
Chinese Defamation Law

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With the rapid growth in Chinese media services and increased awareness of legal rights among the Chinese, defamation litigation in China is on the rise. Generally speaking, defamation is usually treated as a civil matter, but if it is deemed to be a serious threat to public order or national interest, defamation can be a criminal offence. This advisory will summarize the current state of this fast-developing area of in China and includes some general remarks.

Civil Defamation

The General Principles and SPC's Interpretation

Articles 101 and 102 of the General Principles of the Civil Law of the People's Republic of China (General Principle), enacted in 1987, and the interpretations of these two and related Articles of the General principles were the sole basis for Chinese civil defamation law.

Article 101 provides:

Citizens and legal persons enjoy the right of reputation. The human dignity of citizens is protected by law. It is prohibited to harm the reputation of a citizen or legal person by such means as insult or libel.

Article 102 provides:

Citizens and legal persons enjoy the right to honor. It is prohibited to illegally strip a citizen or legal person of his or its honor.

In Answers of the Supreme People's Court on Certain Issues Concerning Trials of Cases Involving the Right to Reputation (the 1993 Answers), the Supreme People's Court (SPC) stated that defamation can be found if (i) there is an illegal act on the part of the defendant, (ii) there has been harm to the reputation of the plaintiff, and (iii) there is a causal relation between the illegal act and the harm to reputation. The three circumstances under which defamation can be found are:

1. Where any written or oral insults or libel against another person that causes damage to the reputation of that person;
2. Where unauthorized disclosure of personal information of another person causes harm to reputation of that person; or
3. Where a news report contains “gross error” **and** the error results in harm to reputation.

The 1993 Answers specifically address the issue of defamation litigation that arises out of the authoring or publication of an article that is critical [of a person]. The SPC stated that:

1. Where the article contains basically true information and is not insulting to another person, the author and publisher are not liable.
2. Where the article contains basically true information and is insulting to another person and causes harm to the reputation of that person, the author and publisher are liable.
3. Where the basic contents of the article are erroneous and cause harm to the reputation of another person, the author and the publisher are liable.

From the 1993 Answers, it appears that truth is not necessarily a defense in civil defamation litigation in China, particularly where the “offending” report is an article that is critical of another person. This is a marked difference from the defamation law of the U.S. and certain other Western countries (including the U.K.), under which truth is a defense generally. Although there is no clear definition of what is defamatory in China, it is believed that defamatory statements must have the effect of lowering society’s or the community’s esteem for the plaintiff.

Another point worth noting is that the 1993 Answers permit close relatives to bring defamation suits on behalf of deceased individuals.

Neither the General Principle nor the interpretations of SPC distinguish between a public and a private figure.

The Tort Liability Law

In 2010, China enacted the Tort Liability Law of the People’s Republic of China (Tort Liability Law). Since that time, defamation has been formally recognized as a tort. Under the Tort Liability Law, the right to reputation, the right to honor and the right to privacy fall within the definition of “civil rights and interests” and anyone who infringes on the civil rights and interests of another person must bear tort liability.

Remedy

The remedy for harm to reputation of a person includes cessation of the infringing act, restoration of reputation, elimination of the effects of the infringing act, an apology and compensation (which, under the Tort Liability Law, includes compensation for mental harm).

Criminal Defamation

Defamation can be a criminal offense in China. Under Article 246 of the Criminal Law of the People’s Republic of China (Criminal Law), enacted in 1997, states:

Whoever, by violence or other methods, publicly humiliates another person or invents stories to defame him, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

The crime mentioned in the preceding paragraph shall be handled only upon complaint, except where serious harm is done to public order or to the interests of the State.

The Criminal Law has not defined what constitutes “serious” circumstances (but see the Joint Interpretation discussed below).

Note that, under Article 246, State agencies normally do not take an active role in enforcing criminal defamation law and will act only upon complaint by the victim and when public order or other State interests are threatened. Note also that humiliation alone can be sufficient ground for criminal liability.

