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# PATOSTREAMING – CHARACTERISTICS AND THE LEGAL CONTEXTS OF THE PHENOMENON

## Abstract

The article describes the phenomenon of patostreaming which is present in the Polish Internet. The authors applied the desk research method and the analysis of media content. The authors explain what is characteristic of patostreaming and how it was created. An analysis of media content has been published by the most recognizable patostreamers: Gural, Rafatus, Daniel Magical and Rafonix. A definition of the most important concepts related to the discussed problem, as well as the classification of patostreaming content, have been included. The second part of the paper analyses the phenomenon from the legal point of view, taking the issues of legal liability of persons submitting content, persons viewing content, as well as platforms providing access to this material into account. The authors also discussed the legal difficulties related to solving the patostreaming problem.

**Key words:** live video streaming, patostreaming, YouTube, Web 2.0, social pathology

## Introduction

The subject of reflection in this article is patostreaming – a new phenomenon occurring in the social media space. Patostreams appeared in the Polish Internet as part of *live video streaming*, i.e. the possibility to transmit video in real time using various Web 2.0 tools.<sup>1</sup> As the name suggests, patostreaming is a live broadcast of

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<sup>1</sup> Web 2.0 refers to the specificity of websites whose content can be easily generated by users.

various pathologies.<sup>2</sup> It is therefore a real-time webcast that contains vulgar, obscene and violent<sup>3</sup> content. This is a phenomenon that raises many concerns and controversies, and also raises the debate on the need for regulations to increase control over online content.

The purpose of this article is to answer the following questions:

- What is it and how was patostreaming created?
- What is the phenomenon of patostreamers?
- Should participation in patostreaming-related activities entail legal liability?
- What are the legal difficulties in combating patostreaming-related issues?

The article uses the *desk research* method, which resulted in a synthesis of knowledge about patostreaming-related issues in Poland. Additionally, we analyzed the materials available on the web, which should be considered as patostreams, as well as recordings from the channels of four of the most popular and recognizable Polish patostreamers: Gural, Rafatus, Daniel Magical and Rafonix. In addition, the content from the so-called Uniwersum Szkolna 17 was analyzed, as well as the materials published by Marta Linkiewicz, a controversial celebrity of the Polish Internet. The content also bears the signs of patostreaming, although in some respects it differs from typical patostreams.<sup>4</sup> On this basis, different types of patostreaming were characterized and different types of patostreams were isolated and described. The knowledge of the phenomenon has been synthesized, as well as a preliminary legal analysis of the possibility of bringing to civil and criminal liability the entities involved in patostreaming.

## 1. Live streaming and patostreaming in social media

*Live streaming* or *live video streaming* is the transmission of video in real time through platforms or applications that enable this type of online transmission. The term *streaming* itself has different meanings: firstly, it is used to describe a popular form of use of online services today, which consists of making content available

<sup>2</sup> See Mr. Siedlanowski, *Homo crudelis? Patostream – kolejna patologia w sieci* [*Homo crudelis? Patostream – Another Pathology on the Web*], “Biuletyn Edukacji Medialnej” 2008, no. 2, p. 44-57.

<sup>3</sup> A. Kmiecik-Goławska, *Patostreaming jako narzędzie popularyzacji podkultury przemocy* [*Patostreaming as a Tool to Popularize the Subculture of Violence*], “Biuletyn Polskiego Towarzystwa Kryminologicznego im. prof. Stanisława Batawii” 2009, no. 25, p. 172-177.

<sup>4</sup> Marta Linkiewicz’s activity can be described as *patoinfluencing due to the fact* that she is active mainly in Instagram service, where she is observed by several hundred thousand people. The School Complex 17, in turn, is a two-canal content led by Krzysztof Kononowicz and Wojciech “Major” Suchodolski who lives with him. Both of them have been regularly posting content on the YouTube platform for several years. These are not always pathological materials, most of them are reports from everyday life of streamers. Within the framework of the Uniwersum Szkolna 17, we are dealing with milder forms of pathological behavior (e.g. quarrels, vulgar statements, threats and insults against third parties).

through data transmission. This is how platforms such as Netflix and Spotify work. You do not need to download files and save them to your computer. The same is true for streaming games. Platforms such as Twitch, Gaikai and Onlive allow users to play games such as MMOs,<sup>5</sup> which transmit current data about the game.

*Live streaming* understood as online video streaming has become popularized as part of one of the most important functions of social media, which is to meet the need for up to date information and relevance. According to [www.press.pl](http://www.press.pl), the most popular game streaming platform at present is Twitch, used by almost 64,000 players. In January 2019, 1.9 million hours of live video was<sup>6</sup> generated on Twitch. Among the streaming platforms, apart from Twitch, YouTube – a popular Internet service that has been allowing viewers to watch *live streaming* since 2011 should also be mentioned. As part of the service, Internet users could watch the wedding of Prince William and Kate, among others. In 2016, the service also enabled Internet users to broadcast streaming transmissions.<sup>7</sup> A user registered in the service who has an account may conduct online transmissions and this does not require any specialist knowledge or technical skills<sup>8</sup> (initially only users with verified accounts with good opinions could *stream*).

