
Introduced by Senator Loren Legarda

EXPLANATORY NOTE

"The very aim and end of our institutions is just this: that we may think what we like and say what we think" - Oliver Wendell Holmes.

Consistent with the Constitutional mandate of promoting free expression, it is imperative for institutions such as the legislative branch of government to adopt a policy towards the proliferation of a free market of ideas. The cyberspace or the internet is a growing medium to broaden the scope of these free ideas not only within the local setting but throughout the global arena as well.

As a dynamic medium like cyberspace, there may be instances where the free market of ideas may be vulnerable to pollutants such as pornography, cybersex, fraudulent practices and the promotion of human trafficking. These pollutants were precisely the reasons for the passage of Republic Act 10175, the Cybercrime Prevention Act of 2012, to protect our people from being victims of such crimes.

We must strike a balance. The reasonableness of adopting such a policy to prevent these pollutants from spoiling the minds of our people must **not** be done, however, at the expense of our valued right to free speech. The current global trend is towards decriminalization of libel. The United Nations has expressed the guiding principles of free speech and expression under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), thus:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order, or of public health or morals.

Specifically, the United Nations Human Rights Commission (UNHRC) through its General Comment No. 34 detailed the application of Article 19 of ICCPR: Freedoms of opinion and expression, and reiterated that:

"States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and

imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.”

This amendatory bill therefore seeks to modify the policy as expressed in R.A. 10175 to eliminate a “chilling effect that may unduly restrict the exercise of the freedom of expression”.

For these considerations, the passage of this bill is earnestly sought.


LOREN LEGARDA
Senator

Introduced by Senator Loren Legarda

AN ACT
AMENDING REPUBLIC ACT NO. 10175 OTHERWISE KNOWN AS THE CYBERCRIME PREVENTION ACT OF 2012, REPEALING SUB-PARAGRAPH 4 OF SECTION 4(C) AND SECTION 19 THEREOF, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of the Representatives of the Philippines in Congress assembled:

1 **SECTION 1.** - Section 4(c) of Republic Act 10175 is hereby amended as follows:

2 “(c) Content-related Offenses:

3 (1) Cybersex. – The willful engagement, maintenance, control, or operation, directly
4 or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the
5 aid of a computer system, for favor or consideration.

6 (2) Child Pornography. – The unlawful or prohibited acts defined and punishable
7 by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed
8 through a computer system: Provided, That the penalty to be imposed shall be (1)
9 one degree higher than that provided for in Republic Act No. 9775.

10 (3) Unsolicited Commercial Communications. – The transmission of commercial
11 electronic communication with the use of computer system which seek to advertise,
12 sell, or offer for sale products and services are prohibited unless:

13 (i) There is prior affirmative consent from the recipient; or

14 (ii) The primary intent of the communication is for service and/or
15 administrative announcements from the sender to its existing users,
16 subscribers or customers; or

17 (iii) The following conditions are present:

18 (aa) The commercial electronic communication contains a simple,
19 valid, and reliable way for the recipient to reject receipt of further
20 commercial electronic messages (opt-out) from the same source;

21 (bb) The commercial electronic communication does not purposely
22 disguise the source of the electronic message; and

23 (cc) The commercial electronic communication does not purposely
24 include misleading information in any part of the message in order to
25 induce the recipients to read the message.

1 [(4) Libel. — The unlawful or prohibited acts of libel as defined in Article 355
2 of the Revised Penal Code, as amended, committed through a computer
3 system or any other similar means which may be devised in the future.]”

4 **SEC. 2.** - Section 19 of Republic Act 10175 is hereby repealed.

5 **SEC. 3. *Repealing Clause.*** - All laws, decrees, orders, rules and regulations and other
6 issuances or parts thereof which are inconsistent with the provisions of this Act are hereby
7 repealed or modified accordingly.

8 **SEC. 4. *Separability Clause.*** - In the event that any provision of this Act is declared
9 unconstitutional, the validity of the other provisions shall not be affected by such
10 declaration.

11 **SEC. 12. *Effectivity.*** - This Act shall take effect immediately following its publication
12 in at least two (2) newspapers of general circulation.

Approved,