

SENATE

S. B. No. 3302

INTRODUCED BY SENATOR ALAN PETER "COMPAÑERO" S. CAYETANO

EXPLANATORY NOTE

The Internet, Smart Phones, Digital media and the Cyberspace are advancements in technology that empower people, foster democracy, and encourage checks and balance. Legislators should pass laws that further promote the positive use of technology and not pass laws that curtail people's freedom of expression and creativity.

This is elaborated in the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression during the seventeenth session of the Human Rights Council:

The Internet is one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building democratic societies. Indeed, the recent wave of demonstrations in countries across the Middle East and North African region has shown the key role that the Internet can play in mobilizing the population to call for justice, equality, accountability and better respect for human rights. As such, facilitating access to the Internet for all individuals, with as little restriction to online content as possible, should be a priority for all States.¹

October 3, 2012 marks the effectivity date of Republic Act No. 10175, otherwise known as the "Cybercrime Prevention Act of 2012". Unfortunately RA No. 10175 contains provisions that contravene the Bill of Rights of the 1987 Constitution. Fifteen cases of certiorari praying for the declaration of unconstitutionality of the Cybercrime Prevention Act have already been filed in the Supreme Court.

*"Important sections of the same (RA No. 10175) violate the due process clause of our constitution, the equal protection of the law clause, the prohibition on illegal seizure, and the double jeopardy proscription. Equally more significant is the law's violation of the freedom of speech and expression and the right to privacy of communication. The law or some part of it should be struck down as void."*²

¹ Frank La Rue. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Human Rights Council Seventeenth session
http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf (last accessed: October 9, 2012)

² Petition for Certiorari entitled "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

Section 19 of Republic Act No. 10175³ commonly referred to as the “takedown clause,” is among the problematic provisions that should be struck down for unconstitutionality. Firstly, Section 19 of RA No. 10175 contravenes Section 1, Article III of the Constitution on procedural due process as it authorizes the Department of Justice (DOJ) to issue an order restricting or blocking computer data access on a mere prime facie determination without notice and hearing.⁴ In effect, Section 19 makes the DOJ a “prosecutor and a judge at the same time.”⁵

Secondly, Section 19 violates Section 3(1), Article III of the Constitution as it constitutes an intrusion in one’s right to privacy of communication.⁶ The DOJ’s prima facie determination of a violation for the issuance of an order to restrict or block access to computer data, will necessarily entail culling through all the data contained in the computer file. *“In the process, the constitutional right of privacy of communication and correspondence of the victim will be intruded, interfered with, and clearly violated. Other files not subject of any inquiry will inevitably be scrutinized.”*⁷

Thirdly, it violates Section 4, Article III of the Constitution on freedom of expression as *“the extraordinary power of the Department of Justice to issue an order to restrict or block access to computer data is a form of “prior restraint.” First, the power is clearly illegal as it is unconstitutional for being violative of the due process clause. Second, the “blocking” and the “restricting” immediately snuff even the opportunity to manifest expression through the computer and cyberspace. There is total abatement by coercive means on the part of the government for one to produce speech by way of messages and other forms of communications through the computer. Third, it prevents expression even before a court of law decides on any legitimate limitation on the victim’s constitutional right.”*⁸

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stressed in his report that:

Any restriction to the right to freedom of expression must meet the strict criteria under international human rights law. A restriction on the right of individuals to express themselves through the Internet can take various forms, from technical measures to prevent access to certain content, such as blocking and filtering, to inadequate guarantees of the right to privacy and protection of personal data, which inhibit the dissemination of opinions and information. The Special Rapporteur is of the view that the arbitrary use of criminal law to sanction legitimate expression constitutes one of the gravest forms of restriction to the right, as it not only creates a “chilling effect”, but also leads to other human rights violations, such as arbitrary detention and torture and other forms of cruel, inhuman or degrading treatment or punishment.⁹

National Police, The DIRECTOR of the National Bureau of Investigation (all of the Executive Department of Government)”, G.R. no. 203440, Pages 5-6.

³ SEC. 19. Restricting or Blocking Access to Computer Data. — When a computer data is prima facie found to be in violation of the provisions of this Act, the DOJ shall issue an order to restrict or block access to such computer data;

⁴ Supra note 2, Page 20

⁵ Id. Citing *Cójuangco vs. PCGG*, G.R. Nos. 92319-20 October 2, 1990, page 20.

⁶ Id., page 22

⁷ Id.

