



REPUBLIC OF THE PHILIPPINES
Senate
Pasay City

Journal

SESSION NO. 17
Monday, September 12, 2011

FIFTEENTH CONGRESS
SECOND REGULAR SESSION

SESSION NO. 17
Monday, September 12, 2011

CALL TO ORDER

At 3:24 p.m., the Senate President, Hon. Juan Ponce Enrile, called the session to order.

PRAAYER

Sen. Ralph G. Recto led the prayer, to wit:

Thank You, Lord, for giving us a chance to live, love and lead as You did on Earth.

When Israel needed leaders, they recruited the best commoners and rationed them the simplest fare. Aristocratic scions were served the most royal food. After ten days, commoners beat aristocrats in tests of brain and brawn. The commoners were chosen to be the next leaders.

Lord, forgive us our own excesses and weaknesses.

Bless us with fortitude so we can pass our own tests for leadership in our country. We want to be able to look after the humblest Filipinos. You counseled us to care for innocent children, the sick, the widows, and those in prison as the highest form of service.

Lord, help us to be leaders who can stand up to the challenge of serving Your people. They need food, shelter, clean air and water, *jobs and peace. Help us deliver their simple needs and wants – as they patiently wait.*

Please grant us strong hands, an iron will and a merciful heart to become true servant-leaders. Help us to be contented with the simplest fare.

We pray for Your guidance so that our service will proudly sing praises to Your name.

Amen.

NATIONAL ANTHEM

The Trinity University of Asia High School Chorale led the singing of the national anthem and thereafter rendered the song, entitled "*Tunay na Ligaya.*"

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Atty. Emma Lirio-Reyes, called the roll, to which the following senators responded:

Arroyo, J. P.	Lacson, P. M.
Cayetano, A. P. C. S.	Lapid, M. L. M.
Cayetano, P. S.	Legarda, L.
Defensor Santiago, M.	Osmeña III, S. R.
Drilon, F. M.	Pimentel III, A. L.
Ejercito Estrada, J.	Recto, R. G.
Enrile, J. P.	Revilla Jr., R. B.
Guingona III, T. L.	Sotto III, V. C.
Honasan, G. B.	

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With 17 senators present, the Chair declared the presence of a quorum.

Senators Angara, Escudero, Pangilinan, Trillanes and Villar arrived after the roll call.

Senator Marcos was on official mission.

At this juncture, Senate President Enrile relinquished the Chair to Senate President Pro Tempore Ejercito Estrada.

DEFERMENT OF APPROVAL OF THE JOURNAL

Upon motion of Senator Sotto, there being no objection, the Body deferred the consideration and approval of the Journal of Session No. 16 to a later hour.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 2958, entitled

AN ACT CREATING THREE (3) ADDITIONAL BRANCHES OF THE REGIONAL TRIAL COURT TO BE STATIONED AT THE CITY OF DAVAO, AMENDING FOR THE PURPOSE SECTION 14, PARAGRAPH (L) OF BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE "JUDICIARY REORGANIZATION ACT OF 1980," AS AMENDED, AND APPROPRIATING FUNDS THEREFOR

Introduced by Senator Enrile

To the Committees on Justice and Human Rights; and Finance

Senate Bill No. 2959, entitled

AN ACT DECLARING THE PETROLEUM INDUSTRY TO BE AFFECTED WITH PUBLIC INTEREST, SETTING THE ALLOWABLE LEVEL OF PROFIT FOR PETROLEUM COMPANIES, IMPOSING

A WINDFALL PROFITS TAX ON PETROLEUM COMPANIES AND FOR OTHER RELATED PURPOSES

Introduced by Senator Trillanes IV

To the Committees on Ways and Means; and Energy

RESOLUTION

Proposed Senate Resolution No. 591, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS AND THE COMMITTEE ON CONSTITUTIONAL AMENDMENTS, REVISION OF CODES AND LAWS, AND OTHER PROPER COMMITTEES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE INDEFEASIBILITY OF THE TORRENS CERTIFICATE OF TITLE, THE INTEGRITY OF THE TORRENS SYSTEM IN THE PHILIPPINES, AND THE NEED TO PUT UP A LAND TITLING INSURANCE SYSTEM AND STRICTER RULES FOR THE RECONSTITUTION OF LAND TITLES, IN LIGHT OF THE RECENT CONTROVERSIAL LAND DISPUTE IN QUEZON CITY AFFECTING RESIDENTS OF SANVILLE 1, 2, 3 AND 4, K-VILLE, K-SQUARE, METRO HEIGHTS, ARFEL HOMES, SADEL COURT, FERNWOOD GARDENS, CLARET SEMINARY, MARIA MONTESSORI SCHOOL, WILCOM BUILDERS IN VISAYAS AVENUE, LIMQUECO COMPOUND AND OTHER AFFECTED LAND OWNERS

