CHAPTER 1

Argentina

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Introduction to the Argentinean Legal System

With her indigenous peoples substantially but not completely decimated by colonialism and republican expansionism and modernization, Argentina is an eloquent example of Anglo-American, Spanish, and other Roman-Germanic legal fusions. A nation of mainly Civil Law and federalist roots, Argentineans gradually built a prominent legal tradition—primarily in the cities of Córdoba and Buenos Aires—that continues to exert significant hemispheric influence in various policy areas including communication law.

The National Constitution of the Argentine Republic, or *La República Argentina*, was adopted in 1994, which replaced the historic national charter of 1853. The Constitution organizes the Republic as a federal legal system with three levels of power: national, provincial, and local. Chapter One of the Third Division establishes the *Corte Suprema de Justicia de la Nación* (*CSJN*, the Argentine Supreme Court) as the country's top judicial authority, currently at five justices or *Ministros* and one of them playing the role of Supreme Court's president.[1] Because of the federal structure, there are two bodies for the administration of justice: the National Judicial Power (*Poder Judicial de la Nación*, which includes the federal capital) and the judicial power of the provinces. Each province also features a corresponding

Superior Tribunal of Justice or provincial Supreme Court, with three to nine members depending on the autonomous province.

Under the CSJN and depending on the nature of the issue, there is a collection of federal courts of specialized jurisdiction (*forum* or *fuero*), most notably the Civil Forum, the Criminal Forum, and the Labor Forum. Also important are the administrative, family, and commercial forums, among others. Civil rulings can be appealed to the *Cámaras Civiles de Apelación* (Civil Courts of Appeal) and penal causes, after a first stage of instruction conducted by a single judge and prosecutor, are tried by so-called *Cámaras del Crímen* (Criminal Courts). If meeting certain conditions, their decisions may be exceptionally reviewed by the CSJN in an extraordinary recourse called *Casación* or Revocation. At the provincial level, civil, or criminal *Cámara* judgments may only be reviewed by the respective Superior Tribunal or provincial Supreme Court, except in rare instances where cases could go all the way up to the CSJN. Trials are mostly oral and public to guarantee a fast, transparent, and fair decision. The Provincial (also called ordinary) and the Federal Justice overlap in each province (see Kozarich, 2001).[2]

The *Constitución Nacional de la República Argentina* (*CNRA*, National Constitution of the Argentine Republic) guarantees: "All the inhabitants of the nation . . . to publish their ideas through the press without previous censorship" (Art. 14, CNRA).[3] Next, in a statement remarkably similar to the U.S. First Amendment, the Argentine charter states: "The Federal Congress shall make no law restricting the freedom of the press or establishing the federal jurisdiction over it" (Art. 32, CNRA). Not surprisingly, the Argentinean federal courts and legal doctrine in media law have been prone to embrace Anglo-American interpretations.

1. What is the locally accepted definition of libel?

Although the CNRA does not explicitly mention damage to a person's honor or reputation as an exception to freedom of the press or the publication of ideas, the Federal Constitution indirectly or implicitly recognizes that abuses in the exercise of this freedom do exist and that prerogatives such as a person's dignity, moral integrity, and good name, among others, ought to be protected. "The declarations, rights and guarantees which the Constitution enumerates," notes the supreme law, "shall not be construed as a denial of other rights and guarantees not enumerated" (Art. 33, CNRA). Here again, the Argentine charter closely resembles the Ninth Amendment to the U.S. Federal Constitution. Thus, protection of a person's right to have a reputation free from undue media interference is a constitutional mandate.

Libel in Argentina is divided in two wrongs (*un modelo de imputación bipartito*): calumnies and injuries, each of which have criminal and civil implications. For example, Law 26.551 of 2009, which reformed the Argentine Penal Code (APC or *Código Penal de la Nación Argentina*), defines *la calumnia* (calumny) as "the false accusation to a specific person of

committing a particular crime with enough evidence leading to a prosecution" (Art. 109, APC).[4]

An injury, on the other hand, is committed by "whoever intentionally harms the honor or reputation of a particular individual" (Art. 110, APC). It is important to observe that both calumny and injury are now punished with fines only, not imprisonment or incarceration, and that the victim should be a physical, not a moral person (Art. 109 and 110, APC).[5] Argentina has seen a partial or mid-point decriminalization (sometimes called *desincriminación*), doing away with imprisonment and extinguishing the penal action if the fine is paid and the damages repaired before the trial (Art. 64, APC).[6] At provincial levels, the 23 provinces abide entirely by the *Código Penal de la Nación Argentina*, although most, if not all, have their own codes of penal and civil procedure.

From a civil law perspective, the Argentine Civil Code (ACC or *Código Civil de la Nación*) also mandates that victims of calumny or injury may only collect monetary compensation, provided that the plaintiff proves there has been an actual harm or a cessation of gain measured in money, and that the publisher or journalist cannot prove truth (Art. 1089, ACC).[7] If convicted of a calumnious wrong, the defendant would also have to pay the plaintiff's court and defense costs, regardless of any other civil or criminal compensation. This monetary reparation shall be collected in a civil action separate from the criminal trial (Arts. 1090 and 1096, ACC).

2. Is libel by implication recognized, or, in the alternative, must the complained-of words alone defame the plaintiff?

In the past, CSJN jurisprudence has recognized the crime of libel by implication, insofar as the alleged calumny or injury adequately fits the APC's crime definition (*configurando el tipo penal*, meaning, matching the prohibition—"the false accusation to a specific person of committing a particular crime" in cases of calumny or "the intentional harm of a specific individual's honor or reputation" in cases of injury). It is also indispensable to prove that the supposed accusation or harm affects the plaintiff (or *querellante*), and that the defendant or *querellado* exercises the right to freedom of expression in an abusive and illegitimate manner, with an intention to hurt.[8] In one case, the Supreme Court, observed that the expression "this sad character" was not insulting enough to infer injury to a person's honor, even when the implication was clear.[9] Ultimately, the gist of words in context is what helps to define whether a conduct is illegal or not.

In situations implying "illicit acts," the ACC is uncompromising, stating that there is no punishment in the absence of actual damage and fault (either negligence or malice, the *dolo*) (Art. 1067, ACC). The law, warns this statute, does not protect the abusive exercise of any right, and by "abusive" the legislator means an act that contradicts the purposes of a right or a

conduct exceeding the limits of good faith, morals, and good customs (Art. 1071, ACC).[10]

3. May corporations sue for libel?

The Argentine Penal Code, as mentioned earlier, categorically states that both calumny and injury occur when the victim is a "physical" (*una persona física*) not a legal person (see Arts. 109 and 110, APC). As written today, this penal dichotomy is designed to protect physical individuals only, their "personal dignity," "their self-esteem," "their own sentiments," and the like. Honor is a prerogative related to human dignity, an essential attribute to the individual, and a fundamental right for a human being (*un derecho personalísimo*). It seems settled, then, that the old "discussion regarding whether or not legal persons could be passive subjects of these types of crimes" is no more in Argentina (Buompadre, n.d.).[11]

By their nature, corporate entities "feel" no injury; thus, strictly speaking they should not have standing to sue for libel nor could legal entities be "personally" convicted of a crime. Even so, corporations are entirely different from their members, as explained in the Argentine Civil Code (Art. 39, ACC). Public and private in character, corporations are persons of virtual or "ideal existence" and, as such, they are entitled by law to different rights and obligations (Arts. 31, 32, and 35, ACC).

Yet, corporations continue to file defamation lawsuits despite recent reforms to the penal code (2009). A good example is the case *Minera San Jorge-Coro Mining of Canada v. Oikos* (an environmental NGO), where the former is suing as a victim of accusations of environmental pollution in a gold/copper mining project in Mendoza, western Argentina (April 2012).[12]

4. Is product disparagement recognized, and if so, how does that differ from libel?

La Ley Fundamental or Supreme Law of the Argentine Republic (the National Constitution), protects all consumers by guaranteeing their right to "adequate and truthful information," including "the defense of competition against any kind of market distortions" (Art. 42, CNRA). The application of this law is limited to commercial, not news reporting or consumer reports. Abusive advertising, such as disparaging products of the competition, can be one of those anomalies. Law No. 22.285, the Broadcasting Act (BA), also commands that "advertisements must conform to the criteria established by this statute and its regulations, primarily in regards to the integrity of the family and Christian morality" (Art. 23, BA or *Ley de Radiodifusión*).[13] Suspension of advertising is one of the sanctions that the *Comité Federal de Radiodifusión* (*COMFER*, Federal Broadcasting Committee) can impose on

licensees, plus severe penalties such as the license expiration in cases of monopolistic maneuvers using inexact, confusing, or misleading ads (Arts. 81 and 84, BA).

5. Must an individual be clearly identified (by name or photograph) to sue for libel? Can a group of persons sue for libel even though not named?

Generally, yes. Libel by implication is a difficult, if not an impossible route for defamation plaintiffs after the 2009 reforms of the Argentine Penal Code. Five major requirements are now necessary to sue for libel in this country: A concrete and detailed defamatory accusation (*circunstanciada*); against a physical and specific person, made intentionally (with *dolo or animus injuriandi*); in non-assertive fashion, and unrelated to public interest events. Photographs are considered adequately "of and concerning" a putative plaintiff, and Argentine plaintiffs have sued *Facebook* twice in 2012, claiming that the network's content has injured their reputations.[14]

Group lawsuits have not been uncommon in Argentina. In 2011, for instance, three Argentine fans sued in Buenos Aires the *Fédération Internationale de Football Association* (FIFA), the world's soccer authority, hoping to collect damages for alleged mistreatment before the soccer World Cup in South Africa. But, with the new writing of the Argentine Penal Code, it seems improbable that joint actions asking for defamation damages will be accepted in Argentine courts.[15]

6. What is the fault standard(s) applied to libel?

a. Does the fault standard depend on the fame or notoriety of the plaintiff?

Yes, it does. The reformed APC exempts defendants of all criminal responsibility in both calumny and injury when expressions refer to matters of public interest including public officials, public figures, and private individuals involved in public interest events.[16]

Argentina's fault standard in libel is thus threefold. First, they have the *Doctrina Campillay*, a criterion which in turn has three parts. As a former vice president of the Supreme Court explained, whoever exercises the freedom of expression or diffuses potentially libelous information is not responsible if he or she: (1) provides such information in an objective fashion, citing a pertinent and existing source; (2) uses nonassertive language (e.g., verbs in would-be or could-be form); (3) avoids mentioning the identity of those presumably implicated in the wrongdoing.

More importantly, the third and most effective immunity would be to successfully argue the public interest or public character of the event.[17] As

the APC states, "in no case will non-assertive expressions and referring to public interest affairs be construed as [the] crime of calumny (Art. 109, APC). Nor will disparaging epithets of honor become, when keeping their relation to public matters, a matter of criminal injury (Art. 110, APC).

There are two exceptions to the above defenses: In cases of calumny, these defenses may be defeated (1) when the alleged defamatory assertions lead to a criminal proceeding; or (2) when the plaintiff asks for proof of the imputation addressed to him or her. Truth, according to Supreme Court views, cannot be an absolute (100 percent) requirement for reporters, since it is humanly impossible to be correct all the time, but truth should be legally or diligently obtained and it should be verifiable.[18]

b. Is there a heightened fault standard or privilege for reporting on matters of public concern or public interest?

Yes. The public interest standard as "an exemption from punishment" is one of the most significant legal developments in the Argentinean process of half-way decriminalization of defamation. The public interest exception takes place in Argentina when general and institutional interests are involved; when the activities of public officials and public figures are relevant to society; and when issues concern the social and political community and the state (not just the government). In this philosophy, the public interest exemption is not to benefit governments, a few members of the public, or a group of people; it is to strengthen society's freedom of expression including journalists and, above all, ordinary people.

7. Is financial news about publicly traded companies, or companies involved with a government contract, considered a matter of public interest or otherwise privileged?

Since financial news is an issue that concerns society, notably after the infamous national crisis of the turn of the century, Argentineans easily conclude that economic or market information is a matter of public interest. The Consumer Protection Act (CPA or *Ley del Consumidor*, No. 24.240), for instance, requires that "those who produce, import, distribute or commercialize goods or services must provide consumers and users, in certain and objective form, truthful, effective and sufficient information on their essential characteristics (Art. 4, CPA).[19] According to the Broadcasting Act, the treatment of information (e.g., financial news) shall avoid contents and forms of expression that generate public commotion or collective alarm. Information cannot threaten national security, nor praise illicit activity or violence. News relating to facts

of sordid, cruel, and repulsive episodes should be treated with dignity and restraint, within the limits imposed by strict information (Art. 18, BA).[20]

8. Is there a recognized protection for opinion or "fair comment" on matters of public concern?

Yes. There is now ample opportunity to express opinions on matters of public interest or public concern in Argentina. Today, voicing an opinion or commentary, including a caustic humoristic expression, is an activity exempted from criminal liability if there is a public interest involved: "In no way will expressions referring to matters of public interest configure a calumny, or an injury," repeatedly states the amended penal rules on crimes against honor (see Art. 109, 110, and 113, APC).

If there is no public interest, the opinion may still be protected, as long as sources are cited, nonassertive language is used, or potentially offended participants are not identified. When public officials, public figures, or private individuals connected to public events are in question, *la prueba de la real malicia* (actual malice test) can also come to the rescue. This new spirit of the law has been introduced to protect the right to freedom of expression and of the press, in other words, journalists; but the law is really intended to shield everyone, meaning ordinary people as well.

9. Are there any requirements upon a plaintiff, such as demand for retraction or right of reply, and if so, what impact do they have?

Both the right of reply and the right to retract operate in the Argentine libel system. The former is not a constitutional, statutory, or administrative principle; it is a judicial creation inspired in international law (Art. 14, *Right of Reply*, The American Convention on Human Rights).[21] The latter (*la retractación*) is a provision of the federal penal code (Art. 117, APC).

In the case of *Ekmekdjian v. Sofovich* (1992), the CSJN accepted the right of reply or correction in a split ruling.[22] The right of reply or correction (*derecho de respuesta o rectificación*), wrote the Court, "seeks to clarify, immediately and for free, information that once diffused through the mass media caused damage to a person's dignity, honor and intimacy. Just as all inhabitants have the right to express and diffuse their thought—ideas, opinions, and criticism—through any media and without prior restraint, every inhabitant, because of inaccurate and harmful information damaging his or her personality, also has the right to defend himself or herself, procuring a right of reply or correction that alleviates the moral offense via an expedient judgment" (CSJN, 1992).[23]

As far as the right of retraction is concerned, the APC prescribes that those "accused of injury or calumny will be exempted of any punishment if there is a public retraction, whether before answering the complaint or at the same time of the response" (Art. 117, APC). A retraction shall not be taken as an acceptance of guilt.

10. Is there a privilege for quoting or reporting on:

a. Papers filed in court?