⁸ Id., page 21

⁹ Supra note 1

Lastly, Section 19 RA No. 10175 violates Section 2, Article III of the Constitution on unlawful searches and seizures. Blocking of computer data under Section 19 constitutes "seizure". Section 19 of Republic Act No. 10175 provides:

Section 19. Restricting or Blocking Access to Computer Data. – When a computer data is prima facie found to be in violation of the provisions of this Act, the DOJ shall issue an order to restrict or block access to such computer data.

"Blocking refers to measures taken to prevent certain content from reaching an end- user. This includes preventing users from accessing specific websites, Internet Protocol (IP) addresses, domain name extensions, the taking down of websites from the web server where they are hosted, or using filtering technologies to exclude pages containing keywords or other specific content from appearing."¹⁰

"Blocking" of computer data is "seizure" within the protective ambit of Article III, Section 2 of the 1987 Constitution which provides,

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (underscoring supplied)

"Seizure of computer data does not require actual taking by, or transfer of ownership or possession to, the DOJ; nor is it necessary for the "blocking" of such data to be permanent. For blocking of computer data to constitute seizure, it is enough that the act of blocking results in the interference with a person's possessory interest over such computer data."¹¹

"Clearly, the provision on blocking in Section 19 of Republic Act 10175 constitutes seizure that should first comply with the requirement of a judicial warrant upon the finding of a probable cause. It should not merely be effected upon prima facie determination by the DOJ."¹²

"On its very face therefore, the said Section 19 is unconstitutional as it violates the right against unreasonable seizures under Section 2 Article 3 of the 1987 Constitution."¹³ Blocking measures constitute an unnecessary or disproportionate means to achieve the purported aim, as they are often not sufficiently targeted and render a wide range of content inaccessible beyond that which has been deemed illegal."¹⁴

However, it is necessary to stress that the provision provided by sec. 19 serves an important role in curbing the effects of other cyber crimes, which endanger the welfare of the People. Hence this bill only proposes to amend section 19. The explanation of the Special Rapporteur on the promotion and protection of the right to freedom of opinion

¹⁰ Id

¹¹ Supra note 2., page 23

¹² Id. page 24

¹³ Id. page 24

¹⁴ Supra note 1

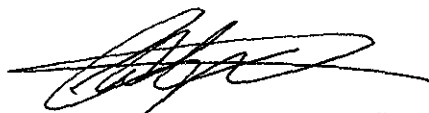
and expression would also be helpful in explaining the necessity of retaining the provision granting a blocking measure:

32. The Special Rapporteur notes that child pornography is one clear exception where blocking measures can be justified, provided that the national law is sufficiently precise and there are effective safeguards against abuse or misuse, including oversight and review by an independent and impartial tribunal or regulatory body. However, he is also concerned that States frequently rely heavily on blocking measures, rather than focusing their efforts on prosecuting those responsible for the production and dissemination of child pornography. Additionally, as child pornography is often a by-product of trafficking and prostitution of children, the Special Rapporteur urges States to take holistic measures to combat the root problems that give rise to child pornography.¹⁵

The present bill aims to cure the constitutional infirmity of Section 19, RA No. 10175 by deleting the provision of prima facie determination by the DOJ for the issuance of an order restricting or blocking access to computer data, and providing instead, for such order to be issued on the basis of probable cause as determined by a judge as required by law.

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. "The vast potential and benefits of the Internet are rooted in its unique characteristics, such as its speed, worldwide reach and relative anonymity. At the same time, these distinctive features of the Internet that enable individuals to disseminate information in "real time" and to mobilize people has also created fear amongst Governments and the powerful."¹⁶ Suppressing Internet access amounts to suppressing our chances of having a truly free and democratic country

In view of the foregoing, the immediate approval of this bill is earnestly sought.



SEN. ALAN PETER "COMPANERO" S. CAYETANO

¹⁵ Id.

¹⁶ Id.

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

Chairman of the Committee

12 OCT 11 9 15

SENATE

S. B. No. **3302**

INTRODUCED BY SENATOR ALAN PETER "COMPAÑERO" S. CAYETANO

AN ACT
AMENDING SECTION 19 OF 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. Section 19 of Republic Act No. 10175, also known as the Cybercrime Prevention Act of 2012 shall be read as:

Section 19. Restricting or Blocking Access to Computer Data. —NO ORDER OF RESTRICTION OR BLOCKING OF ACCESS TO COMPUTER DATA FOR VIOLATION OF PROVISIONS OF THIS ACT SHALL BE ISSUED, EXCEPT UPON PROBABLE CAUSE TO BE DETERMINED PERSONALLY BY A JUDGE AS REQUIRED BY LAW.

SECTION 2. *Repealing Clause* – All laws, decrees, orders, rules and regulations, or parts thereof inconsistent with this act are hereby repealed or amended accordingly

SECTION 3. *Effectivity* – This act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,