*Live streaming* itself is quite popular among Internet users especially in the following cases:

- Viewing video games – streaming is a popular form of commenting on the course of a game in the gaming environment. The player allows others to watch the game with their participation while commenting on what is happening and interacting with the audience via chat, camera and microphone;<sup>9</sup>
- E-sport – in the environment of people gathered around streaming platforms, it is used for broadcasting games and commenting during e-sport tournaments, e.g. in Dota;<sup>10</sup>
- Educational and training activities – e.g. for reporting on training courses,<sup>11</sup> webinars, etc.;

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<sup>5</sup> *Massively multiplayer online* – a type of games in which a large number of players can play with each other in the framework of online reality.

<sup>6</sup> P. Dembowski, *Twitch najpopularniejszą platformą do streamingu gier i e-sportu* [Twitch, the Most Popular Platform for Streaming Games and E-sport], <https://www.press.pl/tresc/56309,twitch-najpopularniejsza-platforma-do-streamingu-gier-i-e-sportu> (accessed 10.04.2019).

<sup>7</sup> M. Połowaniuk, *YouTube spuszcza prawdziwą bombę! Przyszłość platformy to wideo na żywo* [YouTube Is Dropping a Real Bomb! The Future of the Platform Is Live Video], <https://www.spidersweb.pl/2016/06/youtube-transmisje-na-zywo.html> (accessed 10.04.2019).

<sup>8</sup> See <https://support.google.com/youtube/answer/2474026?hl=pl> (accessed 10.04.2019).

<sup>9</sup> M. Klimko, *Era zagrajmera* [Era of a Player], “Polityka” 2019, no. 13 (3204).

<sup>10</sup> This is a multiplayer online battle arena (MOBA) game developed and released by Valve Corporation. See B. Hutchins, *Signs of Meta-change in Second Modernity: The Growth of E-sport and the World Cyber Games*, “New Media & Society” 2008, no. 10 (6), p. 851-869.

<sup>11</sup> K. Andruskiewicz, *Znaczenie działań marketingowych stosowanych przez usługodawców w podejmowaniu decyzji konsumenckich na rynku komercyjnych usług edukacyjnych* [The Importance of Marketing Activities Used by Service Providers in Making Consumer Decisions on the Market of

- Reports of various types of events (concerts, conferences, weddings, etc.);<sup>12</sup>
- Personal branding, the aim of which is to promote a personal brand and build relations with the recipient;<sup>13</sup>
- Other promotional and marketing activities.

It's hard to say clearly how patostreaming happened. There are hypotheses that its origins are related to YouTuber activity on Twitch, which is one of the largest platforms for players.<sup>14</sup> This is where Rafonix and Daniel Magical were originally active. Both of them noticed that with the increase in vulgarity in their message, the interest and number of observers also increased. During the transmission, they intensified the intensity of vulgar comments and controversial behaviors, and viewers sent several golden donations to their accounts.<sup>15</sup>

Another hypothesis assumes that the first patostreamer was Hungarian YouTuber Molnár Krisztián (operating since 2014 under the nickname Bebaszós). He is believed to have been the first person to stream pathological content through YouTube, including drinking alcohol, among others. It was most likely his activity that inspired Polish streamers.<sup>16</sup>

Patostreaming is not only a phenomenon occurring in Poland, as initially thought. Similar content can be found in Ukraine and Russia, where, for example, the “Mops Uncle Dog” channel, run since 2015 by former prisoner Sergei Novik,<sup>17</sup> is popular. On his channel Nowik often follows the instructions of the audience. They ask, for example, to eat a jar of mayonnaise, drink vodka mixed with beer, be electrocuted, etc. The films have many thousands of views,<sup>18</sup> and the “Mops Uncle

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*Commercial Educational Services*], “Zeszyty Studenckie Wydziału Ekonomicznego «Nasze Studia»” 2015, no. 7, p. 119-128.

<sup>12</sup> A. Kmiecik-Gołąwska, op. cit., p. 171.

<sup>13</sup> K.J. Fietkiewicz, I. Dorsch, K. Scheibe, F. Zimmer, W.G. Stock, *Dreaming of Stardom and Money: Micro-celebrities and Influencers on Live Streaming Services*, [w:] G. Meiselwitz (red.), *Social Computing and Social Media: User Experience and Behavior, Lecture Notes in Computer Science*, 10<sup>th</sup> International Conference, SCSM 2018, Held as Part of HCI International 2018, Las Vegas, NV, USA, July 15–20, 2018, Proceedings, Part I, T. 10913, Springer 2018.

<sup>14</sup> <https://www.twitch.tv/> (accessed 10.04.2019).

<sup>15</sup> J. Korus, A. Hudzik, *Patologia na żywo. Skąd się wzięli patostreamerzy* [*Live Pathology: Why Did Patostreamers Appear*], “Newsweek”, <https://www.newsweek.pl/polska/spoleczenstwo/patologia-na-zywo-skad-sie-wzieli-patostreamerzy/4s5qhg8> (accessed 10.04.2019).

