

The Legal System Construction of the Right of Response under the Civil Code System

Zhao Li^{1,a,*}

¹*Institute of Journalism and Communication, Southwest University of Political Science and Law,
Yubei District, Chongqing, China*

a. 2027045369@qq.com

**corresponding author*

Abstract: In the era of self-media, news infringement cases are frequent, and the right to respond provides a solution to balance the freedom of media expression with the interests of citizens' personality rights. The right of reply system in various countries is expanding in response to the changes in media forms, but China has not established a right of reply system. Based on Article 1028 of the Civil Code, the right of reply in the era of self-media is defined as providing relief for citizens' reputation, urging media responsibility, alleviating court pressure, and optimizing social supervision. Based on the characteristics and functions of this right, drawing from the legislative experiences of foreign countries such as Germany and the United States, further arrangements are made for China's right of reply system in terms of the subject of rights, subject of obligations, conditions for exercise, and methods of exercise, mainly limiting public power organs and their officials as the subject of rights, including self-media as the subject of obligations, distinguishing response content into facts and opinions as conditions for exercise, and choosing equal and effective response methods based on different media forms. Regulating the right of reply according to the principle of proportionality, exploring the injunctive relief system of personality rights as a remedy for the infringement of rights including the right of reply.

Keywords: right of response, news infringement, Civil Code, protection of personality rights

1. Introduction

"Media is an extension of man." [1]McLuhan believes that media enhances and amplifies the functions of human organs and senses, serving as a tool for humans to communicate with the world. Digital technology has firmly captured our attention on the daily flood of hot topics. In the digital age where everything is a medium, traditional media's cultivation of user rationality, delayed gratification, and focus is being destroyed.[2] In a society where traffic is king, aided by the duality of media, various false news stories abound, often resulting in "rumors spreading like wildfire while the truth is still putting on its shoes". Various social entities, especially the rights of citizens, are infringed upon, with defamation being particularly significant in this regard.

As a mechanism for balancing media freedom and citizens' personal rights, the right of reply system has carried the important mission of constructing dialogue between the media industry and the public since its inception. The so-called right of reply, also known as the right of defense, refers to the right enjoyed by the person mentioned in the media report to make self-declarations on the

media reporting when they believe the facts reported are not consistent with the truth, and to clarify the facts to respond. [3] This right is considered by developed Western countries such as France and Germany as a necessary legal measure to protect public rights after the development of mass communication. [4] In 1822, France first established the right of reply in the "Against Unlawful Behavior of the News Media Law", which stipulated that individuals mentioned in printed matter have the right to request the publisher to publish their responses. [5] Up to this day, over the past two hundred years, the right of reply system has been continuously updated with the transformation of media forms, while our country has not yet established a clear right of reply system.

2. Response of the Definition and Functional Positioning of the Right in the Era of Self-Media

The definition of the right of response should be placed in the framework of the personality rights of the Civil Code. The "right of reply" in the publishing management and Article 1028 of the Civil Code provide the institutional basis for the construction of the right of response. The construction of response right in we-media era should not only consider the characteristics of different media, but also carry out functional positioning from four aspects: the reported, the news media, the judicial organs and the public.

2.1. Interpretation Based on Article 1028 of the Civil Code

Personality rights form a separate section in the Civil Code, implementing the task of adjusting personal and property relationships between equal subjects in civil law, changing the traditional system flaws of "treating objects heavier than people". [6] A clear example is in cases of news infringement, where to balance the freedom of speech of the public and the protection of the personality rights of those reported, a variety of remedies, including personality rights injunctions, requests for personality rights, and compensation for infringement damages, are established to work together in a coordinated relief system. [7]

The "right of response" clause stipulated in Article 27(2) of the current "Regulations on the Administration of Publishing" is considered to be the actual right of response in China. This right is also endowed with the right to enforce through litigation, and the right of response is essentially a measure to promptly eliminate the impact and restore one's reputation. From this perspective, this right is more like a remedial procedure as part of the right of response. In addition, this right is jointly stipulated with the right of correction, applying the same constituent elements. The legal nature of the "right of response" has not been clarified, and specific provisions regarding the exercise of rights have not been clearly defined, making it a "zombie clause" in the law.

In responding to the definition of the right, it is appropriate to treat it as a right to request personality rights, which is not only based on the functional positioning of the right, but also stems from the systemic interpretation of Article 1028 of the Civil Code. Article 1028 of the Civil Code imposes an obligation on the media for correction, deletion, and other necessary measures for infringing on the right to reputation due to inaccurate reporting. The use of the word "etc." as a buffer space for unspecified items is considered to be included in the right to respond. From the perspective of legislative history, according to the interpretation of our legislative body, the provision of Article 1028 of the Civil Code originates from Article 27, Paragraph 2 of the Regulations on Publishing Management, so this right is also referred to as the "quasi-right to respond." [8] In terms of the nature of the right, the right to respond, along with the correction right and deletion right expressly listed in Article 1028, can be regarded as a request right power attached to the specific personality right of reputation, which is a specific right under the right of personality request right, constituting a similar type of request right. [9]

Despite this, there is still a certain difference between the right of response and Article 1028. Article 1028 requires the respondent to bear the burden of proof and the respondent must "present evidence to prove" that "the content of the media report is untrue and infringes upon their reputation." [10] This often occurs after actual damage has been caused. In the era of self-media, the probability of infringement of personality rights such as portrait rights, privacy rights, and reputation rights of citizens has greatly increased, making it difficult to exercise personality rights requests rights effectively after the damage has been caused. The time and litigation costs also make many small and medium-sized news infringement cases unresolved. In view of this, the judiciary should consider incorporating the right of response into Article 995 of the Civil Code "to stop infringement, eliminate obstacles, and remove dangers" in the right of personality to compensate for the limitations of Article 1028.) [11]

2.2. The Functional Positioning of Response Rights in the Era of Self-Media

In the era of self-media, the increasing amount of fake information and the rapid spread of messages have led to the continuous emergence of news infringement. The complexity and speed of variation under the overall Internet environment make the distance between news infringement and rights protection increasingly distant, with rising costs of rights protection and decreasing effectiveness of rights protection. The conflict between public opinion supervision and individual reputation is becoming more frequent and intense, highlighting the urgent need to activate the "right of reply" and even build the "right to respond" in order to balance the contradiction between freedom of speech and personal privacy, reduce lawsuits on news infringement, and create a social atmosphere of balanced interaction between "expression" and "response".

The lack of the right of reply system leaves a large gap between news reporting and the protection of personality rights, directly leading to the inability to effectively protect personality rights. In the era of self-media, everyone has a microphone, and news reporting has expanded to the scope of self-media, while the means of protecting citizens' personality rights has not undergone substantial changes, resulting in the lagging and misplaced protection of personality rights under the media transformation. Compared to the litigation rights protection in current news infringement cases, the right of reply system not only helps citizens to effectively protect their personality rights and save judicial resources, but also provides a new direction for promoting "responsive" freedom of speech. The interaction between public opinion supervision and citizens' personality rights becomes clearer, serving as a new weapon to create a clean online space, and possessing unique institutional advantages in online reputation infringement.

For the person being reported, the right of response can provide timely and effective relief for their reputation. The emergence of the right of response system reflects the stark power disparity between modern news media and the reported, with its main function being to protect the personality rights of the reported, allowing them to exercise significant communication influence when facing media harassment, supplementing their views in order to achieve self-defense. [12] Compared to litigation, the right of response can promptly interrupt reputational harm and maintain reputation to the maximum extent. Reputation is essentially a general evaluation of specific individuals' moral qualities, abilities, and other qualities by society, and this evaluation is usually closely related to factual information related to the persons concerned. As a significant source of news information, the news media has the potential to substantially influence the social image of the reported. Even though the parties concerned have ample reasons to refute the accusations in the reports, due to the vast gap in communication capabilities, there is a risk of reputation being improperly infringed. [13] Through the "proper use" of the news media reporting system, the right of response diminishes the gap in communication power between the two sides at the time, transforming news reporting from "unidirectional output" to "two-way debate," greatly promoting speech balance, stabilizing volatile

social public opinion in a mitigative form. Meanwhile, reputation infringement suits often take the form of "reinstating reputation, eliminating impact" in a non-financial manner, and over time, the impact of reputation infringement on the parties involved persists. Statements made afterwards are difficult to adapt to the heat of public opinion at the time. In the era of self-media where negative news is rampant, insipid, neutral comments are difficult to have broad dissemination power. Therefore, victims' reputation is difficult to fully recover, and in complex litigation, damages are often not compensated.

For the news media, the right of reply is beneficial for urging the news media to strengthen their media responsibility, while also granting them a certain range of defense. In the era of commercial information explosion and the king of traffic, some news media, under the pressure of survival, release information that attracts attention and competes for traffic without actual research, their behavior is no different from marketing accounts. Some media outlets, shouting out to play the role of public opinion supervision and relying on the defense right obtained from it, are escalating, bringing structural problems to the media ecosystem. Faced with the irresponsible behavior of commercialized media, instead of talking high and lofty about the special role of the media as gatekeepers and supervisors in a democratic society and avoiding the real issues, it is more practical to seek a set of norms that can motivate the media to introspect on their responsibilities and courageously respond to the normative system of questioning by the audience and correcting their biased dissemination behavior. [14]The right of reply system allows the reported party to use the media's dissemination power for "peer questioning," undoubtedly increasing the pressure on news media reporting, prompting them to be more strict in controlling their sources of information. At the same time, the right of reply will not exacerbate the "mantis effect" in the field of speech. Through the strengthening of media responsibility awareness and the reported party's response awareness, both parties' behaviors are supervised and tend to be more rational. By fulfilling the obligation to verify information as far as possible, the media enhances its authority, objectively strengthens its ability of public opinion supervision, which in turn constrains the behavior of the society, while requiring greater public opinion pressure when exercising the right of reply. Finally, after the reported party exercises the right of reply to protect their personality rights, when they subsequently file for infringement, due to the weakening of the prior influence, the corresponding responsibility of the media is also reduced, allowing for a certain degree of defense to mitigate liability.

For judicial authorities, the right to respond is beneficial in alleviating litigation pressure and promoting diverse dispute resolution mechanisms.[15] Specifically, by establishing the right to respond system, a buffer valve can be added between litigation and rights protection to resolve conflicts between news reporting and citizens' personality rights. The right to respond is equivalent to a selective pre-procedural step before the reported party files a lawsuit for defamation, giving the reported party a more convenient option. By responding, barriers and misunderstandings can be eliminated, reducing litigation from the source, while the balance of speech function of response allows the right to reputation to be restored more fully compared to not responding, saving judicial resources in quantity and improving judicial efficiency in quality.

Finally, for the general public, the right to respond can satisfy their right to information, enhance citizens' rationality of speech through debate and judgment on the debate. Currently, digital platforms achieve the "personalized" customization of content through algorithms, which to some extent leads to self-isolation among groups with different views, and continuous self-confirmation and extreme cognitive polarization within groups with the same views. [16]As a result, after news reports, the content enters the "personal domain" of those interested in the topic through algorithms and other mechanisms, continuously reinforcing and confirming it, making the audience unquestionably believe it. Over time, falling into an "information cocoon," it is difficult for the public to have a comprehensive understanding of society and make rational evaluations. However, through "debate,"

two different viewpoints enter the audience simultaneously, and in speeches that have differences or even stark differences, the general public will spend more time comparing and thinking, as well as actively searching for information for further verification, which directly benefits the improvement of public media literacy.

3. the Establishment of the System of Responding Rights under the Civil Code System

The system construction of rights cannot be separated from four elements: the subject of rights, the subject of obligations, the conditions of exercising rights and the way of exercising rights. Expand the subject of obligation to we media; The response content of the exercise condition distinguishes between facts and opinions, and the exercise time is set according to the characteristics of the media. The way of exercising power pays attention to the communication effect of the media.

3.1. Rights Subject

Article 27, paragraph 2 of China's "Regulations on the Administration of Publishing" stipulates that when the content of a periodical or newspaper causes infringement of the legitimate rights and interests of "citizens, legal persons, or other organizations," the above-mentioned subjects can claim the right to respond to the content published in the periodicals and newspapers. It can be seen from this that the subject of the right to respond not only includes all natural persons, but also legal persons or other social organizations, because Article 1024 of the Civil Code stipulates that "civil subjects enjoy the right to reputation. No organization or individual may infringe upon the reputation of others by means of insults, defamation, etc."

Article 12 of the French "Freedom of the Press Act" stipulates that if a person mentioned by the media is a government official and the information pertains to the performance of their duties, they do not have the right to reply, but have the right to request correction.[17] The subject of the right of reply in France excludes officials performing their duties as reported, aiming to maximize the role of news and public opinion in supervising governmental power. Similar to France, the United States focuses on limiting public power in the right of reply system. According to the UCCDA Article 3 of Part I, besides government agencies, any individual or organization has the right to request media correction or clarification of news reports. The restriction is made in compliance with the current consensus on government inability to sue for defamation, as stated in the commentary of this Article. The fact that public power does not have the right of reply does not mean it lacks the ability to respond or the right to "self-response". [18]The government has its own communication system, and public attention to public power ensures that its topics remain hot without any intentional promotion. If the media reports first and then the government responds, there is a suspicion of "self-staging" and "manipulation behind the scenes", which is detrimental to the credibility of the government and the public's enthusiasm for supervising the government.

In comparative law, France and the United States focus on restricting the right to reply to public authorities, limiting the exercise of the right to reply by officials and government organizations engaged in public duties, and striving to maximize the supervisory role of news and public opinion over government public authority. The author believes that there is a certain rationality and necessity in restricting the exercise of the right to reply by the government and its officials, and that government and public officials engaged in public duties should be beyond the scope of the right to reply. Admittedly, the exercise of the right to reply should theoretically be directed at unspecified groups and entities. However, the origin of the right to reply is to balance the difference in dissemination power between the news media and the public, and the government media department, due to its public authority nature, even if it cannot actively grasp the corresponding dissemination power, its credibility and public authority make it the focus of attention for the news media and the public.

At the same time, government announcements have legal effect, and their right to respond is exercised in the form of announcements, which is more authoritative, effective, and suitable compared to the right to respond. Secondly, government departments, through digital information service platforms, are moving from the background of public information dissemination to the forefront, changing the way they communicate with the public. Government information platforms have thus become a public platform for eliminating information asymmetry and preventing the alienation of public power.[19] The proactive dissemination power of the government is constantly strengthening. In addition to information release and sharing functions, government agencies will also use new media to create a dialogue relationship with the outside world. Therefore, when public opinion arises, the media, government, and the public form a three-party dialogue relationship. When the public and the media jointly question the government, they generate a more pure and powerful supervisory power over the government.

3.2. Obligatory Subjects

Subject of duty also known as scope of response, target of response. The transformation of the media age is not a discontinuous process, but a cross-overlapping nonlinear succession process, in which new media has not completely replaced old media. In comparative law, the right to respond system has evolved following changes in media forms, and the scope of the right to respond is undoubtedly the broadest and most important field of media forms currently, but existing weaker media forms should not be ignored. Some scholars believe that in relation to traditional media, the relative parties to the right to respond should include all mass media.

In the Internet era, platform-based media, self-media, and other online media have a numerical advantage, but they are far behind traditional mainstream media in terms of quality. However, certain self-media, due to the individual's internet celebrity status or the popularity generated by topic hype, have a far greater impact than regular self-media. However, they do not belong to the mainstream media, and the establishment of the right to respond is to protect the personal rights of citizens. If these self-media with social influence, either actual or potential, are left unchecked, there will inevitably be loopholes in the establishment of the right to respond.

Based on the binary model of human rights and intellectual property rights, the essence of the mode of infringement of self-media is a "miniature version" of the traditional civil infringement object mode, mainly involving personality rights and intellectual property rights. The limitations of the traditional positioning of human rights objects mainly lie in the lack of relief measures for reputation rights and the fuzzy protection scope of privacy rights. [20] Responding rights provide a new solution to this problem, but due to the self-consciousness of self-media itself, it is difficult to directly exercise the right to respond. It may be appropriate to extend the obligation of self-media response rights to internet platforms, that is, the platform sets up related mechanisms to assist the response subjects, so that their response content can be connected to the content being responded to, such as through tags, or redirection links, or even directly setting up response windows. However, it is worth noting that the inclusion of self-media in the scope of response rights is due to its actual or potential social influence, so it is not appropriate to restrict all self-media and related topics, in order to protect citizens' freedom of speech and prevent the excessive abuse of response rights.

3.3. Exercise Conditions

The main conditions for the exercise of the right of response are the content of the response and the exercise period. Article 27, paragraph 2 of the "Regulations on Publishing Management" of China in 1997 specifies the application objects of the right of response as works published in newspapers and periodicals that are "untrue or unfair".

Due to the often varying degree of conformity between news reports and the actual situation, the issue of the degree of truth or falsehood of news arises. Correspondingly, a series of concepts such as basic truth, partial truth, or basic falsehood, and partial falsehood are also generated.[21] News facts and news impartiality are frequently mentioned together. The "impartiality" in news impartiality can be understood from two aspects, subjective and objective, which include the meanings of fairness and justice in terms of subjective attitudes and fairness and justice in terms of objective results. [22]In response to the requirement of news objectivity and impartiality, it often manifests in the degree of truth of news, with the two showing a positive correlation. Subjective impartiality considers the attitudes of news media and reporters, whether news is carried out through standardized editing processes, upholds an objective and impartial reporting stance, and serves the purpose of a good social effect. This makes it necessary not to overly criticize news media and workers beyond the above obligations. The same applies to the right of reply, where "untruth" should be understood as "basic falsehood," and lack of impartiality should include both "subjective attitudes" and "objective results."

The provision in question is broadly referred to as "work," which includes all news works, including facts and comments. From a comparative perspective, Article 11(1) of the Hamburg News Law provides that individuals or entities reported in newspapers or periodicals have the right to respond, but only to the factual statements reported in newspapers or periodicals. They do not have the right to respond to value judgments contained in opinion statements, comments, or purely commercial advertisements. How to distinguish between facts and opinions in news reports has been correctly answered by Marxist journalism scholars after more than thirty years of hard work: facts express opinions in a tangible way or facts convey opinions in an intangible way. [23]Therefore, in Marxist epistemology, the expression of opinions by facts is one of the cores of news, and the pure expression of opinions is also based on some "existing facts." The main focus of precaution against the right to respond should be facts rather than opinions, as this is also a necessary requirement to uphold freedom of speech and public supervision. The truthfulness and fairness of the facts themselves affect the overall tendency of opinions, while restrictions on opinions themselves are not conducive to clarifying the facts.

There is no consensus on whether the target of response in comparative law should be limited to the news facts themselves. From the perspective of the purpose of response rights setting, the response content should ideally include all publicly disclosed acts that harm the reported party. However, compared to facts, opinions are more subjective and derivative. According to Marxist materialist view, subjectivity arises from objectivity, and likewise opinions arise from facts. Furthermore, opinions depend on various reasons such as personal knowledge, morality, experience, and position. In an era where everyone can be a disseminator, the phenomenon of one fact and multiple opinions, even countless opinions, is prevalent. Opinions, rooted in individuals, are more difficult to change compared to facts themselves. At this time, responding to opinions one by one seems to be "palliative rather than radical," resulting in high costs and minimal effects. In addition, for incorrect factual statements, the emergence of opposing views can make the public aware of their fallacies, thereby avoiding the consequences of reputation damage and enriching the discourse market. Responding to opinions does not help change others' value judgments and does not provide tangible benefits for remedying reputation damage. [24]Therefore, in terms of practical operation and social significance, limiting responses to facts is more reasonable and can maximize the activation of response rights beyond the function of remedying reputation damage, including social discourse and freedom of speech.

In the era of digital media, influenced by the "anchoring effect," the public is more easily dominated by first impressions, and late responses have limited effect on restoring public image. Therefore, it is preferable for the exercise period of the response right to be fast. In reality, due to the emergence of numerous hot topics, the focus of public opinion is unstable. Some people tend not to

respond in order to "set aside public opinion" and achieve self-calming of public opinion. However, in order to better safeguard the personal rights and interests of citizens, the period of the response right should be based on the general evolution law of public opinion, the time period should not be too short, and at the same time should leave enough time for the reported party to prepare and build psychologically.

From the perspective of comparative law, the response time for the right of reply varies from 1 week to three months in different countries, but overall, it tends to shorten with the transformation of media forms and the acceleration of media dissemination speed. The rapid changes brought about by the times have caught some off guard with the rapid succession of media, and the era of one single media leading the way is a thing of the past. In fact, with the accelerated pace of social development, communication and acceptance have become more diversified, and the phenomenon of media overlapping, blending, and coexistence is evident. [25] Social development has made digital media increasingly mainstream, with clear trends towards digitization in traditional newspapers, radio, and television. Important public opinion issues are quickly spread through digital media in an inter-media form, so at present, it is not particularly meaningful to differentiate the exercise period of the right of reply based on the form of media. The exercise period can be flexibly set at around two months as a median to form a unified standard. However, when facing continuously trending major public opinion events or other factors affecting the exercise of the right of reply, the exercise period can be extended accordingly, but should not exceed three months.

3.4. Exercise Methods

The exercise of the right to reply shall adhere to the principle of equality. The exercise of the right to reply is only in compliance with the requirement of equality when the channels are equal, and it is more targeted. Therefore, the subject of the obligation of the right to reply should be the press, internet media, including self-media such as WeChat official accounts, which publish relevant statements.[26]

Depending on the media form, France grants the right to reply with different time limits. For example, the time limit for newspapers is within three months from the date of the original publication; for broadcast television, depending on nationality and place of residence, the time limit is within eight days or fifteen days after the original broadcast. The right to reply was originally established to address the numerous reporting issues brought about by the rapid growth of information after the industrial revolution. With the transformation of media forms and the exponential increase in the speed of information dissemination, the time limit for exercising the right to reply should be further reduced to keep up with contemporary new media technologies and self-media environments. In order to ensure that the response article has a similar dissemination effect as the original report, the provision also stipulates that the response article must be published in the same font size and in the same position in the newspaper or periodical as the original report. The ultimate goal of the right to reply is to achieve a moderate counteracting effect, so factors such as font size, layout, and position were considered in the print media era. In the era of self-media, information is presented in various forms and spreads virally, thus requiring a more thorough institutional design for determining the responsible party and the effectiveness of the response.

By reference to the comparative law practice, for printed media, controversial reports should be published in the same position, in the same length, and in the same font size in the next issue; for broadcast media, they should be broadcasted in the same time slot without delay, in the same program format as the accused report. In the era of self-media, in the digital age, in addition to the position, length, font, and font size of traditional media, the characteristics of digital media should also be considered. The form, effects, technicality, and communicability of different digital media directly affect the cost and effectiveness of exercising the right to reply. Therefore, the exercise of the right to reply should focus on the presentation mode of the media. However, due to the seriousness and

purposefulness of the right to reply, as well as the lack of professionalism in producing relevant digital media content, and the many restrictions on the exercise of the right to reply in traditional media besides the equality principle are related to the scarcity of media resources. In the digital media age, especially in self-media, the scarcity of this resource is greatly reduced, with characteristics such as repeatability and infinity. Therefore, the general form of exercising the right to reply can be set as text and video. The equality in the digital media age is different from that of traditional media. In the case of media content being pushed by platform algorithms and endorsed by "opinion leaders," the "equality principle" also requires the media platform to push the response content to the same audience through the same channel as the original report. [27] The differences in platform and account subjects result in significant differences in audience types and traffic coverage.

Therefore, by establishing the response right mechanism on the platform, presenting response content parallel to the original content, and coordinating response with tags, the response content can reach the same number and type of audience to the maximum extent possible, achieving precise exercise of the response right.

4. Regulation Limits and Remedies for the Right to Reply

To give full play to the institutional function of the right of response, we should not only regulate the exercise of its right, but also seek remedies when it is difficult to realize. Based on the appropriateness, necessity and balance of the principle of proportionality, the author restricts the exercise of the right, and probes into the feasibility and deficiency of the prohibition system of personality right as a remedy for the right of response.

4.1. Access Control Based on the Principle of Proportionality

The proportionality principle "mainly examines the relevance between 'means' and 'purposes' to assess whether state actions have constitutionality, in order to protect the freedom and rights of the people." [28] The core of the proportionality principle lies in emphasizing the appropriateness of intervention and opposing excessive intervention. Therefore, some scholars simply refer to the proportionality principle as "prohibition of excessiveness." [29] Although the exercise of the right to respond is not a confrontation between public power and private rights, the conflicts between public interests and individual rights also need to be balanced. The application of the proportionality principle in civil law can ensure that the rights and freedoms of internal related subjects of citizens are not excessively interfered with, thus realizing the regulation of the right to respond to mass media, the proportionality principle regulating the right to respond, and achieving a dynamic balance between internal freedom of speech and individual privacy of citizens.

The principle of proportionality itself is not a single principle, but a complex regulatory structure composed of several sub-principles. It is generally believed that the principle of proportionality is composed of three sub-principles: the principle of appropriateness, the principle of necessity, and the principle of balance. [30]

The exercise of the right to reply should follow the principle of proportionality, that is, the exercise of the right to reply must be in line with the need to uphold the personal rights of citizens. The principle of proportionality requires that the means taken to intervene in basic rights must be appropriate to the achievement of the purpose. If the choice of means is irrelevant to the purpose, the requirement of proportionality is violated. The premise of the relationship between the means and the purpose is that the subject of the right of reply is clear, that is, the objects mentioned by the media are "identifiable." Specifically, the so-called "mentioning" includes direct mention of names, as well as situations where individuals can be identified indirectly, that is, as long as the audience of the media can directly or indirectly identify the actor based on the statements published by the media, they have

the right to reply.[31] Objects that cannot be "identified" in the report point to an unspecified majority, so there is no infringement of the personal rights of citizens, and whether the right is exercised or not will not achieve the original intention of the right to reply.

