Study on the Exemption Causes of We-media Infringement of Reputation Rights Under the Rubric of China's First Civil Code

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Abstract: Compared with traditional media, the we-media is unique in several respects. It’s more popular than traditional media and has a lower entry threshold; it’s much more interactive and has wider influence. Based on these characteristics, the cases of reputation infringement on we-media are quite different from those of traditional media. In Chinese judicial practice, courts usually distinguish we-media from professional media. In we-media reputation disputes, the courts have been more tolerant of an actor’s freedom of speech, but, at the same time, they believe that opinion leaders should have a stricter duty of care when making speeches on we-media platforms. According to relevant legislation and theories, subjects of we-media infringement include ”network information content producers”, ”network information content users”, and ”network information content platforms”. Different exemption causes are applied to these three. The exemption of we-media infringement is mainly based on the relevant provisions of network infringement and media infringement.

Keywords: Exemption causes; refringement; reputation rights; we-media; Civil Code.

1. Introduction

With the advent of the we-media era, everyone can become an information disseminator. This communication mode enhances social communication and exchanges, promotes the sharing of information resources, and provides convenience for citizens to pay attention to public affairs. However, due to the individuation and arbitrariness of we-media and the lack of corresponding regulations, infringement of we-media occurs frequently. The ”we-media infringement” referred to in this article refers to the act of users who post speech or reprint information on the we-media platform, thereby infringing on the personality rights of other citizens and legal persons. In reality, we-media infringements mainly include infringements of reputation rights, privacy rights, and copyrights. Reputation rights infringement cases are the most common.

An exemption cause is a reason put forward by the defendant to prove that the plaintiff’s claim is not tenable.¹ The fundamental reason for exemption causes of we-media infringement is to protect freedom of speech and public interests. When an act of disseminating information causes harm to others, if it is conducive to freedom of speech and public interest, it is not illegal.² The exemption causes of we-media reputation disputes have three functions. First, the value of exemption causes lies in the right to resist tort claims, thus avoiding tort liability. Second, it can be a supplement to the lack of we-media legislation and protect the freedom of speech of we-media. There is no news law regulating the media in China, so it is difficult to accurately define the tort of the news media. By studying the exemptions of we-media infringement, we can regulate the information content of we-media and give full play to its information dissemination function. Third, through exemption causes, the plaintiff can know whether his rights are violated and whether he can win the lawsuit.

Under the rubric of the implementation of China's first Civil Code (January 1, 2021), combined with the relevant provisions of the tort liability section and the personality rights section of the Code, this paper studies the exemption causes of we-media's infringement of reputation right. First, the author will make an empirical analysis of the trial practice of we-media infringing reputation rights, sort out the characteristics of trial practice, and put forward the practical problems of China's we-media infringement of reputation rights. Second, combined with specific cases and theories, as well as the provisions of the tort liability part of the Civil Code, the author will summarize the general exemption causes and special exemption causes and discuss the exemption causes that can be used by different actors. Finally, the author will analyze the provisions of media infringement in the personality rights section of the Civil Code, and discuss how to better apply the provisions on ”news reporting” and ”supervision over public opinions” in the Code to we-media.

2. Judicial Practice of We-media Infringement of Reputation Rights in China

We-media infringement is a kind of network infringement. Article 1194 of China's Civil Code stipulates that network users and network service providers are the subjects of network infringement. In judicial practice, the subject of we-media infringement may be the infringing content producer, the infringing content user, or the network information content platform. The infringement of reputation rights on the we-media platform usually has a wide range of consequences. The social evaluation of the victim already has been negatively affected, even if he wins his lawsuit later. Compared with traditional cases over reputation rights, the
cases of we-media infringement of reputation rights each has their characteristics.

