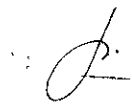Introduced by Senator Edgardo J. Angara

EXPLANATORY NOTE

The huge surge of critical commentary regarding the Cybercrime Prevention Act underscores the vitality and energy of our nation's digital community. The vigorous and sometimes vociferous debate demonstrates how huge the internet universe is and how quickly information travels. These advantages the internet offersare precisely the reasons why it should be protected, its netizens informed of risks, and its responsible use promoted.

For these reasons, this proposal seeks to amend some provisions which appear vague in Republic Act No. 10175, otherwise known as the Cybercrime Prevention Act of 2012.
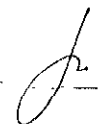
These amendments will:

(1) Repeal the proviso on higher penalties for crimes defined in the Revised Penal Code, as amended, if committed by, through, or with the use of information and communications technologies (ICTs), on the ground of the deeply enshrined principle in the Constitution, which states that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws." (Sec. 1, Art. III, 1987 Constitution);

(2) Strengthen the exclusionary rule providing that evidence procured or collected should adhere strictly to the procedures provided in the law; and

(3) Require a court order for any restriction or blocking of access to computer data in order to ensure that the right of the owner against arbitrary restriction to the access of computer data is avoided and his right to due process is guaranteed. The procedural requirementsintroduced by this measure seek to strike a balance between the right of the owner and the need of law enforcement authorities for expediency and swift action.

The Cybercrime Prevention Act, especially when taken together with the Data Privacy Act, is our best weapon to deal with destructive behavior and unscrupulous acts in cyberspace. This measure will ensure that our information and information systems are protected from illegal access, computer-related fraud and forgery, and identity theft by punishing these acts. More importantly, the law equips our law enforcement authorities with technology know-how and procedural training in gathering computer-related evidence. The law is also compliant to international standards of the Budapest Convention on Cybercrime that raises the bar for protecting the integrity of our computer systems and networks, while civil liberties are ensured.

For these reasons, the swift approval of this bill is earnestly sought.

EDGARDO J. ANGARA

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S E N A T E

S. No. _____ **3315**

Introduced by Senator Edgardo J. Angara

AN ACT
FURTHER PROTECTING CIVIL LIBERTIES IN COMPUTER SYSTEMS,
AND AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 10175,
OTHERWISE KNOWN AS THE "CYBERCRIME PREVENTION ACT OF 2012"

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

1 **SECTION1.**Section 6 of Republic Act No. 10175, otherwise known as the Cybercrime
2 Prevention Act of 2012 is hereby amended to read as follows:

4 "SEC. 6. **OTHER CRIMES COMMITTED THROUGH ICTs–** All crimes
5 penalized by the Revised Penal Code, as amended, and special laws, if committed by,
6 through [and] **OR** with the use of information and communications technologies (ICTs)
7 shall be covered by the relevant provisions of this Act [: *Provided*, That the penalty to be
8 imposed shall be one degree higher than that provided for by the Revised Penal Code and
9 special laws, as the case may be]."

11 **SEC. 2.** Section 18 of the same Act is hereby amended, to read as follows:

13 "SEC. 18. *Exclusionary Rule.* – Any evidence procured without a valid
14 warrant or beyond the authority of the same, **OR COLLECTED IN**
15 **VIOLATION OF THE PROVISIONS OF THIS ACT**, shall be inadmissible
16 for any proceeding before any court or tribunal."

19 **SEC. 3.** Section 19 of the same Act is hereby amended, to read as follows:

21 "SEC. 19. *Restricting or Blocking Access to Computer Data.* When [a]
22 computer data is [*prima facie*] found to be violative of the provisions of this Act,
23 the DOJ [shall issue] **MAY APPLY *EX PARTE* FOR THE ISSUANCE OF**an
24 order **DIRECTING THE DOJ**to restrict or block access to such computer data.
25 **THE APPLICATION SHALL BE FILED BY A PERSON DULY**
26 **AUTHORIZED BY THE DOJ IN WRITING WITH ANY OF THE**
27 **REGIONAL TRIAL COURTS DESIGNATED AS SPECIAL**

CYBERCRIME COURTS IN ACCORDANCE WITH SECTION 21 OF THIS ACT. THE APPLICATION SHALL BE ACTED UPON WITHIN TWENTY-FOUR (24) HOURS FROM ITS FILING. THE JUDGE MUST, BEFORE ISSUING THE ORDER, EXAMINE IN THE FORM OF SEARCHING QUESTIONS AND ANSWERS, UNDER OATH OR AFFIRMATION, THE APPLICANT AND THE WITNESSES HE MAY PRODUCE ON FACTS PERSONALLY KNOWN TO THEM. THE EXAMINATION OF THE APPLICANT AND HIS WITNESSES SHALL BE RECORDED. THE HEARING ON THE APPLICATION FOR THE ORDER SHALL BE HELD IN THE CHAMBERS OF THE JUDGE. COURT PERSONNEL SHALL MAINTAIN THE CONFIDENTIALITY OF THE APPLICATION PROCEEDING.

"BEFORE THE ORDER CAN BE ISSUED, THE EVIDENCE OFFERED BY THE APPLICANT AND PERSONALLY EVALUATED BY THE JUDGE MUST SHOW THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT COMPUTER DATA IS FOUND TO BE VIOLATIVE OF THE PROVISIONS OF THIS ACT.

"THE ORDER SHALL BE SERVED UPON THE OWNER OF THE COMPUTER DATA, IF HE IS FOUND IN THE PHILIPPINES, OR IN CASE OF HIS ABSENCE, THROUGH HIS DULY AUTHORIZED REPRESENTATIVE FOUND IN THE PHILIPPINES. IN CASE BOTH ARE NOT APPLICABLE, A COPY OF THE ORDER MAY BE SENT THROUGH HIS LAST KNOWN EMAIL ADDRESS OR FAX NUMBER.

"UPON RECEIPT OF THE ORDER, THE OWNER OR HIS DULY AUTHORIZED REPRESENTATIVE, MAY FILE A MOTION BEFORE THE COURT WHICH ISSUED THE ORDER ON THE GROUND THAT THE COMPUTER DATA SOUGHT TO BE BLOCKED OR RESTRICTED DOES NOT VIOLATE THE PROVISIONS OF THIS ACT. AFTER A SUMMARY HEARING, THE COURT MAY RESCIND THE ORDER ISSUED TO BLOCK OR RESTRICT ACCESS TO DATA."

SEC. 4.*Repealing Clause.* All other laws, decrees, executive orders, proclamations, and administrative regulations or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

SEC. 5. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved,