

SENATE

AN

S. B. No. 3301

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INTRODUCED BY SENATOR ALAN PETER "COMPAÑERO" S. CAYETANO

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EXPLANATORY NOTE

Defenders of Democracy and the right to freedom of expression often quote the following:

*"I disapprove of what you say,  
but I will defend to the death  
your right to say it."*

—Evelyn Beatrice Hall  
"The Friends of Voltaire"

We now live in an age where technology has enhanced the freedom of expression and speech. It has likewise empowered people and democratized institutions, processes and government.

It is time to defend these gains and work harder to pass legislation that will promote rather than stifle freedom of expression, creativity and people empowerment.

Article 19<sup>1</sup> of the International Convention on Civil and Political Rights (ICCPR) states that:

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;

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<sup>1</sup> Article 19 of the International Convention on Civil and Political Rights

- (b) For the protection of national security or of public order (order public), or of public health or morals.

**Section 2 of Article 2 of the Constitution provides that:**

**Section 2.** The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations

International laws ratified by the Philippines form part of the law of the land under the doctrine of transformation. As a State Party to the International Convention on the Civil and Political Rights, the Philippines has the obligation to adhere to the provisions set by the convention.

Article 19 of the ICCPR mandates that the Philippines protect the right to freedom of expression. According to the ICCPR, freedom of expression includes 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.

Republic Act 10175, otherwise known as the Cybercrime Prevention Act of 2012 contradicts the mandates of the ICCPR. According to the petition for certiorari filed by Sta. Maria et al. and all of the Ateneo Human Rights Center, *"The law stifles the freedom of Filipinos to express themselves, in what is by far, the most democratic medium ever created by humankind. It will stifle not only speech, but thought, altering not only words but action. At every turn and at every moment online, Filipinos will have a specter of subsequent punishment hanging over them, effectively acting as prior restraint."*<sup>2</sup> This is because RA 10175 introduces cyber libel and the harsh provisions of Sections 4 (c) (4), 5, 6, and 7.

The Human Rights Committee in its 102<sup>nd</sup> session further clarified the mandates of Article 19. General Comment No. 34 on Article 19: Freedoms of opinion and expression paragraph 47<sup>3</sup> states that:

47. Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defenses as the defense of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defense. Care should be taken by States parties to avoid excessively punitive measures and

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<sup>2</sup>MELENCIO S. STA. MARIA, SEDFREY M. CANDELARIA, AMPARITA STA. MARIA, RAY PAOLO J. SANTIAGO, GILBERT V. SEMBRANO, and RYAN JEREMIAH D. QUAN, (all of the Ateneo Human Rights Center) v. HONORABLE PAQUITO OCHOA in his capacity as Executive Secretary, HONORABLE LEILA DE LIMA in her capacity as Secretary of Justice, HONORABLE MANUEL ROXAS in his capacity as Secretary of the Department of Interior and Local Government, The CHIEF of the Philippine National Police, The DIRECTOR of the National Bureau of Investigation ( all of the Executive Department of Government) G.R. no. 203440

<sup>3</sup> Paragraph 47 of General Comment 34 on Article 19 of the ICCPR : Freedoms of opinion and expression

penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party. **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. (emphasis supplied.)

The General Comment further highlights that the criminalization of cyber libel is contrary to the obligation of the Philippines under the ICCPR. It expressly states that imprisonment is not an appropriate measure against defamation. Freedom of expression must be upheld.

*“According to the 2011 Southeast Asia Digital Consumer Report, thirty-three percent (33%) of Filipinos have accessed the internet within the twelve-month period, translating to about thirty-one million (31,000,000) users. There are multi-millions more in other parts of the world, regardless of race, religion, culture and background, knowingly or not, who will be affected by Republic Act 10175, otherwise known as the Cybercrime Prevention Act.”<sup>4</sup>*

Hence, the bill aims to protect the constitutional rights of the people by repealing Sections 4 (c)(4), 5, 6, and 7 of RA 10175.

**Section 4 (c) (4)** of RA 10175 provides that:

**Section 4. Cybercrime Offenses.** — The following acts constitute the offense of cybercrime punishable under this Act:

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

**Section 4(c)(4)** of Republic Act No. 10175 should be repealed because:

1. The application of RA 10175 is **unconstitutionally overbroad** affecting “publications” previously made but still present in cyberspace.
2. It is vague in its application and expansive because it covers past speech before the law takes effect.
3. It potentially infringes on a person’s freedom of speech under Section 4 of Article III of the 1987 Constitution. It is, in effect, a form of subsequent punishment.