2.1 Statistical Analysis of Cases over We-media Infringement of Reputation Rights

According to the 47th "Statistical Report on the Development of Internet in China," released by the China Internet Network Information Center (CNNIC), in December 2020, the internet penetration rate in China was 70.4 per cent, with 989 million netizens and 986 million mobile netizens, that is, 97.7 per cent of netizens surf the internet through mobile phones. The development of the internet has brought earth-shattering changes to people's lives. We-media has become one of the main ways for people to obtain information and express opinions. The survey also showed that during the worst period of the COVID-19 epidemic, from January to March 2020, people mainly used Weibo, a we-media platform, to quickly get the latest news. The daily number of unique devices on Weibo increased from 21.05 million on 20 January 2020 to 22.28 million on 6 February 2020, its highest level during the COVID-19 pandemic. However, while enjoying the convenience brought by we-media, the risk of infringement of reputation rights is very real.

As of 11 March 2021, the author had retrieved 4273 judgment documents from the Judicial Case Database of the Pkulaw.cn with the keyword "we-media", including 2325 civil judgment documents. Among the 719 judgment documents based on personality rights disputes, 622 judgment documents were related to reputation disputes, accounting for 86.51 per cent of the judgment documents related to personality rights disputes. Since the case of the Beijing Kingsoft Security Software Co., Ltd. v. Zhou Hongyi in 2011, the number of judgment documents concerning we-media infringement of reputation rights has shown a significant upward trend. See Table 1.

Table 1: Number of judgment documents related to we-media infringement of reputation from 2011 to 2021

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
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<tbody>
<tr>
<td>2011</td>
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<td>2020</td>
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<tr>
<td>2021</td>
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As can be seen, the growth trend in the number of cases of we-media reputation infringement is positively correlated with the development of the mobile internet. The growth rate in 2014 was the highest compared to the previous year, it decreased slightly in 2015, and peaked in 2019, an increase of 35.4 percent compared with 2018. The increase in the number of reputation right dispute cases reflected the heightening public awareness of the right of reputation and of the need to safeguard rights under the network environment. It also has illustrated that in the era of rapid development of the digital economy, the iteration and functional optimization of network products has provided a convenient platform for users to express their opinions. Similarly, the speed of the growth of network communication also offers convenient conditions for the infringement of reputation rights.

Among the 622 judicial documents, 446 were in eastern China, 89 in western China, 68 in central China, and 19 in northeast China. Beijing has had the largest number of judgment documents (226), followed by Shanghai (50), Guangdong Province (47), Jiangsu Province (45), Henan Province (29), and Shandong Province (26). No retrieval data were found on Tibet and Qinghai. As shown in Table 2-2, Eastern China, which has a high level of economic development, has the most cases of we-media reputation infringement, more than 70 per cent of the total.

Table 2: Regional distribution of cases over we-media infringement of reputation

<table>
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<th>Region</th>
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<td>Eastern China</td>
<td>446</td>
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<td>Total</td>
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Five of the 622 judgments were made by the High People’s Courts, 217 by the Intermediate People's Courts, 388 by the Basic People's Courts, and 5 by the Internet Courts. The distribution of judgment results is shown in Figure 2-1. In the first instance, 307 cases (49.4 percent) were fully or partially upheld, and 81 cases (13 percent) were rejected. In the second instance, 159 cases (25.6 percent) were upheld and 26 cases (4.2 percent) were reversed. It can be seen that courts have been generally supportive of cases over reputation infringement on we-media platforms.

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Figure 1: Statistics of judgment results of we-media infringement of reputation

2.2 Characteristics of Infringement of Reputation Cases over We-media

2.2.1 Infringement is Difficult to Verify

According to the division of economic zones by the National Bureau of Statistics: the 10 eastern provinces and municipalities include Beijing, Tianjin, Hebei, Shanghai, Jiangsu, Zhejiang, Fujian, Shandong, Guangdong, and Hainan; The six central provinces include Shanxi, Anhui, Jiangxi, Henan, Hubei, and Hunan; The 12 western provinces (autonomous regions and cities) include Inner Mongolia, Guangxi, Chongqing, Sichuan, Guizhou, Yunnan, Tibet, Shaanxi, Gansu, Qinghai, Ningxia, and Xinjiang; The three northeastern provinces include Liaoning, Jilin, and Heilongjiang. See http://www.stats.gov.cn/tjzc/ztdh/1hfw/2021/rdw/t20210225_1814031.html (visited 20 Aug 2021).
Registering an account on a network platform is very convenient. Users can register accounts with mobile phones, emails, etc. At the beginning of the rise of we-media, the real-name system had not been implemented, which made it difficult to hold the infringement subjects accountable in cyberspace. When the real-name system was gradually popularized, and all network platforms carried out real-name authentication for new users, though real-name authentication was not mandatory for previously registered users. In addition, it has also often difficult to verify the place where the original infringement occurred, which makes it easier to infringe on we-media. These reasons make the action subject can carry out the tort more recklessly. For example, from August 2013 to June 2016, Beijing third intermediate people's Court concluded 116 second instance cases of reputation disputes, including 70 cases of online reputation right infringement, accounting for 60.34 per cent of the total number of cases, and 22 cases of traditional media reputation infringement, accounting for 18.97 per cent of the total number of cases. 7