Introduced by Senator Pimentel III

To the Committees on Justice and Human Rights; and Constitutional Amendments, Revision of Codes and Laws

ACKNOWLEDGMENT OF THE PRESENCE OF GUEST

At this juncture, Senator Sotto acknowledged the presence in the gallery of Gov. David Suarez of Quezon.

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Senate President Pro Tempore Ejercito Estrada welcomed Governor Suarez to the Senate.

APPROVAL OF THE JOURNAL

Upon motion of Senator Sotto, there being no objection, the Body dispensed with the reading of the Journal of Session No. 16 (September 7, 2011) and considered it approved.

APPROVAL OF SENATE BILL NO. 2811 ON THIRD READING

Upon motion of Senator Sotto, there being no objection, the Body considered, on Third Reading, Senate Bill No. 2811, printed copies of which were distributed to the senators on September 7, 2011.

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, upon motion of Senator Sotto, there being no objection, Secretary Reyes read only the title of the bill, to wit

AN ACT ESTABLISHING THE PEOPLE'S SURVIVAL FUND TO PROVIDE LONG-TERM FINANCE STREAMS TO ENABLE THE GOVERNMENT TO EFFECTIVELY ADDRESS THE PROBLEM OF CLIMATE CHANGE, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9729, OTHERWISE KNOWN AS "THE CLIMATE CHANGE ACT OF 2009", AND FOR OTHER PURPOSES.

Secretary Reyes called the roll for nominal voting.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor

- | | |
|-------------------|-----------|
| Arroyo | Lacson |
| Cayetano (A) | Lapid |
| Cayetano (P) | Legarda |
| Defensor Santiago | Osmeña |
| Drilon | Pimentel |
| Ejercito Estrada | Recto |
| Enrile | Revilla |
| Escudero | Sotto |
| Guingona | Trillanes |
| Honasan | |

Against

None

Abstention

None

With 19 senators voting in favor, none against, and no abstention, the Chair declared Senate Bill No. 2811 approved on Third Reading.

COMMITTEE REPORT NO. 30 ON SENATE BILL NO. 2796

(Continuation)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2796 (Committee Report No. 30), entitled

AN ACT DEFINING CYBERCRIME, PROVIDING FOR PREVENTION, INVESTIGATION AND IMPOSITION OF PENALTIES THEREFOR AND FOR OTHER PURPOSES.

Senator Sotto stated that the parliamentary status was still the period of interpellations.

Thereupon, the Chair recognized Senator Angara, sponsor of the measure, and Senator Defensor Santiago, for her interpellation.

SUSPENSION OF SESSION

Upon motion of Senator Sotto, the session was suspended.

It was 3:36 p.m.

RESUMPTION OF SESSION

At 3:54 p.m., the session was resumed.

INTERPELLATION OF SENATOR DEFENSOR SANTIAGO

As regards the procedure she would follow in her interpellation, Senator Defensor Santiago stated that first, she would discuss the background of her questions, in the course of which she might raise a few rhetorical questions, to which no answer would

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be expected. She said that towards the end, she would repeat the questions and properly notify the Sponsor she was waiting for an answer.

Thereupon, Senator Defensor Santiago explained the background of her questions.

1. *Situs of the Offense*

Background:

For purposes of determining the situs of the offense, what foreign factors should be considered? In foreign jurisdictions, the situs of an offense of computer criminal activity shall include the location of the computer, the computer storage medium, the computer program, the computer server, computer software, computer equipment, computer system or computer network which is accessed, or where the computer, the computer's storage medium, computer program, computer software, computer equipment, computer system, computer network or other device used in the offense is situated, or where the actual damage occurs. In August 2000, a certain Onel de Guzman, a Filipino, created the "I LOVE YOU" virus, which caused damages amounting to at least US\$5.5 million in the Philippines, Hong Kong, Europe and the United States. How will our jurisdiction treat a situation in the future when a computer program or network is accessed here and the damage crossed Philippine borders?

Does the Philippines intend to be a party to the Budapest Convention on Cybercrime? Article 22 of the Convention provides:

Article 22 – Jurisdiction


1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 of this Convention, when the offence is committed:
 - a. in its territory; or
 - b. on board a ship flying the flag of that Party; or
 - c. on board an aircraft registered under the laws of that Party; or
 - d. by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.

2. Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1.b through 1.d of this article or any part thereof.
3. Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in Article 24, paragraph 1, of this Convention, in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.
4. This Convention does not exclude any criminal jurisdiction exercised in accordance with domestic law.
5. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

If the Philippines has signified its accession to the Convention, it is bound by the foregoing provisions. What will be the country's policy in case another country is claiming jurisdiction over the offense?

Asked by Senator Defensor Santiago what factors should be considered for purposes of determining the situs of the offense of cybercrime, Senator Angara replied that some factors were already mentioned, i.e. nationality of the offender, where the computer system is located, or where the actual damage occurs. Any of these factors, he said, can cause the Philippines to take jurisdiction but should a problem arise and another jurisdiction comes in, the third or fifth paragraph of the Budapest Convention would be invoked, in which case, both parties may consult or may decide the matter between them.

Senator Angara disclosed that the Philippines had been invited to the Budapest Convention but that he was not sure if the Executive has made a decision whether to accede to it or not. However, he expressed certainty that once the Cybercrime Act is passed, coordination and collaboration with other countries would be easier because international cooperation is at the heart of said law. He emphasized that international cooperation is essential because cybercrimes cross borders and it is in the mutual interest of the community of nations that the issue of jurisdiction be resolved.



Senator Defensor Santiago asked how the Philippine jurisdiction would treat a situation where a computer program or network accessed in the Philippines causes damage across the country's borders, as in the case of the "I LOVE YOU" virus that was launched by a Filipino, considering that the Philippines might not accede to the Budapest Convention. Senator Angara clarified that since the accused is a Philippine national, the Philippine courts may take jurisdiction over the case. He agreed to the observation that Philippine jurisdiction would be determined as a rule under the regulations of the Budapest Convention.

2. Definition of the phrase "without right"

Background:

Section 3, paragraph (g) of Senate Bill No. 2796 defines the phrase "without right" as either: (i) conduct undertaken without or in excess of authority; or (ii) conduct not covered by established legal defenses, excuses, court orders, justifications, or relevant principles under the law.

The definition of the phrase "without right" is crucial considering that it is a principal element of the following cybercrime offenses punishable under Section 4:

- Illegal Access;
- Illegal Interception;
- Data Interference;
- System Interference;
- Misuse of Devices; and
- Computer-Related Forgery.

As presently defined, offenders may invoke the defense that the element of "without right" is lacking in the guise of invoking any right, or any moral duty. This will make it difficult to prosecute persons committing the foregoing offenses. It is a fundamental principle that the law should be drafted with sufficient specificity and clarity to provide foreseeability as to the act that will be criminalized. Furthermore, the Explanatory Note to the Convention on Cybercrime provides a lengthy rationale for defining the phrase "without right." Paragraph No. 38 of the Explanatory Note says in part: "Thus, without restricting how parties may implement the concept in their domestic law, it may refer to conduct undertaken without

authority (whether legislative, executive, administrative, judicial, contractual or consensual), or conduct that it is otherwise not covered by established domestic law."

In view of the foregoing, there might be a need to narrowly define "without right."

Asked whether, at the proper time, he would be amendable to narrowly define "without right" after paragraph 38 of the Explanatory Note to the Convention on Cybercrime, Senator Angara welcomed the proposal, saying that the requirement in criminal offenses is that it must be defined with clarity and specificity.

3. Scope of Sections 4(A) and 4(B):

Sections 4(A) and 4(B) of the Act define offenses against confidentiality, integrity and availability of computer data and systems and computed related offenses. Said offenses apply to computer data and computer, which are defined in Section 3 as follows:

- d) Computer System – means any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data. It covers any type of computer device including devices with data processing capabilities like mobile phones and also computer networks. The device consisting of hardware and software may include input, output and storage facilities which may stand alone or be connected in a network or other similar devices. It also includes computer-data storage devices or medium.
- e) Computer Data – refers to any representation of facts, information, or concepts in a form suitable for processing in a computer system including a program suitable to cause a computer system to perform a function and includes electronic documents and/or electronic data messages

The Act is clear that owners of computer systems or data are protected from hacking or interference as criminalized in Sections 4(A) and (B).

Asked if Sections 4(A) and (B) apply to online programs, emails and social networks, Senator Angara replied in the affirmative. He explained that the provision on data interference goes against the crime of destroying computer data or programs; while hacking or illegal access to email destroys the integrity of a computer system. He confirmed that a person

would be charged with hacking or interfering with online programs, emails and social networks under Section 4(A) and (B) of the Act.

On the concern that this might be regarded as censorship and limitation of freedom of expression, Senator Angara stated that indeed, it is a delicate balance Congress has to tread. He cautioned that the Members might find the problem more acute in subsequent sections that authorize, for instance, security and police authorities to intercept messages, in light of the intrusion of the *New of the World* into private communications that prompted an investigation by the British parliament. He stated that invasion of privacy is a crime but when authorized personnel listen and intercept messages, it would be under strict conditions.

4. *Definition of Illegal Access:*

The definition of “illegal access” in Section 4(A) (1) is too broad. Will ink refilling be considered as illegal access? An ink cartridge is part of a computer system which usually has a Radio Frequency Identification (RFID) tags installed by the manufacturer so that the manufacturer can control/make exclusive the ink supply and refilling. When one goes to a generic ink refilling station, the RFID tags are disabled.

Will cellphone or telecommunication repairs performed by establishments other than the manufacturer, for example, Nokia or Apple Center, accredited Sony Centers, constitute illegal access? Although repealed, we should still be guided by the definition of “hacking” and “piracy” under Republic Act No. 8792, also known as the Electronic Commerce Act, particularly Section 33 in terms of narrowing the scope of international and unauthorized access.

Asked if ink refilling would be considered as illegal access when the RFID tags are disabled, Senator Angara stated that it does not constitute a crime because it is done with the consent of the owner. Similarly, he stated that a cellphone repair man would not be able to repair a broken cellphone without the consent of its owner. He welcomed the proposal to narrow the scope of intentional and unauthorized access, saying that the definition in the E-Commerce Act would be adopted in Section 4(A)(1).

5. *Computer-Related Fraud:*

On the offense of “computer-related fraud” in Section 4(B) (2), should the intent of procuring an

economic benefit or perpetuation of a fraudulent activity be an element of the offense? Damage and fraudulent intent should be sufficient regardless of whether or not there is an economic benefit. It is possible that the intention of computer-related fraud is not economic gain but destruction. “Perpetuation of fraudulent activity” connotes a series of action. It should be sufficient that the perpetrator in one act shows fraudulent intent.

Asked whether he would be amenable to an amendment, at the proper time, so that the intent of procuring an economic benefit for the perpetuation of fraudulent activities would no longer be an element of the offense of computer-related fraud, Senator Angara replied in the affirmative. He agreed that economic benefit is not an element of the crime and that fraud and intent to cause damage is sufficient.

6. *Definition of Cybersex*

Section 4(C)(1) of the Act punishes cybersex which is committed by “any person who establishes, maintains or controls, directly or indirectly, any operation for sexual activity or arousal with the aid or through the use of a computer system, for a favor or consideration.”

This offense is not included in the Budapest Convention on Cybercrime. What does “any operation for sexual activity or arousal” mean? This is vague especially considering that arousal is subjective. Does this mean that the intent of the offender is to create “arousal or sexual activity” should be established? Is the operation of an online men’s magazine site covered under this section?

In light of the constitutional guarantee on freedom of expression, the Supreme Court in *Gonzales vs. Katigbak* made a lengthy pronouncement on obscenity. I will simply make some choices based on what I think are significant to our debate this afternoon.

“xxx Implicit in the history of the first amendment is the rejection of obscenity as utterly without redeeming social importance.”

