Legal article

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If a Post Is Defamatory, Is It Also an Offense Under Section 14 (1) of the Computer-related Crime Act?

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> This article is general legal information, not a legal opinion on any specific matter. Each matter must be assessed on its own facts and evidence. The latest online version is at https://eksiamdefamationlaw.com/en/articles/supreme-court-2778-2561-defamation-computer-act.html

> Short answer
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> If the same set of facts amounts to defamation under the Criminal Code, the act is not an offense under the current Section 14 (1) of the Computer-related Crime Act merely because it was published on a website or on Facebook. The person may still be liable for defamation by publication under Section 328, or for another offense with different elements.

This is the core of Supreme Court Judgment No. 2778/2561, which corrects the belief that "if a false statement is on a computer, a Computer-related Crime Act charge must always be added." In fact, the 2017 (B.E. 2560) amendment draws the line expressly: Section 14 (1) applies only to conduct **which is not an offense of defamation**[1]

The facts of Judgment No. 2778/2561

The case began with a speech at a political group's rally on 22 February 2011 (B.E. 2554), in which words were spoken that the court found to defame the plaintiff. Someone later transcribed the speech and published it on the website manager.co.th[2]

On appeal to the Supreme Court, the issue for the second defendant was the liability of the person holding the right to manage the website. The defendant argued that the original owner company had become bankrupt, so the right to manage the website had ended. The court held that the licensing agreement did not lapse merely because the licensor became bankrupt, and that the circumstances showed the second defendant had absolute authority to manage the website, including control over the content published.

The court therefore held that the second defendant was guilty of defamation by publication under Section 328 and imposed a fine of 60,000 baht. The next question was whether the same publication was also an offense under Section 14 (1) and (5) of the Computer-related Crime Act.[2]

The turning point: a new law took effect while the case was pending

At the time of the events, the former Section 14 (1) covered bringing forged or false computer data into a computer system in a manner likely to cause damage "to another person or the public." Such broad wording was used in many reputation disputes.[3]

The Computer-related Crime Act (No. 2) B.E. 2560 (2017) then amended Section 14 (1) by adding key elements:

1. the act must be done "dishonestly or deceitfully";
2. the data must be distorted, forged, or false;
3. it must be likely to cause damage to the public; and
4. it must be conduct "which is not an offense of defamation under the Criminal Code."[1]

The new law came into force while the case was before the Supreme Court. Section 2, paragraph two, of the Criminal Code provides that if, under a law enacted afterwards, such an act is no longer an offense, the person who committed it is relieved from being an offender. The Supreme Court could therefore raise this issue on its own motion even though the defendant had not appealed on it directly, because it is a question of law concerning public order.[2]

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How the Supreme Court decided

Once the second defendant's act was found to be defamation by publication under Section 328, it lacked the element the new law requires, namely that the act must not be an offense of defamation. The same act was therefore not an offense under Section 14 (1).

> Supreme Court Judgment No. 2778/2561 (abstract, unofficial translation)
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> Since it is established that the act of the second defendant is an offense of defamation under Section 328 of the Criminal Code, the act of the second defendant is not an offense under Section 14 (1) of the Computer-related Crime Act B.E. 2550 (2007) as enacted afterwards, pursuant to Section 2, paragraph two, of the Criminal Code.[2]
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> Thai original: เมื่อคดีได้ความว่าการกระทำของจำเลยที่ 2 เป็นความผิดฐานหมิ่นประมาทตาม ป.อ. มาตรา 328 การกระทำ ของ จำเลย ที่ 2 ย่อม ไม่ เป็น ความผิด ตาม พ.ร.บ.ว่าด้วย การ กระทำความผิด เกี่ยวกับ คอมพิวเตอร์ พ.ศ.2550 มาตรา 14 (1) ที่บัญญัติในภายหลัง ตาม ป.อ. มาตรา 2 วรรคสอง

And since the source data was not data under Section 14 (1), the offense of publishing or forwarding it under Section 14 (5), which depends on that source data, did not arise either. The Supreme Court therefore modified the judgment so that the second defendant was liable under Section 328 alone.[2]

The theory behind it: the channel is not the offense

A common mistake is to start from the fact that "it was posted on a computer" and conclude that it must be a computer crime. Criminal law, however, classifies offenses by the interest the law protects and by their specific elements, not merely by the device used.

- Defamation protects a person's reputation.
- Section 14 (1) targets distorted, forged, or false data used dishonestly or deceitfully and causing the damage the law specifies.
- Section 16 targets images of a person that have been created, edited, added to, or modified in a way likely to damage that person's reputation or cause humiliation.[1]

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Facebook is therefore the "channel"; the offense must be found in "the content, the intent, the audience, and the interest the law protects."

Comparing the former and current law

Issue	Former Section 14 (1)	Current Section 14 (1)
Specific intent	No reference to acting dishonestly or deceitfully	Must be done dishonestly or deceitfully
Who suffers the damage	Another person or the public	Paragraph one refers to the public; paragraph two deals separately with damage to a particular person
Relationship with defamation	No express carve-out	States that the act must not be an offense of defamation
Outcome in this judgment	The act might have fallen within the former test	Under the later law, the act is not an offense under Section 14 (1) and (5) (Criminal Code, Section 2, paragraph two)

This comparison explains why television commentary or some older articles saying "a false post violates the Computer-related Crime Act" may not reflect the provisions in force today.