In principle, as confirmed by CSJN jurisprudence, all hearings are public, and journalists and any regular citizen have the right to have direct knowledge of their content. Explaining the importance of the right to information, the Supreme Court stated that "the republican form of government constitutionally adopted by the Argentine nation requires the publicity of all its acts, except for those necessarily secret or in reserve" (CSJN, 1999).[24] The lack of a federal law to access information from all public powers, however, is publicly perceived as a major flaw in the Argentinean democracy.

b. Government-issued documents?

Besides the above-mentioned Decree 1172 of 2003, regulating access to public information in the executive branch through attendance and participation in public administration hearings (see *Reglamento General para la Publicidad de la Gestión de Intereses en el Ámbito del Poder Ejecutivo Nacional*, 2003, fn 26), there is little recourse for physical and legal persons to obtain government-issued records and information. As a hemispheric press organization explains, should an official or government office "refuse [petitioners] to give information about the contents of a public document, they are authorized, prior to accreditation of legitimate interest and of the arbitrary behavior of the official, to propose judicial action in the attempt to obtain permission to access such document. The basis of the petition would lie on the disclosure of government acts imposed by the republican and democratic form of organization, and the right to information enjoyed by the citizenry regarding subjects of public interest" (IAPA, 1999).[25]

An interesting exception and example of openness is Law 25.831, which establishes a policy of free access to environmental public information (*Régimen de Libre Acceso a la Información Pública Ambiental*, 2003).[26] The purpose of this succinct act is to guarantee physical and legal persons a right of access to environmental information held by the state, not only nationally but also in provincial, municipal, and City of Buenos Aires domains, as well as in quasi-governmental, mixed, and private entities, or enterprises providing public services (Art. 1, Environmental Public Information Access

Law, EPIAL). A number of exceptions related to national security, judicial reservation, commercial and industrial secrets, necessary confidentiality of research, and classified secrets apply.

c. Quasi-governmental proceedings?

Quasi-governmental entities or enterprises, such as the National Securities Commission (CNV, in Spanish), the *Federación Argentina de Trabajadores de la Prensa* (*FATPREN*, the Argentine Federation of Press Workers), and various other organizations like *colegios*, professional associations or guilds, are inclined to have closed proceedings on ethical and other important policy matters. An example is the *Colegio de Médicos de la Provincia Santafé*, where the accused of an ethical error is investigated and the cause decided internally and in secrecy, often without the complainant's active participation (Art. 184, Ley 4931).[27] EPIAL-type of laws, with explicit principles and exceptions, are usually desired by both members of those entities and the general public.

11. Is there a privilege for republishing statements made earlier by other, bona fide, reliable publications or wire services?

Yes. *Campillay*, an influential doctrine similar to the Anglo-American fair report privilege (common law), relies on republication when used in civil and criminal cases. An approach introduced in 1986, *Campillay* recommends all reporters (storytellers) to cite the source of the information and its content as close as possible to the original.[28]

Republication in this test means making an accurate and unequivocal attribution, quote, or reference of the original material, so that complainants know or can identify whom to sue; that is, who is the real source of the information, not the diffuser.

Campillay has also been applied to criminal cases. Several cases using this doctrine, both civil and criminal, have helped news organizations and their reporters to avert criminal charges or costly civil compensation.

12. Are there any restrictions regarding reporting on:

a. Ongoing criminal investigations?

In accordance to the Criminal Procedure Code (CPC or *Código Procesal Penal*), only suspects, defense attorneys, and prosecutors can attend investigative proceedings, particularly the criminal inquiry (*indagatoria*, Art. 295, CPC).

Access of journalists to the investigative stage or reporting on and from investigative hearings is not permitted, but the Supreme Court in jurisprudence has held that "the secrecy or confidentiality of court files [*reserva del sumario*, in Spanish] is of exceptional character and can only be applied in those cases and under those conditions that the law establishes (Art. 204 of the CPC)," otherwise acts will be protected by the publicity of any republican form of government (CSJN, 1997).[29] *El sumario* (court files) will be public for the parties and defense attorneys, unless closed to them by the judge under special circumstances, but there is no right of public access, as the statute states it "is always secret for strangers" (Art. 204, cl. 3, CPC).

b. Ongoing criminal prosecutions?

The Code of Penal Procedure prescribes that, under peril of annulment, debates in hearings will be public, although judges have the power to hold them behind closed doors in part or in full when publicity threatens morality, public order, or security (Art. 363, CPC). Minors (less than 18 years of age) have no access rights to public hearings, nor do the previously convicted (with prison sentences), the insane, or the drunk possess such rights (Art. 364, CPC). People who attend a public hearing may do so respectfully and in silence; without weapons or artifacts that could offend or disturb; and they will not be allowed to exhibit bullying or aggressive behavior contrary to due order and decorum, nor cause disturbances or in any way express opinions or feelings (Art. 369, CPC). The judge can use all disciplinary and police powers to keep order in his or her courtroom (Art. 369, CPC). Testimonies and documents introduced at the hearings are also public, unless the judge closes them for a reason, and the sentencing will be read in public while the debate could be recorded in part or in full, if the presiding judge agrees (Arts. 391–392, 395, and 400, CPC).

c. Ongoing regulatory investigations?