We have not accepted this as a textbook definition of obscenity. But the Court immediately added, “There is, however, some difficulty in determining what is obscene.” And then, it noted that this is the prevailing test: “Whether to the average person,

applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest." The U.S. Supreme Court was quoted by the Philippine Supreme Court:

"xxx sex and obscenity are not synonymous; obscene material is material which deals with sex in a manner appealing to prurient interest."

There appears to be a need to revisit the definition of "cybersex" under Section 4(C.1) of the Act, especially considering that it is not mentioned in the Cybercrime Convention.

In reaction, Senator Angara stated that the issue of obscenity is a very well discussed but controversial topic in constitutional law as law students know. He noted that sex is depicted in art, literature, etc.; but obscenity is utterly prohibited.

The crux of the problem, Senator Angara said, is determining what is obscene. He noted that the Supreme Court has provided the standard, it is something that offends the community standards and that it has absolutely no social significance but appeals only to the prurient interest of people. He agreed to the proposal to redefine the provision at the proper time.

7. *Unsolicited Commercial Communications in Section 4(C)(3)*

This offense is not included in the Budapest Convention. Although there is an ongoing concern against receiving spams or unsolicited commercial e-mails sent in bulk through the computer or telecommunication network, Section 4(C)(3) is too general in the sense it can include a simple email from one person to another person, wherein the sender offers to sell his house or car to the receiver. Therefore, to avoid such acts of injustice, Section 4(C)(3) should be narrowed.

Senator Angara accepted the recommendation as he clarified that what the bill covers is unsolicited emails in bulk.

8. *Real-Time Collection of Computer Data:*

Section 9 authorizes law enforcement authorities to collect or record traffic data. It reads:

- Sec. 9. *Real-time Collection of Computer Data.* — Law enforcement authorities, with due

cause and upon securing a court warrant, shall be authorized to collect or record by technical or electronic means, and service providers are required to collect or record by technical or electronic means, and/or to cooperate and assist law enforcement authorities in the collection or recording of, traffic data, in real-time, associated with specified communications transmitted by means of a computer system.

Section 9 lacks parameters to insure that the authority granted will not be abused by the law enforcement authorities. Republic Act No. 4200, also known as the "Anti-Wire Tapping Law," specifically Section 3, may serve as a guide in setting the parameters for Section 9 of the bill on cybercrime. A proviso in Section 3 of the Anti-Wire Tapping law states:

Provided, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is being committed or is about to be committed: xxxxx (2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and (3) that there are no other means readily available for obtaining such evidence.

As to whether certain provisions of Section 3 of the Anti-Wire Tapping Law may be adopted, if useful, in order to set specific parameters that will prevent abuse by law enforcement authorities in the exercise of authority that is granted under Section 9 of the bill, Senator Angara agreed in principle that the three conditions required under the Anti-Wire Tapping Law should be adopted as these are good safeguards and protection against violations of rights of citizens. But he expressed reservation that instead of a court approval, the approval must be secured from a government administrative or executive officer, because based on experience with the Anti-Money Laundering Act that requires similar conditions in the opening of a bank account, by the time the search was undertaken, the culprit or potential violator had already been alerted. While recognizing that the same risk exists if the approval is required from an executive or administrative officer rather than a judge, he said that because cybercrime is a fast-

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moving, dynamic offense committed swiftly and more often, almost unseen, the need to gather evidence swiftly is also a great concern.

Senator Defensor Santiago agreed thereto, noting that there might be a leakage of confidential information even when court authorization is required because there are many people who have access to the information, for instance, the receiving clerk, the clerk of court, the court sheriff, the stenographer and even the judge, as in the case an administrative paralegal officer. She asserted that the law should be written so tightly that in the custody of information, its integrity and confidentiality should never become vulnerable. She said that during the period of amendments, she would try to put in a provision to achieve what appears to be an extremely difficult procedure in a culture of corruption.

9. Corporate Liability

Under corporate liability in Section 8, the following bases for liability may be too broad: a) a power of representation; b) an authority to exercise control. Does this include any agent or representative of the company? Does the "authority to exercise control" mean the power to hire and fire? Or does a majority stockholder, or group of persons holding the majority shares of stock in a company, becomes responsible for the acts of the corporation?

