

FIFTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

SENATE

S.B. No. 3297

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Introduced by Senator PIA S. CAYETANO

EXPLANATORY NOTE

Section 24, Article II of the 1987 Philippine Constitution provides that "[t]he State recognizes the vital role of communication and information in nation-building." Our fundamental law in Article III also gives paramount import to our rights to due process and equal protection of the laws (Section 1), right to be free from unreasonable searches and seizures (Section 2), right to privacy of communication and correspondence (Section 3), freedom of speech, of expression and of the press (Section 4) and prohibition against double jeopardy (Section 21).

In line with these constitutional mandates, this bill seeks to annul and amend certain provisions of Republic Act No. 10175 or the Cybercrime Prevention Act of 2012 to address identified gaps in the law and ensure its effective implementation, and further buttress government measures in the prevention and suppression of cybercrimes in the country.

Section 4(c)(1) shall be revoked as its all-encompassing nature and reach captures an activity that could very well be considered a legal exercise of a human right, especially between consenting adults in the privacy of their bedrooms. If the intention is to curb the worldwide problem of trafficking and sex trade of minors over cyberspace, the resulting intrusion to one's freedom of expression should be carefully weighed and only to the extent of curbing the evil sought to be prevented. The provision on child pornography in Section 4(c)(2) as well as the Anti-Child Pornography Act of 2009 or Republic Act No. 9775 would be sufficient to protect the children exploited in this manner. Moreover, trafficking of persons in any form, whether committed through the Internet or any other means, shall be governed by the Anti-Trafficking in Persons Act of 2003 or Republic Act No. 9208, or any amendments thereof.

The repeal of Section 4(c)(4) ensures the continued protection of our hard-fought freedoms of speech and expression which are essential to the survival of a free, open and democratic society. These fundamental rights must be zealously guarded at all times for the full and complete exercise of constitutionally-granted civil liberties by the Filipino people. This repeal shall not in any way mean that lawlessness prevails in the Internet, as there is a corresponding responsibility to every right. However, between the freedoms of speech and expression and the accompanying limitations, it is incumbent upon us to remove this provision in this law and engage in a colloquy as the world moves towards the decriminalization of libel.

In annulling Sections 6 and 7 of the law, we seek to reinforce the constitutional prohibition against double jeopardy, the inviolability of which has

long been highlighted by statutes and jurisprudence. Moreover, we also seek to reverse the "chilling effect" that these provisions may bring about, given the non-applicability of probation and the imposition of heavier penalty for libel committed "by, through, and with the use" of information and communication technologies.

Section 12 is repealed to affirm the constitutional injunction against unreasonable searches and seizures and the right to privacy of communication. While the government's power to search and seize is necessary in furtherance of the general welfare of the people, this power must always be exercised in accordance with constitutional guarantees and legal principles.

The repeal of Section 19 emphasizes our adherence to due process of law, a fundamental principle of liberty and justice. The right to due process, an inalienable right, must always be upheld and championed in all government actions and decisions. Even without the benefit of a trial or a conviction, a *prima facie* finding by the Secretary of the Department of Justice that a computer data is violative of this Act would cause the issuance of the order to restrict or block access to this computer data, which is an undue delegation of legislative authority and an infringement upon the powers of the judiciary.

Section 21 needs to be revisited to be in consonance with the territoriality principle of criminal law which we, as a State, adhere to. With regard to cybercrimes that are transnational in nature but have a substantial effect on the State's interests and involve its citizens, an in-depth discussion and review must be made.

Internet is not just any ordinary medium, as it is now a way of life. The right to have access to the Internet has been elevated by the United Nations (UN) as a basic human right that should be guaranteed and protected by states. In a Resolution adopted by the UN Human Rights Security Council, the UN "affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice."

It is worthy to note that the Philippines is the freest in Asia and sixth in the world when it comes to Internet freedom according to the Freedom on the Net 2012: A Global Assessment of Internet and Digital Media by Freedom House, a Washington DC-based advocacy group. With the freedom of expression as a bulwark of democracy that we proudly protect and fortify, a need to review Republic Act No. 10175 in its entirety, especially provisions that might have unreasonable repercussions on our civil liberties, arises, and a sober discourse on the matter is necessitated. Moreover, with the passage of the Data Privacy Act of 2012 or Republic Act No. 10173, there is a need to harmonize certain provisions with this law to the extent possible.

In our efforts to combat cybercrimes and provide the necessary penalties for commissions thereof, we must always guarantee that constitutionally-protected rights are upheld and proscriptions laid down in the Constitution are not circumvented.


PIA S. CAYETANO
Senator

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Introduced by Senator PIA S. CAYETANO

**AN ACT AMENDING REPUBLIC ACT NO. 10175,
OTHERWISE KNOWN AS THE CYBERCRIME PREVENTION ACT OF 2012**

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

SECTION 1. Sections 4(c)(4), 6, 7, 12 and 19 of Republic Act No. 10175, otherwise known as the Cybercrime Prevention Act of 2012, are hereby repealed. All laws, orders, issuances, circulars, rules and regulations or parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed or modified accordingly.

SECTION 2. Section 4(c)(1) is likewise hereby repealed; *Provided*, That the Anti-Trafficking in Persons Act of 2003 or Republic Act No. 9208 shall govern the offense of trafficking of persons committed through a computer system.

SECTION 3. Section 4(a) of the Act is hereby amended to read as follows:

"SEC. 4. Cybercrime Offenses. – The following acts constitute the offense of cybercrime punishable under this Act:

- (a) Offenses against the confidentiality, integrity and availability of computer data and systems, **AS CONSISTENT WITH THE DATA PRIVACY ACT OF 2012 OR REPUBLIC ACT NO. 10173: xxx"**

SECTION 4. Separability Clause. – Should any provision herein be subsequently declared invalid or unconstitutional, the same shall not affect the validity or the legality of the other provisions not so declared.

SECTION 5. Repealing Clause. – All laws, presidential decrees, executive orders, rules and regulations, other issuances, and parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed and modified accordingly.

SECTION 6. Effectivity. – This Act shall take effect fifteen (15) days after publication in the Official Gazette or in at least (2) newspapers of general circulation.

Approved,