The principle of necessity requires that among several means available to achieve a purpose, the mildest means to interfere with basic rights must be adopted, and the use of "sledgehammers" is prohibited.[32] The exercise of the right to respond does not need to be conditional on identifying and confirming that the report constitutes an infringement. Even in cases where the initial report has been confirmed not to constitute an infringement due to the media fulfilling its duty of care, the person being reported should still be allowed to exercise the right to respond.[33] However, this does not mean that the right to respond can be exercised without limit and unconditionally. The principle of necessity for the exercise of the right to respond is based on two factors: the likelihood of infringement on personality rights and the urgency of the infringement on personality rights. In addition to the truthfulness of the reported facts, the likelihood of objective infringement on personality rights is closely related to the media's dissemination power. The right to respond is expanding to digital media such as self-media, where a variety of information is available but those that can become "hot topics" or even surpass the dissemination power of traditional media are very few. For self-media that aims to circulate information in a very limited range, such as having low viewership, low shares, and relatively closed reporting space, the person being reported should not be granted the right to respond. At this point, expanding the influence of the response goes against the purpose of the right holder, and excessive protection of the respondent is not conducive to the development of public opinion ecology.

The response must be made without delay after the reported person knows or should know the initial report, and the response should not exceed a certain period after the initial report is published. The main obligation to exercise the right to reply lies with the news media, and the main content of the response is news reports. The period for exercising the right to reply should be as timely as the news, responding at a moment when the public still remembers and cares, in order to ensure the possibility of achieving the purpose of the response. Some foreign researchers have proposed that the specific time limit can be determined based on the importance of the facts in the initial report to the interests of the reported person and the public interest, the identity of the reported person and their position in the public domain, and the different types of media.[34] In comparative law, the period for exercising the right to reply expands along with the evolution of media forms, adapting to the timeliness of news and the dissemination effects of different media. The period for exercising the right to reply should not be differentiated based on the different subjects exercising the right, which violates the principle of equality before the law, does not align with the media consumption habits of citizens, and may be suspected of using the media for hype, bringing no benefits either publicly or privately.

The principle of proportionality requires that the intervention in basic rights must be proportionate to the purpose pursued, and the two must be proportionate in their effects. Therefore, the principle of proportionality is also known as the "narrow principle of proportionality." [35]The effect of the right to reply is not only reflected in the maintenance of citizens' personality rights by the respondent, but also in the social effects of protecting freedom of speech and public supervision. Based on the exercise effect of the right to reply, the right to reply should not only achieve a balance in the content and manner of the response, but also achieve a balance in the rights and obligations of both parties to the response.

Response rights are first and foremost aimed at the factual statements in the initial report. Factual statements are based on the understanding of an unbiased and rational audience, have demonstrability and objective clarification possibilities, and are different from mere expressions of opinion. [36]Articles 1025 and 1026 of the Civil Code distinguish between factual statements and expressions

of opinion, with this provision also being the "reasonable verification obligation" for news reports and public opinion oversight actors. [37]The use of "insulting language to demean the reputation of others" is aimed at expression of opinion. Combined with the discussion of the response target in the previous text,

Based on the "reasonable verification obligation," the media should have a defense of the right to reply. For media content, if the incorrectness of the fact statement targeted is unrelated to personal dignity, such as only minor differences in timing or location that do not affect the effectiveness of the report, a response cannot be demanded. [38]If the report has been withdrawn or corrected by the media itself, it is necessary to see if the misunderstandings caused by the report have been fully corrected and eliminated. If the person reported on has new additional content, the right to respond should be granted. Content that qualifies for the right of reply should respond in the same media form and layout as the news report to achieve an equal effect.

For responses, they should also be factual and refer to the same event reported in the news. When a response violates the law, public order and good customs, or contains clearly incorrect facts and unclear logic, the media has the right to refuse the response. When the reported person is a national public authority or a staff member currently performing official duties, they do not have the right to respond. If a response inappropriately infringes on the interests of a specific third party who is not involved, or is purely an abuse of the right to respond for publicity purposes, the media may also refuse to publish it.[39]

When the media refuses to cooperate in exercising the right of reply, the reported party has the right to request the court to enforce it. After exercising the right of reply, it is inevitable that the infringement of the personal rights of citizens cannot be restored to a satisfactory state. At this time, the reported party may bring a lawsuit for news infringement for the unrealized effects of the reply. However, the publication of the reply has weakened the seriousness of the consequences of the infringement, especially in terms of the liability for damages caused by the infringement. Consider appropriately limiting the media's liability for damages caused by the publication of the reply to enhance the enthusiasm of the media to publish replies and achieve the institutional purpose of the right of reply.

4.2. Personality Rights Injunction System

As a non-litigious personality right request, the direct exercise of the right to respond may lead to situations where the obligor fails to act due to the lack of state enforcement power. In such cases, resorting to litigation for relief often makes it difficult to timely stop the infringement of personal personality rights. Article 997 of the Civil Code establishes the injunction system for infringement of personality rights. Comparatively, the main function of injunctions is to promptly cease unlawful conduct, prevent harm from occurring or expanding, and provide timely relief to the rights holder. [40]Similarly to the right to respond, personality rights injunctions can provide pre-relief for harm to personality rights without the need for litigation. Positioned between the right to respond and litigation, personality rights injunctions have the enforceability of court orders, serving as a practical remedy for the right to respond.