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<sup>4</sup> Supra note 2. citing <http://www.slideshare.net/truongbang/south-east-asia-sea-digital-consumer-report-2011>

**Section 5** of RA 10175 provides that:

**Section 5. Other Offenses.** — The following acts shall also constitute an offense:

(a) Aiding or Abetting in the Commission of Cybercrime. — Any person who willfully abets or aids in the commission of any of the offenses enumerated in this Act shall be held liable.

(b) Attempt in the Commission of Cybercrime. — Any person who willfully attempts to commit any of the offenses enumerated in this Act shall be held liable.

**Section 5** of Republic Act No. 10175 violates Section 1 of Article III of the 1987 Philippine Constitution for being overbroad. This section when applied to libel tends to punish legally protected communications. Furthermore, Section 5 is vague for not expressly stating the elements of aiding or abetting the commission of a cybercrime. It gives the authority the discretion as to the appreciation of what constitutes as aiding or abetting a cybercrime.

**Section 6** of RA 10175 provides that:

**Section 6.** All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: *Provided*, That the penalty to be imposed shall be one (1) degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

*“Section 6 of Republic Act No. 10175 increases the penalty to one degree provided under the Revised Penal Code and other special laws if committed through a computer. This is unconstitutional because it violates the equal protection of the law clause of the 1987 Constitution.”<sup>5</sup>*

For there to be a valid discrimination, the classification must

- a. Rest on substantial distinctions;
- b. Must be germane to the purpose of the law;
- c. Equally apply to all members of the same class; and
- d. Apply to present and future conditions<sup>6</sup>

*“The only difference of an offense committed under the Revised Penal Code and other special laws and, on the other hand, under the Cybercrime Prevention Act of 2012, is that, in the latter, the crime was committed through a computer. This distinction is not substantial enough.”<sup>7</sup>*

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<sup>5</sup> Id.

<sup>6</sup> Id. citing *People vs. Cayat* 68 Phil 12

<sup>7</sup> Id.

**Section 7** of RA 10175 provides that:

**Section 7. Liability under Other Laws.** — A prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code, as amended, or special laws.

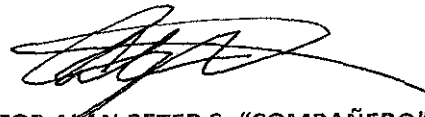
**Section 7** of Republic Act No. 10175 violates Section 21, Article 3 of the Constitution or the provision against double jeopardy.

*“The test to determine the existence of “same offense” for the purpose of double jeopardy has been authoritatively explained by eminent constitutionalist Fr. Joaquin Bernas S.J., thus:*

The test now is whether one is identical with the other or whether it is an attempt or frustration of the other or whether one offense necessarily includes or is necessarily included in the other. What this test shows is that identity of offenses does not require one-to-one correspondence between the facts and the law involved in the two charges. It is necessary, however, that one offense is completely included in the other. Thus, while physical injury is not identical with attempted homicide, for purposes of double jeopardy, physical injury is “the same” as attempted homicide (which alleges inflicted injury) because physical injury is necessarily included in such attempted homicide.”<sup>8</sup>

Further, assuming for the sake of argument that the Supreme Court eventually upholds the constitutionality of the Cybercrime Prevention Act, the same still does not foster creativity, free expression, and empowerment of our people.

In view of the foregoing, in defense of the freedom of expression and opinion of the Filipino people, the immediate repeal of Section 4 (c) (4), 5, 6, and 7 of RA 10175 is now in order.<sup>1</sup>



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<sup>8</sup>Id. citing Joaquin Bernas. The 1987 Philippine Constitution , A comprehensive Reviewer, 2006 Edition Page 186.

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

OCT 15 2012



SENATE

S. B. No. 3301

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INTRODUCED BY SENATOR ALAN PETER "COMPAÑERO" S. CAYETANO

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AN ACT  
REPEALING SECTIONS 4(c)(4), 5, 6, AND 7 OF REPUBLIC ACT NO. 10175,  
OTHERWISE KNOWN AS THE CYBERCRIME PREVENTIONACT OF 2012

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

SECTION 1. *Repealing Clause* – Sections 4 (c) 4, 5, 6, and 7 of Chapter II of  
Republic Act 10175 are hereby repealed.

All laws, decrees, orders, rules and regulations, or parts thereof  
inconsistent with this act are hereby repealed or amended accordingly.

SECTION 2. *Effectivity* – This act shall take effect fifteen (15) days after its  
publication in at least two (2) newspapers of general circulation.

Approved,