Public hearings in the executive branch can be attended by people in general (physical and legal, public and private persons) and by the mass media, as stated in the *Reglamento General de Audiencias Públicas para el Poder Ejecutivo Nacional* (Arts. 10–11, 15, and 24, General Rules of Public Hearings for the Executive Branch, GRPH).

Their purpose is to "allow and promote effective citizen participation and to face, publicly and transparently, the different opinions, proposals, experiences, knowledge, and existing information about the subject in question" (Art. 4, GRPH). Any complaints should be addressed to the office

coordinators, in this case, the Sub-Secretariat for Institutional Reform and the Strengthening of Democracy (Chief Cabinet of Ministers Office) and the office of Anti-Corruption of the Ministry of Justice, Security and Human Rights. The hearing's president will decide whether filming or recording is permitted (Art. 27b, GRPH). Yet, these public hearings may be closed if morality (e.g., Christian values), national defense/security, and public order are at stake, among other dangers.

d. Ongoing civil litigation, or other judicial proceedings?

Hearings in civil proceedings are also public, but they may be partially or fully closed when publicity affects morality, privacy, public order, and security. Once the peril subsides, the hearing should be reopened to the public (Art. 125, CCPC). As in administrative and criminal procedures, members of the media can participate just like any other persons, with the same rights and limitations. Court files, however, can be consulted only by attorneys, expert witnesses, and secretaries when appropriate and within the sphere of their duties (Art. 125, CCPC).

13. Are prior restraints or other prepublication injunctions available on the basis of libel or privacy, and, if so, what are the standards for obtaining such relief?

No. Prior restraint is unacceptable when it comes to anyone's right of publishing ideas through the mass media, according to the federal Constitution (Art. 14, CNRA). A national civil court, for instance, dismissed an actress's lawsuit for damages against Yahoo and Google when their search engines linked her name and image to pornographic sites.[30]

There are a significant number of exceptions to press freedom and freedom of expression in Argentinean statutes. Such is the case of the Broadcasting Act (Law 22.285) where the people's privacy and health (psychological stability included); the audiences' right to truthful, objective, and timely information; and the public's right to a safe environment free of information glamorizing crime, violence, public commotion, and collective alarm are all expected standards in the use of spectrum resources (Art. 18, BA). Also, news free from sordid episodes and supporting cultural and moral enrichment, social solidarity, individual dignity and honor, human rights, and the respect for republican, democratic, and Christian values are criteria for operating a broadcast license in this country (Art. 5, BA; and Art. 1, Decree 1005, 1999).[31]

14. Is a right of privacy recognized (either civilly or criminally)?

Yes. The federal constitution reads: "The private actions of men that in no way offend public order or morality, nor injure a third party, are only reserved to God and are exempted from the authority of judges. No inhabitant of the Nation shall be obliged to perform what the law does not demand nor deprived of what it does not prohibit" (Art. 19, CNRA).

Provincial constitutions can be far more detailed than the CNRA when guaranteeing the right to privacy. For example, the Constitution of the Province of Jujuy has a threefold protection: (1) the recognition of one's personality (Art. 18); (2) the rights of privacy, honor, and dignity (Art. 23); and (3) the defense of personal rights, such as the right to a name and personal image (Art. 24, *Constitución de la Provincia de Jujuy*, 1986). Article 23 is an extensive provision that, after quoting the CNRA, goes on to explicitly protect the rights of privacy, honor, and dignity; of living free from arbitrary or abusive intrusions into one's private life and reputation; of correcting inaccurate and legally responding to offensive news; of personal data; and of reacting effectively to mass media intrusions.

Meanwhile, the Argentine Civil Code indicates that "anyone who arbitrarily interferes in someone else's life by publishing photographs and correspondence, upsetting others' customs and feelings, or in some way interfering with their privacy, and provided the acts were not criminal, will be forced to cease such activities, if he or she had not previously done so. In addition, the judge may also order, at the request of the injured party, that the sentence be published in a newspaper of the location, should this measure be appropriate for adequate redress" (Art. 1071Bis, ACC).[32]

The federal Penal Code also criminalizes physical intrusion (with prison terms of six months to two years) and breaches of personal secrets or intimacy, such as interfering with electronic communications, opening letters or mail envelopes, taking possession of private documents or computer data without consent, and revealing personal secrets (Arts. 150–157Bis, CPC).

a. What is the definition of *private fact*?

A fundamental value of human dignity, as long as it does not offend public order or morality nor injure a third party, privacy is an intimate space of impenetrable freedom leading to personal realization, a requirement of any healthy society. The protection of the right to privacy is the distinguishing factor between the rule of law and an authoritarian state.[33]

b. Is there a public interest or newsworthiness exception?

A public interest defense is recognized in nearly half of the penal clauses referring to crimes against honor (Art. 109–117Bis, CPC). This has been a

significant change in the new *Código Penal de la Nación Argentina*. Because of this reform, it has become easier to publish in regard to activities of public officials, public figures, and private persons involved in matters of public interest (this last exception is apparently of Anglo-American origins but has been reversed in North America). Conversely, the notion of newsworthiness has largely lost its meaning when reporting on private individuals, if it ever had one. The tolerance to publicize and criticize matters of public concern dies down when it comes to informing about private actors or issues, no matter how newsworthy.

c. Is the right of privacy based in common law, statute, or constitution?