In the online society, the phenomenon of infringements of personality rights is more common, the high speed of dissemination makes the infringing behavior more rapid, and the consequences of infringement more serious, making the relief of personality rights appear particularly urgent. The injunctive relief of personality rights stipulated in the Civil Code functions in preventing personality rights violations, and compared to the injunctive relief in procedural law, the injunctive relief in substantive law is a remedy for preventing substantive infringements prescribed by substantive law.

Based on the urgent balance considerations of protecting freedom of speech and preventing infringements on personality rights, although the injunction on personality rights is exempt from

litigation procedures, it has relatively strict conditions for its application. Compared to the right of response, the system of personality rights injunction applies to actions in progress or about to be carried out that infringe upon personality rights. Its inclusion of the risk of future violations of personality rights broadens the scope of relief. Secondly, if not stopped in time, the consequences of harm will quickly escalate or become irreparable. In comparison to the right of response, pre-litigation injunctions directly prohibit the infringing behavior itself and revoke the infringing content. Its effects in preventing harm and restoring reputation are better, and the restrictions on the parties involved are more stringent. Therefore, in the determination process, higher scrutiny is placed on the evidence provided by the requester. The sufficiency and effectiveness of the evidence directly affect the possibility of success in subsequent lawsuits.[41]

The court should carefully examine whether the requirements of Article 997 of the Civil Code are met when deciding whether to apply the personality rights injunction procedure, especially the applicant must prove that "failure to timely stop will cause irreparable harm to his legitimate rights and interests." When deciding to apply the personality rights injunction procedure, the court should determine specific measures to order the perpetrator to stop the relevant acts according to factors such as the type of violated personality rights and the type of illegal behavior, following the principle of proportionality.[42] It should be noted that the personality rights injunction procedure only applies to personality rights as absolute rights, not to the protection of personality interests, especially not to the protection of other personality rights arising from personal dignity and personal freedom. Therefore, not all requests for response rights are suitable for relief in the form of a personality rights injunction, and some requests for personality rights injunction can also be resolved through response, both of which are remedies for the prevention of personality rights violations and do not have a substantive priority relationship.

5. Conclusion

The right to respond is extensive in terms of the right holders, including both natural persons and legal persons. In considering the restriction of public power, institutional entities and government officials carrying out official duties should be excluded. The duty bearers should be expanded to include self-media as media forms evolve, limited by their influence and dissemination scope. In response to the need to protect freedom of speech, the target of response should be limited to content. The exercise of response should evolve with changes in media, fully maximizing its function of timely relief. The ways in which responses are conducted should be diverse, not limited to a one-size-fits-all approach, but based on the characteristics of the media to achieve the desired effect.

When the personality rights of the right subject are urgently infringed due to the inaction of the response rights obligation subject, an injunction can be requested from the people's court to stop the infringement. Given that pre-litigation injunctions involve prior intervention in activities such as news reporting, which concerns restrictions on freedom of action or expression, Article 997 of the Civil Code sets out more stringent conditions for their application. Thus, the coordinated, progressive relief system from response rights, personality rights injunctions, to tort litigation, maximizes the balance between freedom of speech in infringement cases of news reporting and the reputation of citizens. Meanwhile, due to the intelligence of digital media and the disorderliness of self-media, the further improvement of response rights in the future can be considered from the perspective of technical governance and the demonstration of the third-party liability as network service providers.

References

- [1] McLuhan, Marshall (2019). *Understanding Media: On the Extension of Man* (Translated by He Daokuan) Beijing: Yilin Publishing House.