2.2.2. Supervision Function of the Platform is Weakened

In traditional media, information service providers (ISP) were able to prevent damage through prior review, but we-media does not have this review mechanism. On we-media platform, if the information released by the user is an infringement, that information will have been seen by all followers at the moment it is released, and damages begin. In addition, without human or material resources, it has been difficult for we-media to fulfill the obligation of reasonable review of information. When it is difficult for platforms to undertake advanced supervision, the protection of victims is delayed.

In addition, with the development of mobile payment systems, many works saved on we-media platforms are the private property of users. Users obtain property benefits from followers through functions such as "reward" and "like". The private property of users is not to be infringed by any organization or individual, including platforms. According to this theory, platforms can only be network storage service providers, not supervisors of network behavior.

2.2.3 The Consequences of Damage May Become More Serious

As information technology is increasingly used in daily life, we-media has gradually become closely related to the human spirit and emotion. Reputation infringement on we-media can cause great mental suffering to the victim, and the mental damage caused by online violence is more serious than ordinary mental damage. Because it is very convenient to copy and forward on we-media, the damages that result from infringement are persistent and have been expanding. This persistence and infinite expansion are two unique characteristics that distinguish we-media infringement from other types of infringement.

Under the current legal system, when the victim brings a lawsuit to the court because of the infringement of his reputation right, the damages may have already reached an irreparable level. Furthermore, in the course of litigation, the damage will continue to intensify. In some of these cases involving infringement of reputation rights, the victim has already suffered negative social evaluation before the court has ruled that the action constitutes an infringement. The result is the "social death" of the victim. It can be seen that the damage result caused by we-media infringement is persistent, delayed, and infinitely expanding. 5

3. Exemption Causes for Different Action Subjects in We-media Reputation Right Disputes

Unlike the traditional one-way mode of information dissemination, the subjects of information dissemination on we-media are more diverse, play different roles, and assume different responsibilities. The types of legal action subjects in we-media reputation right disputes should be divided and their respective exemption causes should be stipulated. On 15 December 2019, Cyberspace Administration of China issued the "Provisions on Ecological Governance of Network Information Content", which divided the subjects involved in information transmission on we-media into "network information content producers", "network information content platforms," and "network information content users". 3 These divisions are the basis for the classification for detailing the exemptions of various subjects.

3.1 Exemption Causes for Network Information Content Producers

Content is the core of the development of we-media. According to different producers, the content production mechanism of we-media can be divided into "professional production mechanisms" 10, "user production mechanisms" 11 and "intelligent production mechanisms" 12. If the information released by the information content producer damages the interests of others, the producer is the subject of the infringement. In judicial practice, information content producers mainly use the following exemptions to defend themselves.


10Professional production mechanism can be subdivided into professional generated content (PGC) and occupational generated content (OGC). Such content producers have strong professionalism, but the timeliness of content is not strong. They are the mainstream production mode of top-level self-Media content.

11User generated content (UGC), that is, amateurs without professional knowledge or relevant professional background produce and disseminate for the purpose of sharing. It is characterized by a zero threshold for strong interaction and timeliness.

