and unlawful acts such as defamation, insult, or subversion. A pilot application of this evaluative framework could be tested at the People's Court of Ho Chi Minh City, where digital content cases are increasingly common. Similar initiatives have been undertaken in the UK via the CPS's structured discretion protocols (Crown Prosecution Service, 2018).

The use of quantification in criminal law has generated significant scholarly debate. While some legal theorists caution against reducing normative judgments to numeric thresholds, others argue for structured frameworks to guide prosecutorial discretion and judicial decisions, especially in complex areas such as digital expression. This paper acknowledges those tensions and presents the Quantified Criminal Threshold Theory as a methodological tool, not a substitute for normative reasoning. Rather than replacing doctrinal elements, Quantified Criminal Threshold Theory supplements them with empirically grounded indicators to reduce arbitrariness and enhance transparency in borderline cases.

Moreover, for the general public, a transparent legal scoring framework expressed in the form of evaluative indicators can provide significant behavioral guidance. It allows content creators to self-assess their potential legal risks before publishing a post, video, or statement. Simultaneously, it helps prevent over-cautiousness and excessive self-censorship, which constitute a form of chilling effect detrimental to the freedom of expression landscape.

**IV. CONCLUSION**

Navigating the boundary between protected expression and criminal liability has long posed a challenge for both lawmakers and legal practitioners particularly in contexts where speech is rapidly disseminated, socially impactful, and legally ambiguous, such as digital film commentary. The inadequacy of bright-line statutory provisions, coupled with the absence of interpretive guidance in Vietnamese criminal law, underscores the necessity of a new evaluative paradigm that transcends traditional dichotomies between legality and criminality.

In response, this study introduces the Quantified Criminal Threshold Theory as a normative and analytical framework capable of bridging that gap. As the proponent of this theory, I argue that Quantified Criminal Threshold Theory provides a principled foundation for assessing criminal liability based on a structured combination of qualitative criteria (intent, harm, dissemination) and quantitative indicators (view counts, defamatory language, commercial gain). Such a framework not only enhances legal predictability but also aligns with international standards on freedom of expression under the ICCPR.

Quantified Criminal Threshold Theory has demonstrated theoretical robustness by operationalizing the notion of "social dangerousness" into measurable components. It offers practical utility in delineating the threshold between administrative violations and criminal offenses, particularly in speech-related cases where legal ambiguity is most pronounced. Beyond doctrinal contribution, the model supports the development of evidence-based tools for investigation and adjudication, promotes consistency in prosecutorial decisions, and enables empirical research on legal responses to digital speech.

By quantifying the evaluative elements that underlie criminal judgment, this theory paves the way for a more transparent, accountable, and rational criminal justice system one that upholds the values of legality, proportionality, and human dignity. However, it must be emphasized that the Quantified Criminal Threshold Theory model is not intended to replace statutory elements of criminal law. Rather, it serves as a supplementary framework to inform discretion and standardize assessments in complex or borderline cases. Its future institutionalization through judicial guidelines or legislative reform would mark a significant advancement in Vietnam’s legal modernization and its harmonization with international human rights law.

**Ethical Approval**

Not applicable

**Informed Consent**

Not applicable

**Statement Regarding Research Involving Human Participants and/or Animals**

Not applicable

**Author's Contribution**

The authors collect data and write the manuscript

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1. Although U.S. copyright law, under 17 U.S.C. § 107, does not prescribe a numerical threshold for fair use, courts have consistently emphasized that both the **“amount and substantiality”** of the portion used and its **effect on the market** are critical. If a film review uses **approximately 15% of the original film’s duration**, especially in a **non-transformative manner** (e.g., simply replaying scenes rather than adding commentary or critique), such usage may weigh **against a finding of fair use**. Courts have held that **even a quantitatively small portion** can be infringing if it represents the **“heart”** of the work, as seen in *Harper & Row v. Nation Enterprises*, 471 U.S. 539 (1985). Conversely, in *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994), the Supreme Court affirmed that the amount used must be evaluated **in relation to the purpose and character of the use**, not by rigid percentage. Therefore, **using 15% or more of a film’s total runtime without sufficient transformative purpose can significantly increase the legal risk of copyright infringement**, particularly when the excerpted content includes iconic scenes or plot climaxes that drive consumer interest. In the context of online film commentary, where videos are monetized and widely distributed, such usage may also **negatively affect the original’s market**, further undermining a fair use defense. [↑](#footnote-ref-1)