



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

## **Privacy & the media. Traditional and emerging protections in an online world.**

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- Privacy rights

Under Privacy right, we understand the right not to have information about a person to be disclosed to other persons without consent of the person the which the information refers to.

- Are privacy rights statutory rights or are these case-law based ?

Answer: In **China, the privacy rights are statutory rights.**

- What type of information (including pictures, sounds, etc.) would be covered by the concept of “privacy rights” in the legal system of your country ?

Answer: Privacy rights cover right of reputation, personal name, portrait and dignity of human personality.

- Would the information included in that concept, or the extent of the privacy rights, depend upon the celebrity of the person, or upon other elements? Please describe briefly.

Answer: There is no differentiation for privacy right protection between a “normal individual” and a celebrity. Article 38 of the Constitution of the People’s Republic of China-- the personal dignity of citizens of the People’s Republic of China is inviolable. Insult, libel, false accusation or false incrimination directed against citizens by any means is prohibited.

- Would privacy rights also apply in relation to legal persons (vs. physical persons) ?

Answer: Privacy rights do not apply to legal persons, but commercial confidentiality is protected by the law of the People’s Republic of China for Unfair Competition.

- Would privacy rights encompass private information made available only to some chosen persons (authorized recipients). So, for instance, can disclosure to third parties, by one of the authorized recipients of the private information, be part of the privacy rights (e.g. disclosure of private correspondence,



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private phone calls, information shared on social media, etc.)

Answer: Yes, confidential information can be made available to authorized recipients like the police and Ministry of State Security.

- Is there a specific status for “fictional use” of information related to an individual? And are disclaimers sufficient to allow such use?

Answer: No specific status exists for “fictional use”. There are no disclaimers for such use. Cases laws ruled against defendant (writer) even under the shield of “fictional use” and defendant can be sued if a judge finds that the fiction can be easily connected to the plaintiff (the live person) by readers familiar with the plaintiff.

- Freedom of speech

- Is there a on the one hand a statutory/ treaty based freedom or constitutional recognition of “Freedom of speech” or on the other hand is that freedom based on case-law.

Answer: There is a statutory recognition based on freedom of speech in the Constitution in China.

- If it is a statutory/treaty/ constitution based freedom is it based on domestic or supranational law?

Answer: It is a supranational law - the Constitution of the People’s Republic of China.

- Describe the main characteristics of the “freedom of speech” as recognized in your jurisdiction:
  - beneficiaries;

Answer: Citizens.

- extent of the freedom of speech;

Answer: Article 35, Chapter II of the Fundamental Rights and Duties of Citizens, Constitution—Citizens of the People’s



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Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

- exceptions;

Answer:

- Opposition to the fundamental principles of the Constitution established;
- Jeopardizing the national unity, sovereignty and territorial integrity;
- Endangering national security, honor and interests;
- Provoking ethnic separatism, against the minority customs, undermining national unity;
- Revealing state secrets;
- Promoting pornography, superstition or violence, crimes against public morality and the nation's outstanding cultural traditions;
- Insult or slander others; and
- Other content which prohibited by laws and regulations.

- specific status for press (including online press)?

Answer: Article 35, Chapter II of the Fundamental Rights and Duties of Citizens, Constitution—Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

- Hierarchy between Freedom of Speech on one side and privacy rights on the other side.
- Under the law applicable in your jurisdiction, is there a clear hierarchy between freedom of speech on the one hand and privacy rights on the other?

Answer: There is no clear hierarchy.

- What would be the most significant criteria allowing freedom of speech or privacy rights to prevail over the other (e.g. public interest argument)?

Answer: Privacy rights do not prevail over public interest. Article



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40 of the Constitution of the People's Republic of China-- Freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law. No organization or individual may, on any ground, infringe citizens' freedom and privacy, except in cases of state security at stake. Criminal investigation, public security or authorities are permitted to censor correspondence in accordance with procedures stated in law.

- Remedies available in your jurisdiction to protect individuals against disclosure of information belonging to their privacy
- Are there pre-emptive remedies to avoid disclosure of such information before disclosure occurs ? Describe briefly the main remedies available.

Answer: General Principles of the Civil Law of the People's Republic of China -- Article 101 Citizens and legal persons shall enjoy the right of reputation. The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited. Article 102 Citizens and legal persons shall enjoy the right of honour.

- Are "gagging orders" or "super injunctions" as known in the UK known under the legal system of your country? Describe briefly their main characteristics.

Answer: There is no such rule as "gagging orders" in China.