<sup>16</sup> S. Czubkowska, *Donejty pompują dymy. Jak zarabiają patostreamerzy i dlaczego nikt tego nie kontroluje?* [*Donejty Are Pumping Smoke: How Do Patostreamers Earn Money and Why Doesn't Anyone Control It?*], “Gazeta Wyborcza”, 3 September 2019, <http://wyborcza.pl/7,156282,25138386,donejty-pompuja-dymy-jak-zarabiaja-patostreamerzy-i-dlaczego.html> (access 18.09.2019).

<sup>17</sup> See: <https://www.youtube.com/watch?v=cXOokKaYmoI> (access 11.12.2019); <https://www.youtube.com/watch?v=fjMXS4feiwg> (accessed 11.12.2019).

<sup>18</sup> M. Kacewicz, *Co kręci Rosjan i Ukraińców? Były więzień Sojuza, który daje sobie spuścić łomot na YouTube* [*What Turns Russians and Ukrainians On? A Soviet Union Ex-prisoner Who Lets Himself Be Beaten Up on YouTube*], “Newsweek”, <https://www.newsweek.pl/swiat/rosja-ukraina-byly-wiezien-sojuza-ktory-zarabia-na-publicznym-lomocie/479zckf> (accessed 10.12.2019).

Dog” channel had nearly 500 thousand subscriptions<sup>19</sup> at the end of 2019. Similar content is also present in Germany. Young youtubers Adlersson, Inkognito Spas-tiko and Hector Panzer, presented in the film *The Lord of Smartphones*, are known for their content presenting drinking, humiliating colleagues, demolishing apartments, etc.<sup>20</sup> The specificity of patostreaming-related content is that pathological content is not incidental, but becomes a way of life for its creators. Patostreamers publish content regularly and earn money on their activities. Table 1 provides definitions of the most important concepts associated with the phenomenon.

**Table 1.** Concepts related to the phenomenon of patostreaming-related

<b>Donejty (donations)</b>	Donations from patostreamers, paid through various tip and donate platforms. These platforms allow you to make a donation e.g. via text message.
<b>Suby (subs, subscriptions)</b>	User subscriptions within YouTube to keep track of the activity of a given streamer.
<b>Szoty (shots)</b>	Archived “best” fragments of patostreams. <sup>21</sup> Livestreaming transmissions are not always available in full. So often compilations of the best fragments are created, which can be viewed after the stream is finished.
<b>Dymy (fights)</b>	The most spectacular events during streams, often directed or provoked. Usually these are brawls, drinking alcohol or taking drugs, provoked brawls, etc. Fights are quite popular because they increase the number of donors.
<b>Lajwy (live)</b>	A term referring to streams occurring in real time.
<b>Rajdy (attacks)</b>	Attacks against other streamers by mobilizing viewers to enter another streamer’s channel and writing offensive comments there. The attack is a provocation, it is aimed at triggering the reaction of the streamer, which falls victim to it. An example of a rally is the sexist entries made by Gural. <sup>22</sup>

Source: own study based on primary materials available on YouTube and quoted secondary sources.

Patostreamers make a living from donations from people watching their broadcasts. The number of recipients sometimes reaches several thousand.<sup>23</sup> In the case of the most popular streamers, it sometimes generates revenue of about PLN 2,000 per transmission. Monthly, the most popular patostreamers can generate income in the amount of several thousand zlotys.<sup>24</sup> In order to make a deposit, there is no

<sup>19</sup> <https://www.youtube.com/channel/UCeRYNylQIYYX3piVQocJlWQ/about> (accessed 10.12.2019).

<sup>20</sup> Documentary film *Władca smartfonów* [*The Lord of Smartphones*], dir. Pablo Ben Yakov, 2018, accessed at <https://vod.pl/filmy-dokumentalne/wladca-smartfonow/xh81pry> (accessed 10.12.2019).

<sup>21</sup> M. Borys, *Zadymiarze internetu i jedna zadymiara* [*The Internet Hooligans and One Female Hooligan*], “Dwutygodnik”, <https://www.dwutygodnik.com/artykul/8252-zadymiarze-internetu-i-jedna-zadymiara.html> (accessed 10.10.2019).

<sup>22</sup> *Patotresci w internecie. Raport o problemie* [*Patocontent on the Internet: Problem Report*], p. 32, <https://fdds.pl/wp-content/uploads/2019/08/fdds-raport-patotresc-www.pdf> (accessed 10.10.2019).

<sup>23</sup> The highest viewership of 15 million views so far was reached by Gural in February 2018.