In Argentina, the right of privacy is protected by federal constitutional law, federal codes and other statutes (both civil and criminal), provincial constitutional law, and administrative regulation at federal and provincial levels. In short, there is a considerable protection of this right in this country.

15. May reporters tape-record their own telephone conversations for note-taking purposes (not rebroadcast) without the consent of the other party?

No. The Argentine Penal Code expressly bans this conduct by stating: "Whoever improperly accesses an electronic communication [. . .] or a telephone message which that person is not supposed to receive, or who improperly takes over a private electronic communication, or improperly suppresses or diverts any private communication from its intended destination, will be sentenced to fifteen days to six months in prison" (Art. 153, cl. 1, CPC). The penalty will be the same if the intruder unjustifiably intercepts or captures electronic messages or telecommunications coming from any private system or a network of restricted access (Art. 153, cl 2, CPC). *Improperly* in this instance means entering a private space without the expressed or implicit consent of the owner.

16. If it is permissible to record such tapes, may they be broadcast without permission?

No. The *Código Penal de la Nación Argentina* categorically sanctions, with a prison term of one month to a year, any intruder "who communicates to another person" or "who publishes" to broader audiences the content of any private electronic communication, without consent. If private individuals

consent to release the conversation or decide to publicize it as public officials or as public figures, or even in a public event, there will be no privacy to protect anymore.[34]

17. Is there a recognized evidentiary privilege preventing the disclosure of confidential sources relied upon by reporters?

Yes, the privilege of protecting journalistic sources is indirectly included in the federal Constitution (Art. 43, CNRA). While protecting the people's right to habeas data ("any person" can file a motion to gain knowledge of information about him or her in public records and data banks, including private networks, and rid them of eventual inaccuracies, arbitrariness, or illegality), the Fundamental Law concludes: "The secret nature of the sources of journalistic information shall not be impaired" (Art. 43, cl. 3, CNRA). Balancing the right of openness on the one hand (habeas data) and the secrecy and confidentiality of media sources on the other, this constitutional provision has made a big difference for the profession of journalism in Argentina.

18. In the event that legal papers are served upon the newsroom (such as a civil complaint), are there any particular warnings about accepting service of which we should be aware?

Penal court resolutions will be notified to interested parties within 24 hours, and defendants will be informed of the court proceeding at their home addresses, their offices, or those of their legal representatives. If acting through legal representation, only such individuals will be notified, and there will be no need of personal notification to the defendant unless it is mandated by the judge. If the defendant cannot or does not want to be notified, summons will be served through two witnesses, different from the defendant's office staff, if the notification is attempted at his or her office. If made at the defendant's domicile, any adult residing at the location, a literate neighbor, or even a relative could be used to formalize the notification. When the defendant's domicile is ignored, the court will publish the resolution in the Official Bulletin (*edictos*) for five days, placing a copy of the publication in the defendant's file. The tribunal will also keep a record of the notification, primarily in the defendant's file. An unsigned notification or one in error will be declared null. Ordinary and expert witnesses, interpreters, and other auxiliaries may be notified by letter or other forms of notice (Arts. 142–160, CPC).

In civil proceedings, Tuesday and Friday are set days for notification purposes. If falling on a holiday, the notification will be made the following

business day. Taking files through a legal representative or in person will automatically serve as notification (known as *tacit* or *implicit* notification), although there are a number of exceptions, depending on the type of court proceeding or resolution. Other means to make court notifications are notary minutes, certified mail or letters, confidential copies, notifications via radio or television, court postings or publications (*edictos*), or personally (Art. 133–149, CCPC).

19. Has your jurisdiction applied established media law to Internet publishers?

Yes. Recent litigation against Facebook and Google indicates that Argentine judges are willing to applied established media law to Internet service providers and publishers. On August 3, 2011, Argentina made news when judges accepted a lawsuit against Facebook by two subscribers who claimed that the social network damaged their reputations with presumed calumnies and injuries. The alleged victims actually had their case dismissed at the trial stage for not even knowing the address of the perpetrators, among other formalities, but the Fourth Chamber of the National Appeals Chamber on Criminal and Correctional matters (*Sala IV de la Cámara Nacional de Apelaciones en lo Criminal y Correccional*) reversed the lower court, arguing that mere formalities were not enough to declared a lawsuit inadmissible.[35]

In another recent case (July 2011), this time against Google, the *Cámara Federal de Salta* (the Appeals Court of Salta, Province of Jujuy) rejected an appeal by the defendant, which claimed a lack of jurisdiction because the company's headquarters were in California. The court rejected this argument, confirming that Senator Guillermo Jenefes, who had been defamed through a third party's blog created in the social network, was entitled to seek an injunction against a local Internet user allegedly damaging his public image, especially after the senator had repeatedly asked Google to remove the blogger.[36]

20. If established media law has been applied to Internet publishers, are there any ways in which Internet publishers (including chat room operators) have to meet different standards?