12Machine generated content (MGC), through new technologies such as image recognition and video recognition, the machine can understand the information content and judge its news value, and intelligently generate articles based on big data algorithms. At present, it is applied in some professional we media and has not been popularized.
First, freedom of speech and supervision by public opinion. The case over we-media infringing of reputation right is a competition between personal reputation and freedom of speech. Article 35 of China's constitution stipulates that citizens enjoy the right to freedom of speech. While fully guaranteeing citizens' freedom of speech, Article 51 of the Constitution also stipulates restrictions on freedom of speech. Through decentralization, we-media has provided a platform for the public to express their views, promoted the public's active attention to public affairs, and helped to strengthen the public's awareness of rights. In judicial practice, content producers often take freedom of speech as an exemption, mainly because the constitution protects freedom of speech as a basic right. The development of we-media has promoted the rapid development of public opinion supervision, and citizens consciously or unconsciously join in the administrative supervision and judicial supervision by actively participating in the discussion of public issues. In we-media infringement cases, the defendant often takes the supervision of public opinion as the exemption cause.

Second, objective evaluation. Objective evaluation does not mean positive evaluation, but a reasonable evaluation based on objective facts. In the cases over news media infringing on reputation, fair comment is a common exemption, it is quite strict and not feasible to require we-media to make completely non-emotional comment. In the network environment, in addition to the traditional forms of comment on news events, such as editorial, column comment, editor's note, there are also new forms represented by microblog comment, video comment, follow-up post, bullet screen, etc. The comments made by content producers on a we-media platform are often not serious, but rather entertaining. Therefore, as long as the evaluation does not distort and fabricate facts and does not use insulting words to belittle others' reputations, it can be used as an exemption of reputation infringement.

Third, a name is fraudulently used by others. To regulate the Internet industry, in recent years, the Chinese government has gradually implemented the real-name system of user registration, and successively issued relevant regulations such as "Provisions on the Administration of Account Names of Internet Users" and "Provisions on the Administration of Internet User Public Account Information Services". "Fraudulently used by others" is a specific manifestation of "Fault of the third Part", a common exemption in tort law in the field of we-media infringement. When a third party violates the right of reputation in the name of a person, if that person takes timely measures to prevent the expansion of the damage, he can be exempted from the corresponding tort liability. For example, in the case of Xu Dawen v. Song Zude infringing on the right of reputation, Song Zude argued that "others falsely uploaded blog posts in his name" as an exemption ground. The court held that Song Zude did not provide enough corresponding evidence and did not take timely measures to stop the expansion of the result, which constituted a reputation infringement.

3.2 Exemption Causes for Network Information Content Users

First, only reprints were carried out. A convenient reprint function is one of the remarkable features of we-media. There are different opinions in different industries on whether the reprinted actors need to bear responsibility when their work has been reprinted. In the media, the general opinion holds that many on we-media still do not have the internet information service license required by the state, and do not have the right to news gather. It has become the industry practice for we-media to maintain operation by reposting information, and that this reprinting behavior should be exempted from liability. The view in legal circles is as follows:

Reprinters are exempt from liability. For the sake of improving the efficiency of information dissemination, the reprinted information has been reviewed by the media that originally published it, and the reprinted media does not need to review the content of the information again.\textsuperscript{14}

The act of reprinting constitutes secondary transmission, and the actor who reprints needs to bear responsibility. The secondary dissemination expands the scope of influence of the information, and the reprinter is at fault for the occurrence of the damage and should bear the same responsibility as the first media.\textsuperscript{15}

Reprinters bear the reduced responsibility. The reprinters do not have the same verification conditions as the first media, so they bear less responsibility.\textsuperscript{16}

In China's judicial practice, intentional reprinting of infringing information results in liability, while negligent reprinting of infringing information can be exempted or mitigated. Moreover, if we-media only reprints news without making substantive changes to the original news content, the court will not require the reprint to bear the same tort liability as the first media.\textsuperscript{17} The author believes that if the content user is not at fault, he can use "only reply was carried out" as the exemption cause.

Second, reasonable quotation. "Reasonable quotation" is common in copyright disputes. In reputation disputes, the premise of "reasonable quotation" as an exemption is that the information content users do not subjectively have malice. Information that can be reasonably quoted includes two types: information from authoritative sources and information that has been publicly reported. The reason why information from authoritative sources can be reasonably quoted is that the authoritative organization itself has higher social credibility and a better ability to verify facts. Therefore, even if the information released by the authoritative organization is wrong, the user of the information content does not need to bear the responsibility. If there is no obvious false fact or insulting or defamatory content in the quoted news that has

\textsuperscript{14}Yang Xiuqiao, “The influence of reprint from the Perspective of butterfly Effect” (2009)9 News Front 16-18.


\textsuperscript{16}Ma Ping, “Reprint media do not have to bear the same verification responsibility as the original media” (2009)4 News Reporter 6466.

\textsuperscript{17}Cao Xiaojian; Mao Mingchu, "Exemption or Punishment? - Thinking About the Network Reproduced and Whether to Assume the Responsibility of the Infringement of the Right of Reputation" (2016)5 Journal of Shaanxi Normal University(Philosophy and Social Sciences Edition) 169.
been publicly reported, and the user does not tamper with its content when quoting it, the user is exempted from liability.

Third, the duty of care has been fulfilled. The duty of care of information content users includes the general duty of care and higher standard duty of care. After reprinting information, if the information content user can prove that he has no subjective malice and has fulfilled the general duty of care during reprinting, the information content user can be exempted from liability. A higher standard duty of care mainly applies to opinion leaders as users of information content. Once opinion leaders register accounts on we-media platforms, these we-media platforms will attract a large number of fans, and the information released by opinion leaders has a broad social impact. Since the behavior of opinion leaders has a broad social impact, opinion leaders have a higher standard duty of care when forwarding information.

3.3 Exemption Causes for Network Information Content Platforms

Article 1195 of the Civil Code and Article 21-23 of the "Regulation on the Protection of the Right to Communicate Works to the Public over Information Networks" (Hereinafter, the regulation) stipulate the exemption causes for network information content platforms. In judicial practice, platforms are commonly exempted from liability in the following cases:

First, technology neutrality. "The regulation" stipulates that platforms that only implement automatic storage behaviors without changing the content of the transmitted works and without changing the service object shall be exempted from compensation liability. Although "the regulation" is only applicable for the protection of the information network transmission right in copyright law, it can provide a reference for the exemption of reputation infringement. Taking "technology neutrality" as an exemption helps platforms focus on optimizing technical services. In the case of Sammianxiang Company v Thunder Company18, Thunder Company defended that its download service was to improve the efficiency of network resource transmission and improve user experience. The court supported Thunder Company's defense and ruled that it did not bear tort liability. In contrast, in the QVOD case20, the QVOD company proposed "technology neutrality" as the ground for exemption, but the court held that the QVOD company not only provided technology, but also committed the criminal act of disseminating pornographic articles through technical means, so "technology neutrality" could not be the ground for exemption. The use of "technology neutrality" as an exemption cause is only useful if the network service provider only provides information transmission services.

Second, the duty of reasonable care has been fulfilled. Article 1197 of the Civil Code stipulates that the subjective constitutive elements of platforms are "know or should know". "Should know" means that if the platforms have fulfilled their duty of care, they are not liable for the reputation infringement of we-media. In the author's opinion, regarding the information in the we-media platform, the duty of care of platforms is limited to formal review. Due to the massive amount of information on the Internet, platforms cannot be required to conduct a comprehensive and in-depth review of the content of we-media information. If the standards of review are too high, the standard of review obligations will infringe on the public's freedom of speech. Mitigation or exemption may be granted if the platform reviews and takes appropriate action within a reasonable time.

Third, safe harbor rule. If the user employs the network service to infringe, the right holder, whose right of reputation has been infringed upon, has the right to notify the platform to take necessary remedies such as deleting, blocking, and disconnecting the link. Furthermore, the platform will not be liable for compensation if the platform is not at fault and takes necessary remedies promptly. The safe harbor rule was originally stipulated in article 36(2) of Tort Liability Law, which was modified and improved in Article 1195 and Article 1196 of the Civil Code. The perfection of the "safe harbor rule" in the Civil Code is reflected in the following:

Article 1195(1) of the Civil Code stipulates the content of the notice sent by the right holder to the platform, which should include preliminary evidence and the true identity information of the right holder. This provision is conducive to platforms that help the right holders to protect their rights in a targeted manner, reduce the possibility of the right holders submitting false evidence materials, and at the same time to hold the right holders responsible for wrong notifications, and prevent the legitimate interests of network users from being harmed by malicious notifications. However, in practice, when the right of reputation is infringed, most we-media platforms do not publish their contact information or provide links to contact their staff. How to timely notify we media platform and how to seek effective relief path are urgent problems to be solved.