- Are there other post-disclosure remedies, such as for example damage claims, rectification claims, right of answer. Describe shortly

Answer:

1) "The Supreme People's Court commented on the implementation of <General Principles of the Civil Law of the People's Republic of China as follows:" Article 160 states: "to state privacy issues regarding others in writing, oral and other forms or making up facts to openly damage others personality, as well as insult or slander to damage the reputation of others, is illegal";



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2) The Supreme People's Court commented on trials regarding defamation cases- "without consent, unauthorized material publishing privacy facts about others, in writing, oral or by other means damaging the reputation of others is an infringement of the right of reputation."

- In the case of damages, how are they calculated ?

Answer: The Supreme People's Court stated how to calculate damages related to tort causing mental damages quoted. For compensation of pure psychological and emotional distress of the victim, the judge will consider: a) the degree of fault of the offender; b) the damage caused to the victim; and c) financial conditions of both parties.

- In case of disclosure of private information, who can be held liable for damages, especially online?

Answer: The web service provider and the web user can be held liable.

- Are there special defences to a cause of action for information disclosed by the press/ media?

Answer: There are no special defences to a cause of action for information disclosed by the press/media.

- As part of your answer please explain what is the range of news information organisations is covered by the definitions press/media?

Answer: Newspapers, web search engines, web sites, Blogs, Wei bo, WeChat, TV, magazines, radio, internet, intranet and gatherings.

- Is there sa specific protection offered to informants/sources?

Answer: No specific protection are offered to informants / sources.

- Are the principles described in your answers above also applicable to the



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online world? Is there any specific case-law in your country relating to social media, and if so please summarise this?

Answer: The above principles also apply to online publication causing damages to the reputation of an individual or disclosing unlawfully private facts. There is no specific case-law on online infringements of those rights yet in China regarding the above principles.

- Are there **specific remedies against disclosure of** information that (could) damage an individual reputation (such as slander or libel) ? Describe these remedies briefly.

Answer: Yes, there are,

1) **Stop the infringement for ongoing infringement. The victim can request to stop the infringement;**

2) **Apologize** in the media;

3) **Compensate** for the loss. Compensation for privacy disclosure requires two thresholds —

a) the victim suffered moral damage; and

b) the victim's privacy has been violated and property compensation is required.

- Forum and applicable law
- Describe shortly what rules exist in your jurisdiction for the determination of the forum and the applicable law.

Answer: Legal proceedings should take place in court of the city where the location of the tort / infringement occurred. The people's court handles this type of legal issues. The right location could also be where computer terminals used for infringing rights are physically located or where the infringing party is domiciled

- Are there specific rules for breaches caused online (when the information is accessible from different jurisdictions) ?

Answer: There is no specific rule.



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- From your experience, what reforms should be made to the legal system of your country to better protect individual privacy, if any ?

Answer: Law to protect the informant should be enacted. The right to Know should be at the constitution level, full execution of the freedom of speech and government transparency shall be more regulated.

- Interplay between data protection rules and privacy rights
- Summarise how does data protection law in your jurisdiction protects privacy or other personal data being used in online media? Answer: There is no data protection law/act in China.
- Is there an effective a right of opposition to collection of data?

Answer: There is no effective right of opposition to collection of data, especially if the collection of data is required by the government.

- Right to be forgotten
- Is there a statutory or case-law based “right to be forgotten” in your jurisdiction (whether under domestic or supranational law) ? Describe it briefly.  
  
Answer: Except the right of privacy, there is no such statutory or case-law based “right to be forgotten”.
- Is there relevant case law in your jurisdiction regarding the right to be forgotten and/or are there other guidelines (whether under domestic or supranational legal procedure) for a successful claim under the “right to be forgotten”.  
  
Answer: There is no relevant case law in China regarding the right to be forgotten.
- Did the view on the right to be forgotten change in your jurisdiction due to the European Court of Justice Case in Google Spain v. AEPD and González (C-131/12)? Is there any case law arising from this decision in your jurisdiction?





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Answer: This case didn't impact Chinese court nor bring more caselaw.

- Are there other aspects to take into consideration in your jurisdiction in relation to freedom of speech, the privacy right and the right to be forgotten?

Answer: PRC regulation regarding freedom of speech on the Internet is not applied extraterritorially. As a practical matter, however, all Internet traffic in China is monitored by and subject to interruption by the PRC authorities at any point of time. China regulates the Internet through its control over value-added telecommunications service providers whose operations or servers are located in the PRC. China requires approval, licenses, permits, inspection and reporting obligations on Internet content and service providers in the PRC and VAT business.