Not yet, but Argentina's litigation on Internet and defamation issues is becoming quite active, and new standards applicable to this technology are likely to emerge, including standards for chat rooms. Despite the fact

that the Internet is widely used in Argentina, there is no clear definition on whether bloggers and any other Internet publisher should enjoy the status of a full reporter, having immunity for instance to protect the confidentiality of their sources. Article 43 of CNRA speaks of "secret sources of journalistic information" not to be impaired, but the journalism profession is unclear about whether a blogger or Internet publisher is in fact a "journalist."

For example, the *Estatuto Profesional del Periodista* (The Professional Journalist Statute) regards as professional journalists only those who, in regular fashion and for a salary, perform journalistic tasks in daily or periodical publications and news agencies. These people will be directors, co-directors, chief news editors, editorialists, reporters, chroniclers, correspondents, graphic editors, news photographers, archivists, or any other permanent collaborators. And the media they serve would be print, broadcast, and film channels carrying information or news-related products. Individuals working in advertising or activities outside this profession, or participating in dailies, magazines, and news programs for ideological or political reasons and without pay, are not considered journalists (Art. 2, The Professional Journalist Statute, *Ley 12.902*).[37] Thus, Internet publishers and other communicators appear to be excluded. This is another issue to resolve among Argentineans.

21. Are there any cases where the courts have enforced a judgment in libel from another jurisdiction against a publisher in your jurisdiction?

Not yet. However, it is important to review the above-mentioned case of *Senator Jenefes v. Google*, where the Federal Appeals Court of Salta, Jujuy, implied that a defamation plaintiff does not have "to sue the planet" to collect for damages from an Internet publisher or communicator who might be damaging his or her reputation in a local community, a place where both plaintiff and defendant make their living and are known. Argentina is actually prone to use international media jurisprudence and apply foreign judgments, but this openness may work sometimes in favor of defamation plaintiffs and other times in favor of defendants.

Notes

1. See, Law 26.183, December 18, 2006. Actually, there are seven justices today, but the country is awaiting two vacancies to bring the Supreme Court to five members, as during its historic *Primera Corte* of 1862.

2. N. Kozameh, E. N. Kozameh, E. Trajtenberg, and J. O. Trajtenber, "Features—Guide to the Argentine Executive, Legislative and Judicial System," July 15, 2001. http://www.llrx.com/features/argentina.htm.
3. See, *Constitución Nacional de la República Argentina*, *Ciudad de SantaFe* (also in English), August 22, 1994. http://pdba.georgetown.edu/Constitutions/Argentina/argen94.html.
4. *Código Penal de la Nación Argentina, Ley 11.170*, 1984. See also Art. 1, *Ley 26.551*, which redefined Article 109, APC. http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm.
5. Before 2009, calumny was subject to a penalty of one to three years in prison, while those convicted of injury received sentences of one month to a year. E. Moliné-O'Connor, "La calumnia e injuria y la 'Real Malicia': La doctrina Campillay," in *Justicia y Libertad de Prensa: Ensayos de la Cumbre Hemisférica* (Miami, FL: Colección Chapultepec/SIP, 2003), 47.
6. J. E. Buompadre, "Injuria: La reforma de los delitos contra el honor en Argentina. Carlos Parma Website, Derecho Penal y la Criminología Latinoamericana" (n.d.). http://www.carlosparma.com.ar/index.php?option=com_content&view=article&id=428:injuria-la-reforma-de-los-delitos-contra-el-honor-en-argentina-&catid=52:legislacion&Itemid=50.
7. *Código Civil de la Nación*, 1871. http://www.infoleg.gov.ar/infolegInternet/anexos/105000-109999/109481/texact.htm.
8. Eduardo G. Kimel and Jacobo Singerman, CSJN, s/ Art. 109 CP, K. 32 XXXIII, December 22, 1998. http://www.csjn.gov.ar/cfal/fallos/cfal3/ver_fallos.jsp.
9. See Noberto L. Recasens, c/ Editorial Atlántida S.A. y otro, CSJN, Recurso de hecho, R. 393. XXXIV, November 9, 2000. http://www.csjn.gov.ar/cfal/fallos/cfal3/ver_fallos.jsp.
10. Title VIII (*De los Actos Ilícitos*), Chapters I (*De los Delitos*) and II (*De los Delitos contra las Personas*), *Codigo Civil de la Nación*, 1871. http://www.infoleg.gov.ar/infolegInternet/anexos/105000-109999/109481/texact.htm.
11. J. E. Buompadre, "Injuria," 6.
12. "Argentina: Coro Mining denunció a organización ambientalista mendocina," Los Andes, *Business News Americas*, May 1, 2012. http://www.minesandcommunities.org/article.php?a=11669.
13. "Radiodifusión, Ley 22.285," September 15, 1980. http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/17694/texact.htm.
14. "La justicia argentina habilitó demandas contra Facebook por injurias," Notio.com, August 3, 2011. http://notio.com.ar/sociedad/la-justicia-argentina-habilito-demandas-contra-facebook-por-injurias-16464.
15. Articles 109 and 110 are precise when saying that false imputations or intentional dishonor shall be made to a physical person (*una persona física*), not a group or collectivity.
16. Buompadre, "Injuria," 10. See also Moliné-O'Connor, "La calumnia e injuria," 47; and G. Badeni, "La calumnia e injuria y la real malicia: La libertad de prensa y la despenalización de la calumnia e injuria," in *Justicia y Libertad de Prensa: Ensayos de la Cumbre Hemisférica* (Miami, FL: Colección Chapultepec/SIP, 2003), 37.