Asked whether Section 8 would include any agent or representative of the company, Senator Angara replied that the bill would not cover an agent or representative in a simple capacity. He explained that what is envisioned under the provision is that the liability lies in a corporate officer authorized to bind the corporation and in this case "bind" would include the authority to hire and fire and not simply to act in representation of the corporation.

Asked if the "authority to exercise control" means the power to hire and fire or if the majority stockholder or a group of persons holding the majority shares of stocks in a company ought to be responsible for the acts of the corporation, Senator Angara replied that it is not necessarily so because the ultimate test control is the ability to hire and fire. However, he posited that control also implies a broader scope of authority that can include the management of the business and the power to bind the corporation through his/her acts. He clarified that although the one who hires and fires exercises the power of

control, he/she must also perform an executive function. He said that it is not enough that he/she is a majority owner but that he/she must also be an executive officer of the corporation.

Asked if the authority to control as defined by the Supreme Court, therefore means the power to alter, modify, nullify or set aside the action of the subordinate, Senator Angara replied in the affirmative. On the question of whether the authority to exercise control means that a majority stockholder or a group of person holding the majority shares of stock in a company is responsible for the acts of the corporation, Senator Angara replied that it not necessarily so, except or unless that majority owner or that group of shareholders wielding majority control also act in executive capacity. He explained that what the provision criminalizes is the act of an actor who is actively managing the corporation and not the owners who are only passive actors.

Senator Defensor Santiago stated that she was glad Senator Angara agreed with her view that the bases for liability under Section 8 of the bill are too broad and that there is a need to tighten the definition of terms. Senator Angara said that he fully subscribed to the idea that a criminal law should have a tighter definition of what constitutes the crime, how the crime is committed, and who are responsible for the crime.

INTERPELLATION OF SENATOR SOTTO

Asked by Senator Sotto what provisions would apply if the online crime did not originate from the Philippines, Senator Angara replied that if the cybercrime originated elsewhere but the damage was inflicted on a computer system in the Philippines, the Philippines can justifiably assert jurisdiction over the same. Nonetheless, he clarified that depending on the law of the country where the crime was initiated, it may also theoretically have jurisdiction over the person or the defendant because of his/her physical presence. Should there be a problem of conflicting jurisdiction between two countries over the same crime, he said that the bill provides that international cooperation and consultations must take place immediately because by their very nature, cybercrimes happen unseen over a borderless space, therefore, international cooperation is imperative and essential to the enforcement of the law.

Asked when the Budapest Convention comes in, Senator Angara said that said Convention will come

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in merely as a guide because the Philippines is not yet a party to it.

On whether the Philippines intends to be a party to the Budapest Convention or if it was pursuing international treaties or bilateral or multilateral agreements on cybercrimes, Senator Angara said that it would be desirable for the country to do that but as of the moment, he had no inkling at all whether the Philippine government would accede to the Budapest Convention.

Senator Sotto stated that the bill provides for a list of acts that constitute cybercrimes, including but not limited to the following: offenses against confidentiality, integrity, reliability of computer data, illegal access, illegal possession, computer-related offenses, computer-related forgery, computer-related fraud, cybersex, child pornography, unsolicited commercial communications, spamming, aiding or abetting commission of cyber crime, attempt in the commission of cyber crime, among others.

Senator Sotto asked whether it is possible to include cybersquatting as one of the punishable offenses under the Act, as he recalled that he filed such a bill in the 12th Congress. He explained that cybersquatting refers to an act whereby somebody acquires a domain name before the legitimate owner or trademark holder can do so. He narrated that he sought to acquire the domain name *titosotto.com* and he was surprised to learn that someone else was already using it and that individual, in fact, asked him for a huge amount of money in return for the right to use the same. He disclosed that Senator Legarda was also a victim of this so-called cybersquatting.

At this juncture, Senator Legarda confirmed that in 1998, she also applied for the domain name *lorenlegarda.com* only to find out that there was already a Loren Legarda website.

Senator Angara admitted that it did not occur to him that someone can appropriate another person's name. He believed that it happened to Senators Sotto and Legarda because both of them are popular, making it worthwhile to appropriate their names.

To the observation of Senator Sotto that it could happen to a trademark, Senator Angara stated that it would constitute an infringement and promised that the Committee would look into the matter.

