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### Bloggers Beware: The Five Commandments for Bloggers

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# **Bloggers Beware: The Five Commandments for Bloggers**

By Warren B. Chik

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There is a need for Singapore bloggers to be aware of legal issues arising from their online diaries, particularly in the light of the recent cases involving seditious remarks made online by bloggers that resulted in jail terms and fines; and earlier in the year, a dispute arose over allegedly defamatory speeches made by a blogger about A\*STAR's Chairman, Philip Yeo, which was resolved amicably, but not without an apology. The threats of legal repercussions in the form of civil lawsuits and criminal charges serve as reminders of the potential legal problems that can arise from blogging, and indeed from any online activity, such as chat rooms, that involves the expression of opinions and views. Most bloggers treat their blogs as merely an online version of their personal diaries or journals. However, they often forget that the private-public distinction between keeping a written diary and one that is open to public viewing, can give rise to civil and criminal liability. This paper will consider some of the potential legal issues that may arise. Its aim is to create awareness and care, as well as to highlight sensitivities, but not to the extent that it may impact, to any significant extent, the greater freedom of expression that so many of us take for granted when navigating cyberspace.

## **Introduction**

A 'blog' is short for a 'weblog' or a web application presented in the form of a web page, which generally consists of periodic posts from its author and creator. The term is now commonly used to describe online personal diaries or journals which, unlike their written counterparts, are made accessible to, and often even intentionally created for, public viewing. People use it to share their daily thoughts and experiences as well as a means to express themselves creatively through art, prose and poetry. In reality, the word has a much wider meaning and includes web pages which contain posts from politicians and political parties, corporations and the media, and other organisations and collectives. Some blogs enable visitors to interact by leaving messages or comments while others are non-interactive. It is only the latest in a series of forms for expression and interaction through the electronic medium. Before it became popular to blog, for example, people were already putting up posts through digital communities such as the usenet, discussion fora, e-mail lists and bulletin boards.

Currently, online diaries are most popularly used by teenagers and young adults for social intercourse and sharing, as computers and the internet have become a part of life in developed, and even developing, countries. Most personal users have some vague idea of the netiquettes involved, but it is clear that a majority are unaware or unconcerned with the possible legalities which might be involved in what they are doing. This is because individual internet users are perhaps emboldened by what appears to be less legal and regulatory control and enforcement of online activities. They are also perhaps more uninhibited due to a sense of anonymity, such as through the use of pseudonyms and false identities. This has led to increased risk-taking in the forms of unadulterated speech and expression that are appearing in blogs and other online fora. However, recent events have shown that real world consequences still follow words or actions taken in cyberspace. It is therefore useful to spend a little time considering the various legal implications which may arise from blogging so that one can be aware and take care in starting and maintaining a blog, and avoid any nasty surprises along the way. Many of these legal issues are not new and are already applicable to any medium, traditional or electronic, which allows public access.

The following are the top five legal quagmires that can arise from blogging that bloggers should be alert to, and which should be avoided.

### **Thou Shalt Not Defame or Spread Malicious Falsehood**

On a cool spring day on 3 March 2005, a graduate student at the University of Illinois in Urbana-Champaign in the United States sat down before his computer, as was his habit, to express his feelings, thoughts and opinions in his online journal, which he called 'Caustic Soda', and through his pseudonym 'Acid Flask'. Amongst his posts, he made some probably scathing remarks about someone half the world away, in Singapore. Unfortunately, that someone took umbrage at those statements. Even more unfortunately, that someone was a chairman of a governmental organisation, who happens to be Philip Yeo. Philip Yeo felt that the posts made by Acid Flask (or Chen Jiahao) were libellous and defamed him, and sought an apology, a retraction and a promise to cease and desist from making such similar statements against him again. After a failed attempt at such an apology on 26 April 2005, which was dismissed as insincere and not unreserved, a subsequent apology on 8 May 2005 was accepted. The matter never went to litigation.<sup>1</sup>

The apology appeared in this form on the weblog:

I recognize and accept that a number of statements that I made on my on-line journal "Caustic Soda", in particular the blog post of 3 March 2005, were defamatory of A\*STAR, its Chairman, Mr Philip Yeo and its executive officers.

I admit and acknowledge that these statements are false and completely without any foundation.

I unreservedly apologize to A\*STAR, its Chairman Mr Philip Yeo, and its executive officers for the distress and embarrassment caused to them by these statements.