17. Moliné-O'Connor, "La calumnia e injuria," 47; and Badeni, "La calumnia e injuria y la real malicia," 37.
18. A. R. Vásquez, "Algunos criterios y reglas para enjuiciar las posibles restricciones a la libertad de expresión en la jurisprudencia de la Corte Suprema de Justicia de la República Argentina," in *Justicia y Libertad de Prensa: Ensayos de la Cumbre Hemisférica* (Miami, FL: Colección Chapultepec/SIP, 2003), 58.
19. *Ley Defensa del Consumidor*, No. 24.240, October 18, 1994. http://www.filo.uba.ar/contenidos/carreras/edicion/catedras/derechos/sitio/leydedefensadelconsumidor.html.
20. "Radiodifusión," Ley 22.285, 1980. http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/17694/texact.htm.
21. See American Convention on Human Rights, "Pact of San Jose, Costa Rica," 1969. http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.
22. "Argentina," in *Freedom of the Press and the Law: Laws That Affect Journalism in the Americas* (Miami, FL: Interamerican Press Association (IAPA), 1999), 49–50.
23. Miguel Ángel Ekmekdjian, c/ Sofovich, Gerardo y otros. s/Recurso de Hecho, CSJN, July 7, 1992. http://www.dipublico.com.ar/juris/Ekmekdjian.pdf.
24. Mario Fernando Ganora y otra. s/hábeas corpus. CSJN, G.529 XXXIII, T. 322, p. 2139, September 16, 1999. http://www.csjn.gov.ar/jurisp/jsp/MostrarSumario?id=297408&indice=87.
25. Inter-American Press Association, *Freedom of the Press and the Law: Laws That Affect Journalism in the Americas* (Argentina) (Miami, FL: IAPA/SIP, 1999), 51.
26. See, *Ley 25.831*, November 26, 2003. http://www.infoleg.gov.ar/infolegInternet/anexos/90000-94999/91548/norma.htm.
27. *Código de Ética de los Profesionales del Arte de Curar y sus Ramas Auxiliares*, Ley 4931, n.d. http://www.colmedicosantafe2.org.ar/top/leyes/ley4931.pdf.
28. Julio C. Campillay, c/ La Razón y otros. CSJN, May 15, 1986. http://www.perio.unlp.edu.ar/htmls/unesco/documentos/unidad7/campillay.pdf.
29. *Tribunal Oral en lo Criminal Federal de Mendoza no. 1, avocación*, Pereyra González Carlos, Mestre Brizuela Eduardo, González Macías Juan s/expte,adm, T. 975, T. 320, p. 484, January 4, 1997. http://www.csjn.gov.ar/jurisp/jsp/MostrarSumario?id=290134&indice=17.
30. See Andrea Paola Krum, c/Yahoo de Argentina SRL y otro s/daños y perjuicios. Read Rechazan demanda por daños y perjuicios presentada por una actriz contra buscadores de Internet, *Informática Legal*, August 18, 2011. http://www.informaticalegal.com.ar/2011/08/19/rechazan-demanda-por-danos-y-perjuicios-presentada-por-una-actriz-contra-buscadores-de-internet/.
31. *Radiodifusión. Decreto 1005/99, Modificaciones de la Ley 22.28, a los Efectos de Posibilitar su Adecuación a las Transformaciones Operadas en los Campos Económicos, Social y Tecnológico*, September 10, 1999. http://infoleg.mecon.gov.ar/infolegInternet/anexos/60000-64999/60146/norma.htm. See also, Argentina, *Press Reference*. Avaialble at: http://www.pressreference.com/A-Be/Argentina.html.
32. See, Inter-American Press Association, *Freedom of the Press and the Law* (Argentina), 49.

33. Asociación Lucha por la Identidad Travesti-Transexual c/Inspección General de Justicia, CSJN, A.2036 XL; RHE; T. 329, p. 5266, November 21, 2006.
34. A. R. Vásquez, "Algunos criterios y reglas para enjuiciar las posibles restricciones a la libertad de expresión en la jurisprudencia de la Corte Suprema de Justicia de la República Argentina, " in *Justicia y Libertad de Prensa: Ensayos de la Cumbre Hemisférica* (2003), 57.
35. See NN. s/injurias y G.SRL y otros s/art 109 CP. Read La justicia argentina habilitó demandas contra Facebook por injurias, Notio.com. http://notio.com.ar/sociedad/la-justicia-argentina-habilito-demandas-contra-facebook-por-injurias-16464.
36. Ratifican competencia de la justicia Argentina en demanda presentada contra Google, Informática Legal, July 11, 2011. http://www.informaticalegal.com.ar/2011/07/11/ratifican-competencia-de-la-justicia-argentina-en-demanda-presentada-contra-google/.
37. See, *Estatuto del Periodista*, 1946. http://www.espaciosjuridicos.com.ar/datos/LEY/LEY12908.htm.