<sup>24</sup> *Patocontent on the Internet...*, op. cit., p. 14.

need to register an account with a donation agent. For this reason, *donejty* may come from minors. Patostreamers and people who pay them use services such as Tip4Stream or TipAndDonation. The money reaches the streamer through them and the deposits can be additionally integrated into the recording. You can therefore set a collection target or encourage recipients to pay by promising, for example, fights. The services charge commissions on payments, which ranges from 48% for text message payments to 2% for PayPal, Blik or bitcoin<sup>25</sup> payments. According to “Gazeta Wyborcza”, “(...) the patostreamer search engine suggests that TipAndDonation currently uses 50 patostreamer channels and that the second number is extinguished.”<sup>26</sup>

Patostreaming-related content categories are as follows:

- *Alcohol-streaming* (the name *drunk-streaming* also appears in the press discourse) – drinking alcohol during a stream.
- *Violence-streaming* – streaming of various types of violence; physical violence: live beatings, verbal violence: racist content, incitement to violence, threats, insults, etc.
- *Sex-streaming* – streaming situations in which there are various types of sexual deviation, including acts of pedophilia. An example is patostreamer Gural, who encouraged minors to undress in front of the camera during his streams.<sup>27</sup>
- *Daily-patostreaming* – streaming everyday life, with a particular emphasis on transmitting so-called fights. An example is the Uniwersum Szkolna 17 described later in the article.

## 2. Activities of Polish patostreamers

So far, there are only few papers in Polish literature on the phenomenon of patostreaming-related issues, which is due to the fact that this is a new issue and it is not yet clear whether it is temporary in nature. The problem with testing patostreamers also lies in the ephemerality of the material. Patostreams are transmitted live and can no longer be accessed after the transmission, unless the material is archived. In addition, as many films record offensive events, content administrators and platform owners often remove these materials from the web. Table 2 presents a brief description of the most important Polish patostreamers and their content.

<sup>25</sup> S. Czubkowska, op. cit.

<sup>26</sup> Ibid.

<sup>27</sup> A. Żelazińska, *Patostreamerzy – nowe „gwiazdy” internetu* [Patostreamers – New Internet “Stars”], “Polityka”, 8.05.2018, <https://www.polityka.pl/tygodnikpolityka/ludzieistyle/1747520,1,pato-streamerzy--nowe-gwiazdy-internetu.read> (accessed 10.09.2019).

**Table 2.** Characteristics of analyzed patostreamers and their content

Streamer	Content of streams	Other
Rafonix	<ul style="list-style-type: none"> <li>• While playing Tibia, he got drunk in front of the camera, behaved aggressively, vulgarly referred to other players.</li> <li>• He reported vulgarly on various situations, especially those of a sexual nature.</li> <li>• He was aggressive towards different people during streams, he used insults and threatened to use violence.</li> <li>• He reported the live beating of a person criticizing his behavior on the Internet.<sup>28</sup></li> </ul>	<ul style="list-style-type: none"> <li>• One of the pioneers of drunk-streams in Poland.</li> <li>• Sentenced to one year's suspended imprisonment of three years for assault, insult and public acclaim.<sup>29</sup></li> </ul>
Gural	<ul style="list-style-type: none"> <li>• Vulgar comments and getting drunk during games.</li> <li>• Sexist content.</li> <li>• Pedophilia-like behavior (persuading a 12-year-old girl to undress in front of the camera during a live broadcast).</li> <li>• Vulgar behavior and comments when chatting with other users via Omegle.</li> <li>• Offering money to minors for sexual behavior.</li> <li>• Incitement to violence and threats to callers.</li> </ul>	<ul style="list-style-type: none"> <li>• One of the most popular patostreamers, before being stopped by the police, one of its transmissions had almost 15 million views in total.<sup>30</sup></li> <li>• Accused of incitement to hatred on the Internet. He was banned from public speaking. His YouTube channel was deleted.<sup>31</sup></li> <li>• Accused of crimes: beatings and threats. Sentenced to 14 months' imprisonment.</li> </ul>
Daniel Magical	<ul style="list-style-type: none"> <li>• Drunk-streams while playing Tibia.</li> <li>• Drinking alcohol, collective libations.</li> <li>• Verbal abuse.</li> <li>• Violence against loved ones (mother).</li> <li>• Demolishing rooms.</li> <li>• Filming third parties without their consent.<sup>32</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Sentenced to be beaten by a final sentence; in early August 2019 he was released from prison.<sup>33</sup></li> <li>• On one of the streams he praised the murder of the President of Gdańsk, Paweł Adamowicz; after the incident the prosecutor's office forbade him to stream.<sup>34</sup></li> </ul>
Rafatus	<ul style="list-style-type: none"> <li>• Drunk streams – getting drunk to lose consciousness.</li> <li>• Violence-streams – violence against loved ones (beating a partner).</li> <li>• Sex-streams – transmitting sexual intercourse.</li> </ul>	<ul style="list-style-type: none"> <li>• He gained popularity thanks to the streams in which his partner Marlenka, whom he beat during one of the broadcasts, appeared.</li> </ul>

Source: own study based on primary materials available on YouTube and quoted secondary sources.