Article 1195(2) and Article 1196 of the Civil Code stipulate the platform's obligation to forward the notice of rights protection. According to these provisions of the Civil Code, a platform should promptly forward the notice of rights protection to the relevant network user, and take reasonable and necessary remedies after a preliminary examination of the evidence to limit the re-dissemination of relevant information. After receiving the forwarded notice, the network user may submit a statement of non-existence of tort to the platform. The statement must include the prima facie evidence of the non-existence of tort and the true identity information of the network user. After receiving the statement, the platform shall forward the statement to the right holder who issued the notice and notify him that he may complain to the relevant authority or institute an action in a people's court. If the platform fails to receive, within a reasonable period after the forwarded statement reaches the right holder, a notice from the right holder that he has complained or instituted an action, it shall, on time, terminate the remedies taken.

19See the case of Shenzhen Thunder Network Technology Co., Ltd. v Beijing Sammianxiang Copyright Agency Co., Ltd. for the dispute over infringement of information network communication rights, Tianjin No. 1 Intermediate People's Court Civil Judgment, 2017.
20See the Case of Shenzhen QVOD Technology Co., LTD., Wang Xin and others spreading obscene materials for profit, Beijing No. 1 Intermediate People's Court Criminal Judgment, 2016.
Article 1195(3) of the Civil Code stipulates the legal liability of the right holder for a notification error. In practice, there may be cases where some competitors of the platform maliciously issue Rights Protection notices, which not only damages the legitimate interests of network users but also hinders the healthy development of the Internet economy. Based on this, Article 1195(3) of the Civil Code has regulated the abuse of the right of notification.

Through the above provisions, the Civil Code has established a set of temporary relief procedures for network infringement, as shown in Figure 2. If the platform is not at fault and has fulfilled its obligation to forward the notice and take necessary remedies, it can be exempted from liability.

![Figure 2: Temporary relief procedures for network infringement](image)

4. How to Understand the Exemption Causes in the Part of Personality Rights of the Civil Code?

After more than 100 years of development, common law countries have formed a complete defense system of reputation tort. In the era of accelerated development of web-media, this system can still be interpreted and applied. The development history of China’s reputation rights protection system is not long. On October 1, 2020, the first Civil Code of the People’s Republic of China came into effect. The interpretation and application of relevant provisions still need to be clarified in future judicial practice.

4.1 Exclusions of Exemption - Understanding of Article 1025 of the Civil Code

Article 1025 of the Civil Code is about the special protection given news reporting and public opinion supervision. The protection of news reporting and public opinion supervision is related to the development of national journalism. The healthy development of journalism is conducive to the realization of social public interests and the protection of citizens' rights. Excessive restrictions on media development may have a chilling effect, which is not conducive to social development and progress.

Article 1025 of the Civil Code stipulates that "the actor who carries out news reporting and public opinion supervision" is the subject of infringement. The scope of "actors" should include the traditional media as stipulated in "Measures for the Administration of Press Cards" and the new media as stipulated in "Provisions for the Administration of Internet News Information Services".

Although Article 1025 provides for "news reporting, supervision over public opinions for public interests" as the exemption grounds for reputation infringements, it also stipulates three circumstances that cannot be exempted.