- [2] Qi Linhui. Media "Interruption" and "Anti-interruption" in the age of Distraction: A case study of "Focus on forest" [J]. Shandong social science, 2022 (02) : 141-147. The DOI: 10.14112/j.carol carroll nki. 37-1053 / c. 2022.02.014.
- [3] See John Hayes, *The Right to Reply: A Conflict of Fundamental Rights*, 37 COLUM. J.L. & Soc. Probs. 551 (2004).
- [4] Zhang Yongming. Research on the Right of Reply in European Media Law [J]. Gao Gao Review of Law, 2010(1):25-36.
- [5] Xie Yizhang, Zhang Chi. Construction and Improvement of China's Response right system in digital media era [J/OL]. The press, 1-10 [2024-05-13]. <https://doi.org/10.15897/j.cnki.cn51-1046/g2.20240308.002>.
- [6] Wang liming. personality right of the civil code of the bright spots and innovation of [J]. Chinese law, 2020, (4) : 5-25. DOI: 10.14111 / j.carol carroll nki ZGFX. 2020.04.001.
- [7] YueYePeng. "civil code" in news tort liability of innovation and [J]. Applied press, 2020, (11) : 75-84. The DOI: 10.16057 / j.carol carroll nki/g2.2020.11.008 31-1171.
- [8] Huang Wei. Interpretation of Personality Rights and Tort Liability in the Civil Code of the People's Republic of China [M]. Beijing: China Legal Publishing House, 2020:167.
- [9] Shen Weixing. On the construction and Systematization of Personal Information Right [J]. Comparative Law Research, 2021(5):1-13.
- [10] Li Jing. On the "Right of Response" of the reported -- An Interpretation of Article 1028 of China's Civil Code [J]. Media, 2021, (20):91-93.
- [11] Zhang Hong. On the System of Claim right of Personality Right in Civil Code [J]. Guangdong Social Sciences, 2023(3):235.
- [12] See Lin Ziyi, *Freedom of Speech and Freedom of the Press*, Yuan Zhao Publishing Company, 1998, p. 247.
- [13] Yue Yepeng. On the Right of Response as a Remedy for reputational Damage -- Comment on Article 27, Paragraph 2 of the Regulations on the Administration of Publications [J]. Northern Law, 2015(5):58-68.
- [14] Wu Yongqian. "On Media Accountability Mechanism and Parties' Right to Reply", Law Monthly, No. 1, 2010.
- [15] Chen Lidan. Correction and Defense: A Neglected and internationally Recognized Journalistic Professional Norm [J]. International Press, 2003(5): 32-37.
- [16] Zhu Hu. Regulating the Right of Response of Mass Media: Function Continuation and Institutional Development [J]. Legal Studies, 2023(1): 125-142.
- [17] Jin Yu. The System of Extraterritorial Response Right and its Enlightenment [J]. Journal of the Party School of Nanjing Municipal Committee of the CPC, 2013(03):39-44.
- [18] Hannes Rosler, Dignitarian Posthumous Per-sonality Rights-- An Analysis of U.S. and German Constitutional and Tort Law [J]. 26 Ber keley J. Int'l L. 153 (2008) .
- [19] Wang Pu, Chen Peiyun. Research on the credibility construction of government information Platform from the perspective of Role Theory [J]. Learning and Exploration, 2023(09):36-41.
- [20] Sun Lianbin. Since the era of media tort liability object paradigm analysis [J]. People's BBS, the academic front, 2020 (5) : 120-123. The DOI: 10.16619 / j.carol carroll nki rmltxsqy. 2020.05.015.
- [21] Yang Baojun. Fact, Truth and Reality: An understanding of the three key concepts in the truth theory of news and their mutual relations [J]. News Reporter, 2008(06):61-65.
- [22] Ye Dongzhi. A Brief Discussion on Journalistic Justice [J]. Journal of Zhejiang Radio and Television College, 2002(02):14-15.
- [23] Li Xiuyun. Facts and Opinions: The internal logic of the historical evolution of news reporting thought [J]. Journal of Inner Mongolia university (philosophy and social sciences edition), 2008 (4) : 103-107. The DOI: 10.13484 / j.carol carroll nki NDXBZSB. 2008.04.021.
- [24] See Shao Yunzhong, "Review of the Constitutionality of forcing Print Media to apologize, Retract (correct) Reports, and reproduce Letters," Yue Dan Law Journal 167, July 2006.
- [25] Zhou Xing. From single media to cross-media to fusion media [J]. Film Literature, 2024(04):56.
- [26] Wang liming. Since the media age the right to respond to [J]. Journal of Oriental law, 2023, (4) : 68-82. The DOI: 10.19404 / j.carol carroll nki DFFX. 20230208.001.
- [27] Joshua Crawford. Importing German Defamation Principles: A constitutional Right of Reply [J]. Florida State University Law Review, 2014(41): 767-793.
- [28] See Zhang Hong, "Fingerprint Privacy Protection: Dual Dimensions of Public and Private Law", Law Review, No. 1, 2015.
- [29] Vgl. Claus-Wilhelm Canaris, *Gesammelte Schriften, Band 1: Rechtstheorie*, Verlag Walter de Gruyter 2012, S.775 ff.
- [30] Vgl. Michael Stürner, *Der Grundsatz der Verhältnismäßigkeit im Schuldvertragsrecht*, Verlag Mohr Siebeck 2010, S.23.
- [31] Zhang Yongming. Disaster news interview and the response right of the reported object [J]. Lunar Journal of Law, 2010, (12).
- [32] Vgl. Veit Thomas, *Wurde und Verhältnismäßigkeit: Grundbegriffe der Zivilisierung*, Verlag LIT 2007, S.333

- [33] MiKoBGB/ Rixecker, 9. Auf.2021, Anh.zu § 12 Rn.386.
- [34] BeckOK InfoMedienR/ Brose/Grau, BGB 8 1004 Rn.51.
- [35] Vgl. Michael Stürner, a.a.O. (Fn.12) , S.23.
- [36] BVerfG NJW 2017, 1537 (1538
- [37] Li Yang. *Research on the "Reasonable verification obligation" of News reports and public opinion supervision: Based on the interpretation of Articles 1025 and 1026 of the Civil Code [J].* Press, 2020 (8) : 78-86. The DOI: 10.16057 / j.carol carroll nki/g2.2020.08.009 31-1171.
- [38] MiKoBGB/ Rixecker, 9.Aufl.2021, Anh.zu § 12 Rn.393.
- [39] OFK ZGB/ Andrea Bichler/Marco Frei, 2. Aufl, Orell Füssli Verlag AG, 2011, Art.28h Rn.4.
- [40] See David Price & Korieh Duodu, *Defamation Law, Procedure and Practice*, 3rd ed., Thomson and Sweet & Maxwell, 2004, p.231.
- [41] Wang liming. *Theory of violations of the personality right before litigation injunction system [J].* Journal of finance and economics of law, 2019 (04) : 3-15. DOI: 10.16823 / j.carol carroll nki 10-1281 / d. 2019.04.001.
- [42] Cheng Xiao. *On the prohibition System of Personality Right in China's Civil Code [J].* Comparative Law Study, 2021(03):138-151.