<sup>28</sup> M. Obszarny, *Rafonix skazany za polowanie na „wykopka” w Piotrkowie. Sąd uznał, że to był samosąd* [Rafonix Sentenced for Hunting “Digging” in Piotrków. The Court Decided That It Was Lynching], “Dziennik Łódzki”, <https://dzienniklodzki.pl/rafonix-skazany-za-polowanie-na-wykopka-w-piotrkowie-sad-uznal-ze-to-byl-samosad/ar/c1-14071477> (accessed 10.09.2019).

<sup>29</sup> *Patotreści w internecie...*, op. cit., p. 37. At the time the report was written, the sentence was not final.

<sup>30</sup> S. Czubkowska, op. cit..

<sup>31</sup> SW, *Poznański „pato-streamer” znów nadaje. Sąd uchylił zakaz Guralowi* [Poznan “Pato-Streamer” Is Broadcasting Again. The Court Annulled the Ban on Gural], <https://epoznan.pl/news-news-89144> (accessed 10.09.2019)..

<sup>32</sup> *Patotreści w internecie...*, op. cit., p. 32.

<sup>33</sup> S. Czubkowska, op. cit.

<sup>34</sup> M. Borys, op. cit.

Additionally, streamers use a so-called chat roulette, e.g. Omegle or Ome, during transmission. It is possible to conduct a video chat with selected recipients through them. The selection of people is random, and the person to whom the streamer connects is not always aware that the conversation is broadcast publicly. This form of communication was used, among others, by Gural, who encouraged 12-year-old girls to undress in front of the camera.<sup>35</sup>

Another type of patostreaming-related activity is the so called Uniwersum Szkolna 17. These are regular broadcasts from the home of Krzysztof Kononowicz, who is known for the fact that he once ran for the office of president of Białystok. During the streams, viewers can observe the everyday life of Kononowicz and his alcohol and psychoactive substance addict roommate – Wojciech (Major) Suchodolski. From time to time “fights” are transmitted, which particularly attract the attention of the audience. Szkolna 17 is a peculiar phenomenon, it has loyal viewers who follow the lives of the inhabitants of Szkolna Street.

It is also worth noting the phenomenon of patoinfluencing, which cannot be clearly classified as patostreaming, but has a similar form. Marta Linkiewicz, who is mainly active in Instagram, is an example of a patoinfluencer. The Influencer gained popularity because she boasted of having a collective relationship with members of Rae Sremmur. Linkiewicz is known for her vulgar statements and recordings in which she boasts of her life full of parties, alcohol and sexual conquests.<sup>36</sup>

### 3. Controversy and legal contexts

Patostreaming content is popular especially among young people. According to the survey conducted by Puzzle Research for the Give Power to Children Foundation, as many as 84% of respondents aged 13-15 years have heard about patostreamers, and 37% of the surveyed teenagers admitted to having seen such materials. Some of them (15%) indicated that they watch them regularly. The reasons for this are also interesting, among which curiosity was mentioned (74% of the respondents), but also the desire for entertainment (24%).<sup>37</sup>

As Aleksandra Żelazińska notes:

The viewer's participation in this pathological game is much greater than in TV shows. The recipient not only watches but also co-directs. And as a donor, he is somehow the producer of these peculiar clips, sometimes not fully aware of what he is contributing to. It's a kind of

<sup>35</sup> Ibid.

<sup>36</sup> S. Torcińska, *Marta Linkiewicz kto to? Instagram, ile ma lat i kim jest? Patostream i patostreamer – co to?* [Marta Linkiewicz Who Is She? Instagram, How Old Is He and Who Is He? Patostream and Patostreamer – What Is It?], <https://polskatimes.pl/marta-linkiewicz-kto-to-instagram-ile-ma-lat-i-kim-jest-patostream-i-patostreamer-co-to-zdjecia-wideo/ar/c15-13918985> (accessed 10.09.2019).

<sup>37</sup> *Patotreści w internecie...*, op. cit., p. 18–20.



interactive game, still very fresh on the Internet. The question is, why take part in it, why would someone want to watch it and pay for it, when similar scenes could be seen for free outside the net, in the open air? Piotr Marszałkowski in his film *Why Is Pathology So Popular on YouTube?* argues that behind the phenomenon there is curiosity, a natural need to peep. We like to compare ourselves and check how we fall out on someone's background, better or worse. With patostreaming-like, it's easy to get a good deal. "We like to see real problems where people fight, puke and have sex," says Marshal. "Patostreaming," he adds, "is like a simulator of experiences that the viewer may not experience or even avoid every day. Like a game you watch from a safe distance."<sup>38</sup>

Patostreaming is classified as harmful content on the Internet, defined as "materials that can evoke negative emotions in the recipient or that promote dangerous behavior."<sup>39</sup> The deviation presented in these broadcasts – like all social pathologies – is directed against commonly accepted social values and norms.<sup>40</sup> The harmful effects of patostreaming-induced infections on children and adolescents<sup>41</sup> are widely highlighted. Young people are, on the one hand, most susceptible to the negative impact of patterns presented in recordings, and on the other hand, they are the main recipients of Internet transmissions. The phenomenon of patostreaming-related diseases can therefore be regarded as worrying and even socially harmful. Therefore, it is interesting not only for sociologists or media experts, but also for lawyers.