Private Prosecution of Criminal Defamation; Administrative Action

The second paragraph of Article 246 shows one peculiar aspect of Chinese criminal justice system: in China there are a handful of crimes, including criminal defamation, with respect to which private citizens can bring an enforcement action in the criminal courts, i.e., private prosecution (so-called to distinguish it from prosecution by public law enforcement agencies).

If a person commits criminal defamation, but the circumstances do not rise to the “serious” level that warrants public prosecution and the victim does not come forth to “prosecute” the offender, then the Public Security Bureau may take action under the Law of the People’s Republic of China on Penalties for Administration of Public Security (LAPS).

Under Article 42 of LAPS, openly humiliating another person or slandering another person by fabricating stories, among other offenses, is punishable (i) by detention of up to five days or by fine of up to RMB 500, or (ii) if the circumstances “relatively serious,” by detention of more than five but no more than ten days and possibly a fine of up to RMB 500 in addition to the detention. LAPS has not defined what “relatively serious” mean.

Directive and Guideline

In 2009, the Ministry of Public Security issued its Directive, which requires that public security agencies nationwide treat criminal defamation cases with the utmost care. To avoid the abuse of power by local police, the Directive requires local police to know the exact circumstances under which public prosecution is permitted and has to seek approval from a public security agency of a higher level before investigation or making any arrest.

In 2010, the Supreme People’s Procuratorate (SPP) issued guidelines to clarify that handling of criminal defamation cases by local procurators are subject to strict scrutiny and control. The guidelines include:

- Local procurators must fully understand what constitutes the offence of criminal defamation.
- Procurators should distinguish clearly between when private or public prosecution may occur.
- Upon application for any arrest warrant by the police in criminal defamation cases, procurators must obtain approval from a higher-level procuratorate before issuing such warrant.

Defamation via the Internet

While the Internet is a channel for the public to gather and disseminate information, to speak their minds and to expose wrongdoings by local public officials, it also can be an easy means to spread inaccurate and false information. In September 2013, the SPC and the SPP jointly issued a new guideline, the *Interpretation of The Supreme People's Court and The Supreme People's Procuratorate on Issues Pertaining to Application of Laws in Handling Criminal Cases of Using The Internet to Defame Etc.* (Joint Interpretation). The Joint Interpretation sets forth the criteria for convicting and sentencing offenders who use information networks to defame, among other things. "Information networks" includes the Internet, broadcasting networks, wired communication networks, mobile communication networks that use electronic devices such as computer, television, wired telephone and mobile as terminals, and local area networks to which the public has access.

The Joint Interpretation specifies that any of the following constitutes "fabricating stories to defame others" within the meaning of Article 246 of the Criminal Law:

1. Fabricating defamatory stories and spreading, or organizing or directing others to spread, the fabricating stories on the Internet;
2. Tampering with online information concerning others to fabricate stories to harm the reputation of others, and spreading, or organizing or directing others to spread, the fabricating stories on the Internet; or
3. Knowingly posting fabricated defamatory information online, if the circumstances are serious.

Thus even if a person (presumably including the platform provider) has not created the defamatory information, if the person (or platform provider) knows that the information was fabricated and is defamatory, then it may have liability if the circumstances are serious.

The Joint Interpretation provides that any of the following circumstances involving an online posting constitutes a "serious circumstance":

1. Where a piece of defamatory information has at least 5,000 clicks or been read at least 5,000 times, or has been forwarded 500 times;
2. Where the online defamatory information causes serious negative effects on the victim or his or her close relatives, such as mental disorder, self-mutilation or suicide;
3. Where the defaming offender was subject to administrative penalties for defaming others within the last two years; or
4. Other serious circumstance.

That the Joint Interpretation includes the basket clause of "other serious circumstance" leaves a huge area of uncertainty.