Fabricating and distorting the facts. Objectivity and authenticity are the basic principles of news reporting and public opinion supervision, and the actor should ensure that the content of the report is objective and true. Article 5 of "Interpretation of the Supreme People's Court on Several Issues about the Trial of Cases Concerning the Right of Reputation" stipulates that if the actor insults another's reputation in the name of accusation, the other person has the right to bring a lawsuit to the court. Article 9 of the judicial interpretation stipulates that if consumers slander or defame the reputation of others, it constitutes an infringement of reputation; if the main content of the news unit’s comments is inaccurate and causes damage to the reputation of others, it constitutes an infringement of reputation. The part of personality right of the Civil Code absorbs and draws on the relevant provisions of the judicial interpretation, and improves it, which expands the scope of actors and is more suitable for the development of modern society. Although we-media is not subject to the same strict supervision as traditional news media, it still needs to ensure the authenticity of editing activities and hold press cards. The term “new agencies” as mentioned in these Measures refers to domestic newspaper publishing entities, news periodical publishing entities, news agencies, broadcasting stations, TV stations, newsreel film studios and other entities that engage in news gathering and editing business, which are legally established upon the approval of the relevant administrative departments of the state. The newspaper and news periodical publishing entities shall be determined by the administrative department of press and publication under the State Council; and the determination of radio, film and TV news agencies shall be subject to the relevant approval documents of the administrative department of radio, film and television under the State Council.

According to the regulations on the administration of internet news and information services, media with "class I qualification" can engage in news editing and publishing, and media with "class II qualification" can only reprint the news released by the former. See Wei Yongzheng, “The Subject of ‘News reporting’ in the Civil Code” (2020) 19 Youth Reporter 71-74.

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Article 5 of the "Interpretation of the Supreme People's Court on Several Issues about the Trial of Cases Concerning the Right of Reputation" stipulates: "Where a citizen impeaches or accuses the illegal act or wrongdoing of another person to the relevant authority, if the other person files a lawsuit with a people's court for the reason that his right of reputation is infringed on, the people's court will not accept the case. Where a citizen insults or slanders another person by resorting to impeachment or accusation and thus causes damage to the right of reputation of that person, if the other person files a lawsuit with a people's court for the reason that his right of reputation is infringed on, the people's court shall accept the case.

Article 9 of the "Interpretation of the Supreme People's Court on Several Issues about the Trial of Cases Concerning the Right of Reputation" stipulates: "Where a consumer criticizes or comments on the quality of products or services of a producer, operator or seller, it will not constitute an infringement on the right of reputation of another person, unless the consumer makes this opportunity to slander or defame the reputation of another person."
of the content it disseminates and shall not fabricate or distort facts.

The “obligation of reasonable verification” is not fulfilled for completely untrue content provided by others. The actor who manages news reports and public opinion supervision is obligated to fulfill the reasonable verification of facts and ensure that the content of the information is as true as possible. Depending on the content to be disseminated, the strictness of the "obligation of reasonable verification" may be different. On the one hand, if the untrue content does not substantially affect the right holder's social evaluation, the actor does not need to bear tort liability. On the other hand, for unimportant content provided by others, even if the actor fails to fulfill the obligation of reasonable verification, in principle, he will not bear tort liability. Regarding how to determine whether the actor has fulfilled the obligation of reasonable verification, Article 1026 of the Civil Code stipulates several considerations, such as "the credibility of the source", "whether necessary investigations have been conducted", "the timeliness of the content", etc.

Degrading another’s reputation with insulting words. While ensuring the truthfulness of news reports, comments need to be as fair as possible. Thus the comments made by an actor on the we-media platform must be as fair as possible. If the author uses insulting words, even if the reported content is true, it may constitute an infringement on the reputation right of others. On the we-media platforms, the comments posted by users are increasingly diversified. "Insulting words" has been explained in an expanded manner, including not only common words but also pictures, cartoons, videos, audio, and other contents with the function of expressing opinions.

4.2 The Obligation of Reasonable Verification - Understanding of Article 1026 of the Civil Code

An actor is obligated to perform reasonable verification when managing news reports and public opinion supervision for the public interest. In the era of traditional media, news organizations were deeply trusted by the public and had great influence. They were expected to undertake strict "reasonable verification obligations". In the era of we-media, however, how the actor verifies the transmitted content depends on the specific situation in which he is working. Article 1026 of the Civil Code presents the elements from which a comprehensive judgment can be made to determine whether the perpetrator has fulfilled the obligation of reasonable verification.

The credibility of the source of the content. If the source of the content has a high degree of credibility, the actor's verification obligation is relatively light. Otherwise, the author bears a more strict verification obligation. Some scholars have concluded that the sources of content with high credibility refer almost exclusively to documents issued by state agencies.26 On the we-media platform, the source of content is not limited to text, video, and audio may also be content. The actor still needs to fulfill the obligation of verification before publishing the content. For the content from non-authoritative sources, the actor has a higher duty of care.