Senator Legarda recalled that in 2007, she met with Mr. Chua of the CICT who told her that there was no law covering such a situation. She suggested that perhaps this was the best time to include cybersquatting in the measure. She stated that like Senator Sotto, she was asked to pay millions of pesos for the use of the domain name by an individual based in California and another one based in Singapore.

Senator Angara assured the Body that before the bill is passed, he would look into it and make a recommendation. Senator Sotto said that he owned the domain name but had to pay for it.

Relative to the right to privacy, Senator Sotto noted that there is a thin line between interception, as defined in the bill, and wiretapping. Senator Angara clarified that "interception" refers to illegal access, while wiretapping falls under Section 9. He recalled the recent incident in England when a whistleblower revealed that the leading tabloid, *The News of the World*, was hacking into computers to access e-mails and voice conversations of certain celebrities and the controversy prompted the owners to close it.

On the concern that the bill would somehow downgrade the right to privacy of a person, Senator Angara stated that with the onset of the internet, people have surrendered much of their privacy anyway. He took note of an article which stated that Steve Jobs, through his creativity, almost single-handedly opened up the privacy of every person through the iPhone and iPad. He surmised that it is a reality nowadays that people's private lives are being laid bare, sometimes unintentionally. He clarified that precisely, the bill intends to draw the line because crossing it would be a criminal liability.

Senator Sotto asked if special courts would be needed to try cybercrimes since the RTCs might not be equipped to handle them. Senator Angara explained that since these cases are highly technical, law enforcers must be especially trained on information technology and the internet. He added that the judges should also be equally trained but if establishing a separate court is not feasible, at the very least, there ought to be a group of technically trained judges to hear such cases.

On the sufficiency of the P10 million appropriation for the implementation of the Act, Senator Angara stated that the amount was set four years ago so that he was very much open to increasing the same.

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He stated that, presently, cybercrime is costing the country billions of pesos as he recalled that the "I Love You" virus released by Mr. de Guzman ten years ago costs US\$5 million worth of damages in the Philippines alone. He added that the frequency of cybercrimes is rising rapidly and that an international protocol on cooperation against cybercrime is needed because the economic damage is already worth billions.

Senator Angara informed the Body that the IT-BPO sector is the fastest growing sector in the economy, now a US\$8-9 billion industry, which employs more than half a million people, with a starting salary of P24,000-P26,000 a month. At this rate, he said that by 2016, the sector is expected to employ 1.3 million people and be a US\$25 billion industry, which would probably exceed the remittances of the OFWs. However, he cautioned that the main concern is the potential of the country to be a cybercrime center as he disclosed that according to Semantic – a company monitoring cybercrimes throughout the world – the Philippines is fourth in Asia as among the most vulnerable to such crimes. As such, he stated that it is essential to pass the bill to prevent this concern from becoming a reality.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2796

Upon motion of Senator Sotto, there being no objection, the Body suspended consideration of the bill.

CHANGE OF REFERRAL

Upon motion of Senator Sotto, there being no objection, the Chair approved the change of referrals of the following bills from the Committee on Rules to the Committees hereunder indicated:

1. Senate Bill Nos. 2361 and 2727 — Committee on Education, Arts and Culture;

2. Senate Bill No. 2804 — Committee on Health and Demography; and
3. Senate Bill No. 960 — Committee on Labor, Employment and Human Resources Development primarily, and Committee on Education, Arts and Culture secondarily.


As regards Senate Bill No. 960 (Caregiver Act of 2010), Senator Sotto stated that it was originally referred to the Committee on Labor, Employment and Human Resources Development but Senator Cayetano (P) requested that the Committee on Rules study the referral as she believed that the Committee on Education, Arts and Culture and the Committee on Health and Demography have jurisdiction over it. He stated that after a careful study of the matter and in consultation with the Senate Secretariat, it was decided that the bill be referred primarily to the Committee on Labor, Employment and Human Resources Development and secondarily, to the Committee on Education, Arts and Culture.

ADJOURNMENT OF SESSION

Upon motion of Senator Sotto, there being no objection, the Senate President Pro Tempore declared the session adjourned until three o'clock in the afternoon of the following day.

It was 4:57 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO REYES *ms*
Secretary of the Senate *ms*

Approved on September 13, 2011