I undertake not to repeat the statements, or make further statements of the same or similar effect in this or any other forum or media. I further undertake to remove any such posting anywhere that has not been deleted.<sup>2</sup>

Fast on the heels of the apology, international press freedom groups and media watchdogs, including the Committee to Protect Journalists ('CPJ') and Reporters Without Borders ('RWB'),<sup>3</sup> seized on this incident to criticise Singapore on its strict media controls and oppressive environment in relation to free speech. The threat of, or action on, defamation was specifically singled out as the favoured tool to bludgeon free speech. Defamation is a legitimate action in most Commonwealth countries. The only country which tips the scale in favour of free speech over defamation is the United States, which sets a more stringent test for an action in defamation to succeed.<sup>4</sup> Hence, short of an amendment to the current law of defamation,<sup>5</sup> which is not likely to be expected, what Singapore bloggers (and bloggers commenting on Singaporeans) should be aware of is how to blog effectively and creatively to avoid legal censure (and the embarrassment of a public apology or the cost of paying damages). Here are some tips on how not to be sued for defamation while writing a weblog:

- 1 Only blog about yourself and your life, which is not a difficult thing to do for some people, although it will be more difficult for bloggers who are out to find an audience. Alternatively, generally post positive comments.
- 2 Make comments about society and people in general, but without identifying any person or group of persons in particular. Even caustic remarks and insults can be made, so long as you do not identify anyone or any group of persons for ridicule. That was what Philip Yeo himself did when he made the sweeping comment that ‘Singapore boys are whiny and immature’, which was seconded by one of his female scholars.<sup>6</sup> It created a spate of bitter replies from some disenfranchised Singapore men, but there was no question of defamation suits.<sup>7</sup>
- 3 If you feel confident enough, make all the comments you want provided that you are: (a) sure of its truthfulness (and can prove it in a court of law);<sup>8</sup> (b) making a fair comment (and not just any sort of comment but one of ‘public interest’);<sup>9</sup> or (c) replying to comments made about you by another person to defend yourself and to protect your self-interest. You can also get the consent of the subject to insult him or her, but make sure you have it in writing and that it is not obtained illegitimately, such as by duress or undue influence.
- 4 Make the blog satiric and parodiatic. Think Colin Goh’s ‘www.talkingcock.com’ web site or Mr Brown’s ‘www.mrbrown.com’ blog. Biting comments or political and social satire, which no reasonable person will seriously consider to be true, are safe to post.
- 5 Make your blog password-controlled and only allow access to people you trust. However, selective sharing or dissemination may not suit the blogger who is seeking an audience online, whether for fame or fortune.<sup>10</sup>

Of course, if one cannot defame other people online, then certainly one cannot use a blog to spread unsubstantiated rumours carelessly, particularly if they are known to be false, and certainly if it is done out of malice.<sup>11</sup>

### **Thou Shalt Not Negligently Miscommunicate**

Not only should one take care not to perpetrate libel or falsehood online, one should also verify the accuracy of the information being put up so as to avoid negligent mis-statements which may expose one to a negligence lawsuit.<sup>12</sup> Liability can rest on tort law if there is no contractual basis for an action.<sup>13</sup>

### **Thou Shalt Not Breach Thy Contract**

#### *Contract for sale or services*

If you want to peddle wares (or services) online through your blog page, then you have to be aware that you can breach it the same way as if you sell goods or provide services offline. For example, you can be sued on your contract by a purchaser for non-conforming goods (or services) because you can breach it in the same way as if you had sold them in a real world setting (ie physical store).<sup>14</sup> Familiarise yourself with the Electronic Transactions Act (Cap 88).<sup>15</sup> Generally, just be aware that most contract law principles apply the same way to online contracts as they do to oral or written contracts negotiated and agreed upon in the physical realm.

#### *Employment*

It is not advisable to blog in the office or to make negative comments about your job or the boss for obvious reasons. If you are found out, your blog may be considered your employer's property, you may be out of a job soon or you may be sued for breach of confidentiality or breach of your employment contract or of your duties as an employee or agent (eg fiduciary duty).<sup>16</sup>

### *Confidence and privacy*

Even though we do not have a comprehensive set of privacy or data protection laws in Singapore, you should still not reveal information that you are contractually bound to keep confidential. There are other areas of law, which can hold you accountable for the things you say, especially if they are work-related matters. For example, there can be implied contractual terms of trust and confidence in employment contracts between employers and employees.