Even just pointing out all legal issues related to patostreaming would require a separate article. This is due, firstly, to the diversity of the presented materials, and secondly, to the complex nature of Internet transmissions involving viewers. Behavior can be legally assessed:

- patostreamers;
- other "actors" in the recordings;
- active viewers – commentators and donors;
- the owners and administrators of the platforms on which we are making our summaries available;
- owners of services collecting commission on donations.

Moreover, all of these behaviors may violate the norms established in various branches and areas of law. Generally speaking, this will be both civil and criminal law.

The basic issue is to determine the unlawful nature of the behavior of patostreamers. On civil law grounds, they often violate the personal rights of other people (relatives, neighbors, public officials) in the recordings, often without their knowledge or against their will. Personal property is listed in Article 23 of the Civil

<sup>38</sup> A. Żelazińska, op. cit.

<sup>39</sup> Z. Polak, *Szkodliwe treści [Harmful Content]*, [in:] A. September (ed.), *Bezpieczeństwo dzieci online. Kompendium dla rodziców i profesjonalistów [Child Safety Online: Compendium for Parents and Professionals]*, Naukowa i Akademicka Sieć Komputerowa, Fundacja Dzieci Niczyje, Warszawa 2015, p. 96–100.

<sup>40</sup> Cf. A. Dobieszewski, *Przyczyny i przejawy patologii społecznej [Cause and Manifestations of Social Pathology]*, "Polityka i Społeczeństwo" 2004, no. 1, p. 153–166.

<sup>41</sup> Cf. *Patotreści w internecie...*, op. cit., p. 23–30.

Code,<sup>42</sup> but it is not a closed catalogue. Among them, it is worth distinguishing: freedom, health, honor, surname, image or inviolability of the apartment. A patostreamer who records someone without their consent, discloses their personal data without permission, insults them, hits them, invades their apartment or restricts their freedom of movement, is in violation of their personal rights and exposes themselves to civil liability.

The constitutional principle of proportionality allows for the introduction of criminal liability where other branches of law remain powerless.<sup>43</sup> As indicated above, patostreamers not only violate the personal interests of the people involved in the productions in question, but also threaten social welfare. Criminal law seems to be the right tool to react. Patostreamers are exposed to repressive responsibility for various prohibited acts: from offenses such as using vulgarisms in a public place<sup>44</sup> (Article 141 of the Code of Offenses<sup>45</sup>) or promoting alcohol in an unauthorized manner (Article 452 of the Act on Upbringing in Sobriety and Counteracting Alcoholism<sup>46</sup>), through acts against property (e.g. destruction of property under Article 288 of the Penal Code<sup>47</sup> and Articles 124 and 126 of the Penal Code), offenses prosecuted under private prosecution (defamation under Article 212 of the Penal Code, an insult under article 216 of the Penal Code, infringement of physical inviolability under Article 217 of the Penal Code or slight damage to health under Article 157 § 2 of the Penal Code) and offenses to the detriment of public officers (e.g. insulting or infringing the physical inviolability of a public officer under Articles 222 and 226 of the Penal Code), up to violent offenses (e.g. discriminatory violence – under Article 119 of the Penal Code). The following crimes are considered: extortion – with Article 191 of the Penal Code; abuse – with Article 207 of the Penal Code; causing serious damage to health – with Article 156 of the Penal Code; or participation in a fight or beatings – with Article 158 of the Penal Code) and sexual offenses (e.g. public presentation of pornographic content – with Article 202 of the Penal Code; and even sexual intercourse with a minor under 15 years of age – with Article 200 of the Penal Code). In addition, many acts carried out in the framework of patostreams can be attributed to hooliganism, which is an<sup>48</sup>

<sup>42</sup> Act of 23 April 1964 Civil Code (i.e. Journal of Laws 2019, item 1145, as amended).

<sup>43</sup> Cf. e.g. T. Dukiet-Nagorska (ed.), *Prawo karne. Część ogólna, szczególna i wojskowa* [Criminal Law: General, Special and Military Part], Wolters Kluwer, Warszawa 2018, p. 43–45.

<sup>44</sup> The Internet was declared a public place by the Supreme Court's verdict of 17.04.2018, file No IV KK 296/17.

<sup>45</sup> Act of 20 May 1971 Code of Offenses (i.e. Journal of Laws of 2019, item 821, as amended). Hereinafter, Code of Offenses.

<sup>46</sup> Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism (i.e. Journal of Laws 2018, item 2137, as amended).

<sup>47</sup> The Act of 6 June 1997, Penal Code (i.e. Journal of Laws 018, item 1600 as amended). Hereinafter: Penal Code.

<sup>48</sup> Art. 115 § 21 of the Penal Code. A offense of hooligan nature is an offense involving a deliberate assassination of health, freedom, honor or physical integrity, public safety, the activities of state or local

extremely harsh punishment.<sup>49</sup> It should be added that this calculation is only an example.<sup>50</sup> Identifying all breaches of criminal law would require a separate analysis of each of the material made available on the network.