Whether necessary investigations have been conducted on contents that are likely to cause disputes. The contents that are likely to cause dispute are also are likely to become the focus of public opinion. When faced with contents that may cause disputes, the actor needs to fulfill a higher standard of verification, and conduct investigations and verifications through on-site inspection, field visits, and other means. If the investigative methods adopted by the actor before releasing the information are unreasonable when judged by a reasonable person, it can be concluded that the actor has not fulfilled the reasonable verification obligation.

The timeliness and verifiability of the content. News reports emphasize timeliness, that is, the time from the occurrence of news events to the release of the report should be as short as possible. If information needs to be reported in a timely fashion but cannot be verified within a certain period, the actor's verification obligation is relatively light. The greater the timeliness, the lighter the verification obligation. For example, when in the case of emergencies, the reporting needs to be timely even if the actor has failed to fully verify the content, it need not be excessively criticized. In addition, if an event occurs a long time ago and is more difficult to verify than a recent event, the action subject assumes a higher standard of verification obligation.

The relevance of content, public order, and good morals. If the content published by the actor is closely related to public order and good morals, the actor has stricter reasonable verification obligations. The obligation of reasonable verification, however, should not impede the normal flow of information. If the facts related to public order and good morals need to enter the public view as soon as possible, then the obligation of reasonable verification will be correspondingly lessened due to the consideration of timeliness. Even if the published content is found to be falsified afterward, the actor who has fulfilled the obligation of reasonable verification can be exempted from liability.

The possibility of a victim's reputation being damaged. This element requires the actor to consider the consequences of his behavior when releasing information. If the reputation of another or others is more likely to be damaged, the actor has a higher standard of verification; otherwise, he should be assumed to have the verification obligation to a general degree.27

The ability and cost of verification. Due to the different scale and professional levels, media organizations have established their different information verification systems. All media should not be expected to have a professional team, and the difference in verification ability and cost makes the actor's verification obligation different. For example, the verification ability of institutional we-media is usually stronger than that of personal we-media, and the cost of verifying information content is usually higher than that for personal we-media.


Professional-level we-media that has operated stably and ordinary we-media that are still in the development stage have different verification capabilities and costs, and their verification obligations are also different. Taking into account the ability and cost of verification as elements for consideration can prevent the actor from being subject to excessive verification obligations.

5. Conclusion

The plebification, individualization, and strong interaction of self-media have contributed to its rapid development and have brought changes to the information dissemination modes. When people enjoy the convenience brought by we-media, infringements on we-media also emerge in an endless stream, along with the number of reputation disputes. Under the rubric of the implementation of the Civil Code, this research draws the following conclusions.

The fundamental cause of reputation disputes is the potential conflict between reputation and freedom of speech. Therefore, an appropriate evaluation of reputation disputes involves the weighing of different interests. We-media is different from traditional news media. The speeches published on we-media platforms are highly subjective and arbitrary, and society has become more tolerant of these speeches. Meanwhile, we-media has the role of promoting communication and carrying out public opinion supervision. Therefore, the study of the exemption causes of we-media infringement can examine the relationship between the protection of reputation rights and freedom of speech from another dimension and protect the legitimate rights of we-media users.

Although China does not have a "Media Law", it has established a system of media infringement law through relevant judicial interpretations, cases in practice, and scholars’ theories. Content authenticity and in the public interest are the two major exemptions to media infringement. In we-media reputation disputes, the actors are divided into content producers, content users, and content platforms, and their exemption reasons have been studied to clarify each of their responsibilities in different areas of information dissemination.

The Civil Code has summarized the practical results of personality rights cases, has made systematic provisions on personality rights, news reports, and public opinion supervision, and has delimited the legal boundaries for news reports and public opinion supervision. As the subjects of reputation infringement on we-media platforms are increasingly diversified, the use of the much broader term “actor” and the regulations related to that correspond to the rapid development of the communication industry, with sufficient space is reserved for subsequent legal development.