The SPC and SPP also enumerate in the Joint Interpretation the circumstances under which defamation via the Internet will rise to the level specified in Article 246 that requires State action. Specifically, a person who makes use of the Internet to defame shall be prosecuted by the State if such action:

- causes a mass incident;
- causes public disorder;
- causes ethnic or religious conflicts;
- results in multiple cases of libel, creating adverse social impact;
- damages the image of the State and national interests;
- causes unfavorable international repercussions; or
- otherwise causes serious harm to social order and State interests.

In a case decided earlier in 2013 before the Joint Interpretation was issued, an Internet company escaped liability by removing the allegedly offending article before trial and provided evidence that the number of clicks on the article was small enough that there was no serious impact.

Defamation Cases; Some General Remarks

China has a civil code system, so caselaw has no precedential value. Many cases are not in the public record. In addition, records of cases often do not provide a lot of factual information or include the judges' reasons for holding one way or another. However, in the hope of discerning some trend, we have reviewed more recent defamation cases involving media defendants in China that are in the public record. We are painting with a broad brush, but below are some general remarks:

- In cases where the publication is truthful, courts tend to find the publication not defamatory.
- If the publication contains inaccurate or untruthful information, if the newspaper or writer does not make a correction afterwards, the newspaper or writer tends to lose.
- If the newspaper or writer can show that it in good faith believes its sources to be reliable, the courts tend to hold for the defendant newspaper or writer.
- In a majority of the cases, the newspaper or writer is required to publish a correction and make a public apology and, in some cases, pay a modest fine. (Cases with higher penalties include: In one case where the plaintiff company was able to show economic loss, the court awarded damages in the amount of RMB 110,000. In another case, the writer of a critical essay and the magazine that published the critical essay were ordered to compensate the plaintiff's mental suffering in the amount of RMB 40,000 and RMB 100,000, respectively; the damages amounts were reduced to half of the original amounts on appeal.)
- Sometimes, even where a court has found defamation on the part of the defendant, instead of deciding what the monetary compensation should be, the court allows and even encourages the parties to negotiate for a settlement.
- Media defendants tend to do better in courts in the major cities or in the highest court of a province.

There have been cases in a district in Shanghai, principally involving Chinese soccer star plaintiffs, in which the court held that the plaintiffs, being public figures, should be more tolerant of critical comments by the media that may result in slight damage to the plaintiffs' reputation. However, these cases occurred around the period when China was trying to root out illegal or unsavory practices in professional soccer in

the country, so generally they should not be relied on by media defendants when they are sued by plaintiffs who are public figures.

In the *Wang Hong* case, an individual consumer was sued, successfully, by a Chinese computer manufacturer for defamation. Wang had issue with the computer screen and could not have it repaired; he posted criticism of the computer and service providers on the Internet; other unhappy consumers added postings. The computer manufacturer claimed sales dropped significantly and sued Wang and two magazines that reported on the postings. The lower court awarded damages for the manufacturer against Wang in the amount of RMB 500,000 and against each magazine in the amount of RMB 240,356. On appeal, the damages payable by Wang were reduced to RMB 90,000, and the assessments against the magazines were eliminated.

Since group discussion and information dissemination becomes easier with the popularization of Sina Weibo (Chinese Twitter), WeChat and other similar web platforms, there is a trend of tightening the control and supervision of the Internet publication by the Chinese government. For example, the *Decision on Improving Network Information Protection* imposes a duty on network service providers that provide website access services to require users to provide real identity information (that generally means the user's national ID card number); the *Decision* also requires network service providers to monitor and prevent illegal activities by users. This trend may affect the development of defamation practice in China, but it is difficult, if possible at all, to predict whether the law will be further tightened and whether scrutiny will be stricter.

In view of the differences in defamation law, the wide discretion vested with government agencies due to the apparent vagueness in certain provisions in the law, and stricter scrutiny of publications or discussions on the Internet, media companies operating in China should try stay abreast of the development in defamation law and generally take a more cautious attitude, especially when dealing with publication on the Internet.

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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