### **Thou Shall Not Steal**

Like any other website creators, bloggers must beware of intellectual property right infringement. Intellectual property is a vast subject area, but even laymen should have some rudimentary knowledge of them in this day and age. So do not upload music files or provide links to illegal download sites (ie copyright infringement). You may hyperlink or quote but make sure you attribute or give credit to the original creators or authors. Do not copy logos, trademarks, and certainly do not register a website address which can deceive or confuse web surfers that your website is that of another.

### **Thou Shalt Not Commit Crimes**

It only takes some common sense to know what is criminal conduct which should be avoided. The criminal laws of Singapore can be perused online.<sup>17</sup> For instance, do not make serious threats to others, or upload pornographic or other offensive or objectionable materials or images, online. These are just some of the offences contained in the Penal Code (Cap 224), which contains the general criminal offences in Singapore. Do not spread viruses or worms, or do anything against the Computer Misuse Act (Cap 50A). Do not make seditious remarks (such as racist postings) online in contravention of the Sedition Act (Cap 290).<sup>18</sup> If you want to be extra safe, act according to rules of good conscience and decency and inculcate good netiquette.

### **Conclusion**

When all is said and done, the blog is really not a minefield if some precautions are taken, and there is awareness of the law and how it applies equally to words and pictures in the electronic form as it does in the physical form. A little education and some common sense is a recipe for worry-free blogging. Be Aware, Exercise Care.

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## Endnotes

1 See Melissa Lwee, 'Blogger Says Sorry Again A\*STAR', Straits Times, 10 May 2005; available at: taken by Philip Yeo and A\*STAR against an <http://www.asiamedia.ucla.edu/article.asp?parentid=24127> (last visited on 1 June 2005). As stated in the article, this was not the first action online blogger who had made remarks about the chairman and/or the organisation and its agents.

2 These words appear on the Caustic Soda weblog, which now appears to be abandoned and defunct. The web site is available at: and sent to him to <http://www.scs.uiuc.edu/~chen6/blog/> (last visited on 1 June 2005). Chen had subsequently told Reuters that the words were written by A\*STAR use. See Geert de Clercq, 'Singaporean Shuts Blog After Libel Threat', Reuters, 9 May 2005; available at: [http://news.yahoo.com/news?tmpl=story&u=/nm/20050509/wr\\_nm/media\\_singapore\\_blog\\_dc\\_1](http://news.yahoo.com/news?tmpl=story&u=/nm/20050509/wr_nm/media_singapore_blog_dc_1). This could also constitute an 'offer of amends' accepted by the victim under s 7 ('Unintentional Defamation') of the Defamation Act (Cap 75).

3 Reporters Without Borders released a survey in 2004 and placed Singapore 147th out of 167 countries in the press freedom ranking, the lowest ranked developed nation. See 'Singapore Student Apologises to Government Agency for Internet Criticism', AFP, 9 May 2005; available at: <http://au.news.yahoo.com/050509/19/u8xl.html> (last visited on 1 June 2005).

4 Perhaps Acid Flask was emboldened by the way libel and slander are handled in the United States. Briefly, in the US, there is a requirement of 'actual malice' on the part of the defamer in order for a defamation claim to succeed. This standard came out of the majority decision in the US Supreme Court case of *New York Times v Sullivan* 376 US 254 (1964). It operated to protect a citizen's right to comment on government officials, even to the point of defamation (but short of doing it with the knowledge that it was false or with reckless disregard of whether it was false or not). See Brennan J's statements at *ibid* 279–80. The standard was extended to apply to 'public persons' in *Curtis Publishing Company v Butts* 388 US 130, particularly Harlan J's statements at *ibid* 163–4. However, 'private persons' (including public persons outside their public persona) are still subject to the negligence standard only.

5 Defamation is a tort action developed under common law. The Defamation Act (Cap 75) adds on and clarifies certain aspects of the law on defamation and malicious falsehood. To prove that he had been defamed whether orally (slander) or in a more permanent form (libel), a claimant must prove that the statement was in fact made by the respondent and that it was defamatory in the eyes of an objective reasonable person such that it would injure his or her reputation 'by exposing him [or her] to hatred, contempt, or ridicule, or which tends to lower him in the esteem of right-thinking members of society' (per Lord Atkin in *Sim v Stretch* [1936] 2 All ER 1237). The statement must refer to the claimant (ie that he or she was identifiable) and be published to a third party (i.e. communicated).

6 See Tan Ooi Boon, 'Forget Wimps, I Prefer Women', New Paper, 8 May 2005, available at: <http://newpaper.asia1.com.sg/news/story/0,4136,87882,00.html?> (last visited on 1 June 2005).