What this judgment does not mean

1. **It does not mean that a defamatory post is lawful**, the second defendant in this case was still punished under Section 328.
2. **It does not mean that truth always excuses defamation**, Sections 329 and 330 must be examined separately.[4]

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3. **It does not rule out Section 16**, if there is a created or edited image of a person, the elements of Section 16 must be examined specifically.

4. **It does not bar charges under several laws where there are separate acts**, one statement may be defamation, while a separate image or a separate deceptive scheme may satisfy another law.

5. **It does not make a website administrator automatically liable for every post**, in this case the court relied on the agreement, the management rights, and the specific circumstances to decide the second defendant's liability.

Comparison with two other Supreme Court judgments

Judgment	Key question	Principle
2778/2561	Is the act already defamation?	If so, the same act is not an offense under Section 14 (1)
5764/2562	Was there the specific intent to act dishonestly or deceitfully?	False data alone is not enough[5]
2211/2566	Did the damage reach "the public" under paragraph one?	The law sets no minimum number of viewers. Where the data is directed at the public in a system that members of the general public can access, a single actual viewer still satisfies paragraph one[6]

For an overview of all three judgments, see How defamation differs from the Computer-related Crime Act (Thai)

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Applying the principle to a Facebook post

Suppose someone publicly posts that a shop owner "cheats customers," while the person accused insists that it is untrue. The correct analysis is not to cite Section 328 and Section 14 (1) together straight away, but to ask, in order:

1. Whom does the statement refer to, and can third persons identify that person?
2. Is it an assertion of fact, or merely an opinion or insult?
3. Is it likely to damage the person's reputation?
4. Is there an exemption under Section 329, or can the truth be proved under Section 330?
5. Is there any other act distinct from the defamation, such as creating a fake page, tricking someone into transferring money, or using an edited image?

If there is only an imputation damaging reputation through Facebook, the principal offense is defamation, not Section 14 (1) for the same act. If there is a separate set of acts, the elements of each offense must be analyzed separately rather than lumped together.

About the author

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Defamed in a post, or charged under the Computer-related Crime Act as well? Let us check the offense

Choosing the wrong legal basis at the outset can waste time, miss evidentiary issues, or misjudge the risk. **If you face a problem of this kind, Eksiam Defamation Law will be glad to review** the statement, images, context, audience, charges, and evidence before you file a police complaint, bring a lawsuit, give a statement, or respond.

> This article is general information, not an opinion on the facts of any particular case.

Frequently asked questions

Is a defamatory Facebook post also an offense under Section 14 (1)?

Not automatically, from the same act. If the substance meets the elements of defamation, the current Section 14 (1) excludes that case, following Supreme Court Judgment No. 2778/2561.

Can I file a police complaint on both charges?

A person may allege several charges, but that does not mean every charge meets its elements. Where there are several separate acts, each must be analyzed separately. Where there is only a single defamatory statement, adding a Section 14 (1) charge runs into the problem identified in this judgment.

What if it is an edited image that damages someone's reputation?

Section 16 must be examined separately, because it is a specific offense concerning images that are created, edited, added to, or modified, and it does not lead to the same conclusion as Section 14 (1).

Is a page or website administrator always liable?

Not always. The person's role, power of control, knowledge, approval or publication, and the elements of the offense must be proven for each individual.

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Footnotes

1. Computer-related Crime Act (No. 2) B.E. 2560 (2017), Sections 8 and 10, amending Sections 14 and 16, Royal Gazette, Vol. 134, Part 10 Ko, 24 January 2017 (B.E. 2560), pages 24-35, Royal Gazette. Quotations of Section 14 (1) are unofficial translations.
   Thai original: พระราชบัญญัติว่าด้วยการกระทำความผิดเกี่ยวกับคอมพิวเตอร์ (ฉบับที่ 2) พ.ศ. 2560 มาตรา 8 และมาตรา 10 ซึ่งแก้ไขมาตรา 14 และมาตรา 16, ถ้อยคำในมาตรา 14 (1): “โดยทุจริต หรือโดยหลอกลวง”, “อันมิใช่การกระทำความผิดฐานหมิ่นประมาทตามประมวลกฎหมายอาญา”

2. Supreme Court Judgment No. 2778/2561, Supreme Court judgment database.

3. Computer-related Crime Act B.E. 2550 (2007), Section 14 (1) before amendment, Royal Gazette.

4. Criminal Code, Section 2, paragraph two, and Sections 326, 328, 329, and 330; Judicial Law and Academic Affairs Office, Court of Justice.

5. Supreme Court Judgment No. 5764/2562, Supreme Court judgment database.

6. Supreme Court Judgment No. 2211/2566; Office of the Judiciary, *Dika InTrend Ep.159*, COJ Channel.

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