The general public should be aware that the legal consequences of patostreaming-related behavior may also be borne by third parties (“actors,” active viewers or platform owners). The recorded behavior of persons other than the sender of pathological content – if it is found unlawful – may also give rise to civil or criminal liability. Similarly offensive comments made by viewers visible during the broadcast of recordings may violate personal rights, as well as fill in the signs of e.g. insults (Article 216 of the Penal Code and Article 226 of the Penal Code) or hate speech (Article 256 of the Penal Code). Some statements made by Internet users cheering on the creators of patostreams may also be qualified as praise or public provocation to a crime (Article 255 of the Penal Code). Another notable issue is the criminal complicity of viewers in crimes committed by patostreamers. Inducing filmmakers to commit certain prohibited acts (*dymy*) and financing the production by means of *donejty* with the awareness and acceptance of the content presented in the recordings may be considered at least as incitement (Article 18 § 2 of the Penal Code) or aiding and incitement (Article 18 § 3 of the Penal Code), which is connected with criminal liability.

Another problem is the legal responsibility of websites that enable the posting of pathological content. The lack of reaction to the patocontent available on a given platform exposes its administrator to legal liability. In view of the widespread possibility of online broadcasts, it is difficult to expect service administrators to apply preventive censorship and catch harmful content before it is released. They should, however, expressly prohibit the posting of material containing dangerous content in the rules and respond immediately to requests from users. Recordings and even entire channels that violate the law should be removed, and those that may be considered legal but not appropriate for minors should be given a warning and have limited access.<sup>51</sup>

In the case of content that fulfils the elements of a crime, the lack of an appropriate response to the reporting of irregularities may – in certain cases – become the basis of a criminal charge for an individual responsible for administering the service. This possibility will depend on the type of content presented in the recording. If a recording posted on the platform perpetuates a crime, e.g. insult or beatings, the administrator cannot be held responsible for complicity in the crime.

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government institutions, public order, or the deliberate destruction, damage or rendering unusable of another person's property, if the perpetrator acts in public and for no reason or for a manifestly trivial reason, thereby showing a gross disregard for the legal order.

<sup>49</sup> Article 57a. § 1 of the Penal Code. In the case of a hooliganism, the court shall impose the penalty for the offense attributed to the offender at a level not lower than the lower limit of the statutory threat increased by half.

<sup>50</sup> Cf. *Patotrześci w internecie...*, op. cit., p. 32–34.

<sup>51</sup> Cf. *ibid.*, p. 35–36 and 38.

Article 18 of the Penal Code requires an accomplice to join as an accomplice or assistant at the latest during the execution of the constituent elements of a prohibited act.<sup>52</sup> Meanwhile, the possibility of publication undoubtedly exists after the deed. The specificity of the streams, however, is that they are transmitted live. If the administrator knows what the transmission is about and what the patostreamer<sup>53</sup> is aiming at, and yet he does not interrupt the transmission, one may wonder about assigning him an assistant (Article 18 § 3 of the Penal Code). The problem is complex, but there is a good chance that if the patostreamer couldn't transmit his actions, he would abandon his intention.

It is different when the recording contains pornographic content. Presenting them to a minor under 15 years of age or distributing pornographic content in a way that allows such a minor to become acquainted with them shall constitute a prohibited act under Article 200 § 3 of the Penal Code and shall be subject to the penalty of deprivation of liberty for up to three years, while under Article 202 § 1 of the Penal Code public presentation of pornographic content in such a way that it may impose its reception to a person who does not wish to do so, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to two years. Importantly, it is absolutely forbidden to disseminate or present pornographic content with the participation of a minor or pornographic content related to the presentation of violence or the use of an animal (Article 202 § 3 of the Penal Code). In such cases, the accusation can therefore be made not only against the creators of the recording, but also against those responsible for the functioning of the service, regardless of whether the recording was posted on the *post factum* network or it is a live report. It is also possible to wonder whether leaving the criminal content on the platform constitutes their praise (Article 255 § 3 of the Penal Code). However, it seems that praise is more than just a lack of reaction, because it means expressing a positive opinion<sup>54</sup> and it would be difficult to show such an attitude to the service administrator.

The attribution of responsibility for complicity in a committed crime could also be made to the owners of the payment platforms. If they are aware of the purpose of the money, and yet they handle the payments in question, then help is involved. It can be assumed that the patostreamer's business would end quickly if it was no longer profitable.

The trend of promoting patostreamers as celebrities is also very worrying. An example is the MMA Fame Gala, during which patostreamer and patoinfluencer

<sup>52</sup> Cf. e.g. A. Sakowicz, *Commentary to Article 18 of the Penal Code*, [in:] M. Królikowski, R. Zawłocki (ed.), *Kodeks karny. Część ogólna. Komentarz do art. 1–116* [*Penal Code: General Part. Commentary to Articles 1–116*], C.H. Beck Publishing House, Warszawa 2017, p. 436–440 and 470.