7 If a class of people is defamed, an action can only be brought if the individual members of that class are identifiable as individuals. Too large a class will rule that out. See the comments by Willes J in *Eastwood v Holmes* (1858) 1 F&F 347 at 349. See also the House of Lords decision in *Knupffer v London Express Newspaper Ltd* [1944] AC 116. As an aside, vulgar abuse is also not considered defamatory. As Mansfield CJ stated in *Thorley v Kerry* [1812] 4 Taunt 355 at 365, '[f]or mere general abuse spoken no action lies'. See also the statements made by Pollock CB and Wilde B in *Parkins v Scott* [1862] 1 H&C 153 at 158, 159. Flaming may not be actionable although it can still get you into trouble even if you do not fall foul of the law, depending on the circumstances. See 'Singapore Schools Punish Cheeky Student Bloggers', Stuff, 27 September 2005, available at: <http://www.stuff.co.nz/stuff/0,2106,3425256a11275,00.html>; and 'School Bloggers Suspended', Australian IT, 27 September 2005, available at: <http://australianit.news.com.au/articles/7204,16737190%5e15306%5e%5enbv%5e,00.html?from=rss> (last visited on 10 October 2005).

8 See s 8 ('Justification') of the Defamation Act (Cap 75).

9 What can constitute 'of interest to the public'? For example, they may include opinions or views on books, music, art, plays, shows as well as the activities of public figures. So comments on the happenings of your neighbour, his wife,

children and dog are not of public interest in the legal sense (although the tabloids may find it salacious enough for publication). See s 9 ('Fair Comment') of the Defamation Act (Cap 75). Fair comment can be in the form of allegations of fact or expressions of opinion or both.

10 See e.g., XiaXue at [www.xiaxue.blogspot.com](http://www.xiaxue.blogspot.com); Cheeky at [cheekybynature.blogspot.com](http://cheekybynature.blogspot.com); Mr Brown at [www.mrbrown.com](http://www.mrbrown.com); and Miyagi at [myveryownglob.blogspot.com](http://myveryownglob.blogspot.com). These are just some of the more popular blogs online that have a large following.

11 Briefly, malicious falsehood is a false statement published maliciously that either causes or is likely to cause financial loss to the claimant.

12 E.g. negligent mis-statement and the negligent infliction of emotional distress.

13 i.e. the tort of negligence. In brief, the elements of negligence are: a duty of care, the breach of duty, causation and remoteness, and damages. The tortfeasor may have full or partial defences to the action.

14 E.g. you might as well have sold the goods (or services) in a store you set up in a shopping mall, in which case you will have to suffer the consequences of a breach of contract such as selling fake or defective goods, or giving bad or sub-standard service.

15 Which gives legal recognition to electronic records by stating in s 6 that 'information shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record'. In laymen's terms, that means that electronic records are as good as hand-written or type-written or printed ones. Contracts can be formed via the internet (see Part IV) and electronic signatures can be recognised.

16 See Jeffrey Au Yong, 'Singapore: Firms with Blogging Rules in a Minority', Straits Times, 2 October 2005, available at: <http://www.asiamedia.ucla.edu/article-southeastasia.asp?parentid=30993> (last visited on 10 October 2005).

17 The Singapore Statutes Online is available at: <http://statutes.agc.gov.sg/>

18 See 'Two Bloggers Jailed for Making Seditious Remarks Online', Channelnews Asia, 7 October 2005, available at: <http://sg.news.yahoo.com/051007/5/singapore172257.html> (last visited on 10 October 2005). See also, 'Sedition Law's Use Stirs Up Singapore 20 Blogging Community', Agence France-Presse, 9 October 2005, available at: [http://news.inq7.net/infotech/index.php?index=1&story\\_id=52782](http://news.inq7.net/infotech/index.php?index=1&story_id=52782); 'Writing's on the Wall for Asia's Risque Bloggers', Sydney Morning Herald, 27 September 2005, available at: <http://www.smh.com.au/news/next/writings-on-the-wall-for-asias-risque-bloggers/2005/09/26/1127586780111.html>; 'Third Person Charged with Sedition for Racist Remarks on Blog Site', Channelnews Asia, 17 September 2005, available at: <http://sg.news.yahoo.com/050917/5/singapore168673.html>; and 'Man Charged With Making Racist Remarks Back in Court', Channelnews Asia, September 2005, available at: <http://sg.news.yahoo.com/050920/5/singapore169270.html> (last visited on 10 October 2005).