<sup>53</sup> The so called “dymy” are announced for a specific hour. Cf. *Patotreści w internecie...*, op. cit., p. 11.

<sup>54</sup> Cf. e.g. M. Kalitowski, *Commentary to Article 255 of the Penal Code*, [in:] M. Filar (ed.), *Kodeks karny. Komentarz* [*Penal Code: Commentary*], Wolters Kluwer, Warszawa 2016, p. 1442.

fighters take place. The event is a mass event and was initiated by Wojciech Gola, known from Warsaw Shore and youtuber Michał “Boxdel” Baron, who is also known for streaming pathological content. As we read on the event website:

FAME MMA is the only freak fight gala in Poland, during which the biggest stars of Polish YouTube and TV celebrities can face each other. The first two editions met with great interest. The fights of their Internet idols were watched by several hundred thousand young viewers.<sup>55</sup>

Simply creating patostreamers on media personalities does not constitute unlawful behavior. However, promoting their activities can already be qualified as praising a crime, which constitutes a criminal act.

The existence of a legal basis for attributing responsibility to patostreamers, active viewers or platform administrators does not yet mean that they are an effective tool for preventing this phenomenon or minimizing its negative consequences for children and young people. The research already referred to, carried out on behalf of the Give Strength to Children Foundation [Fundacja Dajemy Dzieciom Siłę] in cooperation with the Ombudsman, has shown that state authorities very rarely intervene in such cases. Lack of experience and preparation to conduct cases concerning virtual space was indicated as the reason.<sup>56</sup> In the analyzed cases, several difficulties are accumulated. First of all, it is not always easy to identify people who are visible on the recordings or commenting on the stream. Secondly, the correct legal qualification of the observed behaviors poses problems. Recipes created a dozen or so years ago do not always fit into virtual reality. Thirdly, some pathological content can be considered as a kind of creativity, and then the conflict between freedom of speech and artistic expression and the rights of others is updated.<sup>57</sup> However, these obstacles do not seem to be insurmountable. It's high time for state authorities to face up to these problems.

## Summary

The phenomenon of patostreaming-related diseases is perceived as a manifestation of social pathology and as such raises objections. It is not true that the Internet creates space for unlimited freedom of expression. A message preceding some recordings: “The film is not intended to promote hatred, but only serves an informative

<sup>55</sup> See <https://famemma.com/o-fame-mma/> (accessed 10.09.2019).

<sup>56</sup> Cf. *Patotreści w internecie...*, op. cit., p. 36-37 and 40-41.

<sup>57</sup> Such a thread appeared in the case of Cypis – the creator of vulgar songs available on his channel on YouTube. The prosecutor refused to open an investigation because of the “non-statutory counterattack of art and science.” However, one can get the impression that this argument is being abused. Cf. *Patotreści w internecie...*, op. cit., p. 40-41; F. Ciepły, *O kontratybie sztuki [About the Counteretypes of Art]*, “Prokuratura i Prawo” 2015, no. 10, p. 26-41.

function, the freedom to disseminate views and information is guaranteed to all Poles by the Constitution of the Republic of Poland.”<sup>58</sup> It does not abolish the grounds for limiting freedoms and rights - also contained in the Constitution of the Republic of Poland.<sup>59</sup> Pathological content on the web requires not only further in-depth research, but above all the attention of state authorities, especially law enforcement and judicial authorities.

In 2018, on the initiative of the Ombudsman Adam Bodnar, a roundtable meeting was organized on the subject of pathological Internet content. The meeting was attended by representatives of various circles, whether journalists, lawyers, scientists or representatives of public authorities and NGOs, as well as people representing the YouTube community and technology companies. The meeting resulted in demands to take action that could reduce the phenomenon of patostreaming-related diseases as well as their negative effects. As far as legal regulations are concerned, it was proposed to introduce changes that could make it more difficult to earn money from publishing pathological content.<sup>60</sup> The initiative is a step in the right direction and raises hopes for a reduction in the controversial activities of patostreamers and their associates.

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<sup>58</sup> See <https://www.youtube.com/watch?v=RWS9CipW8zs> (accessed 10.09.2019).

<sup>59</sup> Constitution of the Republic of Poland of 2 April 1997. 1. Freedom of the person shall receive legal protection. 2. Everyone shall respect the freedoms and rights of others. No one shall be compelled to do that which is not required by law. 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights. (Journal of Laws 1997, No. 78, item 483).

<sup>60</sup> Message on the RPO website: *Patostreaming – co robimy? Deklaracja uczestników Okrągłego Stołu RPO do walki z patotreściami w internecie* [Patostreaming. What Do We Do? Declaration of the Participants of the Polish Ombudsman Roundtable for Combating Patocontent on the Internet], <https://www.rpo.gov.pl/pl/content/deklaracja-uczestnikow-okraglego-stolu-rpo-do-walki-z-patotresciami-w-internecie> (accessed 10.09.2019).

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