



Republic of the Philippines
House of Representatives
Quezon City, Metro Manila

Fifteenth Congress

First Regular Session

House Bill No. 4031

Introduced by **HON. ROMEO M. ACOP**

EXPLANATORY NOTE

The global reach and uncharted potentials of the Internet are beyond dispute. The phenomenal speed of transfer of information over the Internet on real time basis and through territorial jurisdictions has opened tremendous possibilities, both in terms of opportunities and problems. The Internet has revolutionized our perception of the dimensions of time and space. We have witnessed the explosion of message boards, e-groups, blogs and other Internet fora wherein people share information, views and opinions just about anyone and anything. Considering the staggering amount of materials written and posted about almost everyone in the Internet, it will not be long before someone gets really pissed and files a case for libel. In fact, there are already pending cases in the Philippines and in many other countries.

Libel committed through the Internet remains a novel legal issue in the Philippines. In the industrialized countries of the world, new laws have been enacted or existing ones updated to keep up with the pace of development in cyber technology. While libel in the Philippines and the means by which it is committed are defined by Articles 353 and 355 of the Revised Penal Code respectively, there is presently no explicit Philippine law on libel in the internet. Even Philippine jurisprudence is bereft of any doctrinal ruling except for a few scattered pronouncements on the subject and related issues.

Legal scholars suggest that while the Internet is not among the means enumerated in Article 355 of the Revised Penal Code (RPC) by which libel may be committed, it may qualify under the catch phrase 'or any other similar means' as provided therein. The Supreme Court held that while the medium of television is not expressly mentioned among the means specified in the law (Art. 355, RPC), it considered defamatory words made in a television program as libel under the general provision 'or any other similar means'.¹ However, it will be difficult for concerned parties to rely on the above pronouncement in the case of libel committed through the Internet as it may not be, in legal parlance, a precedent, much less controlling.

To fill in the gap, this bill seeks to expressly include the posting or publication of libellous comments, remarks, and other forms of electronic communications and materials in web sites in the Internet as a means of committing libel through the amendment of Article 355 of the Revised Penal Code.

Under Philippine law, the following elements must concur in order for libel to arise :

- 1) The comment, remark or message must be defamatory;
- 2) It must also be malicious;
- 3) It must be given publicly; and,
- 4) The offended party must be identifiable²

The test of the defamatory character of the words used are :

- 1) They must be construed in their entirety and taken in their plain, natural and ordinary meaning³; and,
- 2) The words are calculated to induce the hearers to suppose and understand that the person against whom they were uttered was guilty of certain offenses, or are sufficient to impeach the honesty, virtue or reputation, or to hold him up to public ridicule.⁴

The element of malice is presumed by law and to overthrow the presumption the offender must prove that the act was done under any of the exceptions in Article 354 of the Revised Penal Code.

The element of publication is the more problematic one in the context of cyberspace. In relation to libellous matters posted in the Internet, the libellous communication is deemed to have been published when viewed by at least a third person. It is only then that the reputation of the offended party that others hold of him could be injured.⁵

1. People vs. Casten, C.A. – G.R. No. 07924-CR

2. Diaz vs. Court of Appeals, G.R. No. 159787

3. Novicio vs. Aggabao, 463 Phil 510,516

4. US vs. O'Connell, 37 Phil. 767

5. People vs. Atencio, CA-G.R. Nos. 11351-R to 1153-R

The fourth element is that the victim of the libellous matter should be identifiable. It is not sufficient that the offended party recognizes himself as the person defamed. Thus, if there be a series of publications (or postings in the Internet) of the libellous material, the entirety of the material must produce the effect of the offended party being identifiable to at least a third person.⁶

Another important issue in libel in the Internet is whether the on-line service providers, web hosts or website owners, or operators of bulletin boards may be held liable for the libellous materials posted through them or in them. In traditional libel law, the presence of liability is determined whether the accused is deemed a distributor of information or a publisher of information. Thus, in the Internet world, if the defendant, under the circumstances of the case, is considered by the court to be a distributor, then liability does not arise unless the defendant had personal knowledge of the contents of the libellous material. However, if the operator of the web site or the web host is considered to be a publisher, then liability will be found. But in both instances, whenever it is shown that the operator or web host knowingly received financial benefit directly attributable to the posting of the libellous material, or refuses or fails to remove or block any libellous material in his site after due request by the offended party, and without any justification provided by law, liability will arise.

The proposed measure also seeks to provide higher penalties for the commission of the offense and restricts judicial discretion in the imposition of penalties as further deterrent.

Then the most important issue, the question of jurisdiction and proper venue.

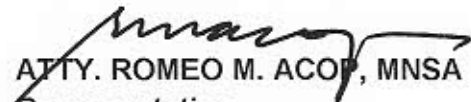
The Internet is an international subject matter, hence, in the absence of an international treaty or convention regulating it, conflicts of law inevitably arise. In Private International Law, in tort or civil cases, the principle that 'the law of the place where the tort was committed will apply' (*lex loci delicti commissi*) is generally observed. Thus, the court of the place where the tort was committed acquires jurisdiction. But in criminal law, Philippine jurisdiction covers only those acts or omissions committed within its territory unless falling under any of the exceptions in Article 2 of the Revised Penal Code. This is the principle of territoriality. However, as already insinuated, the global character of the Internet wherein the web site is hosted in another country, or the posting of the libellous material has been established to have occurred in another country, acquiring jurisdiction for criminal prosecution is legally impossible.

Having stated so, the provisions of this bill are primarily intended to cover prosecution of libellous acts through the Internet where Philippine jurisdiction over the defendant's person, whether juridical or natural, may be acquired, or where it can be clearly established that the posting or publication of the libellous material was committed within Philippine territory. This measure seeks to establish the basic legal framework for the prosecution of libel through the Internet in the Philippines within the context of the lack of international agreements to address the problem whence multi-nationalities and territories are involved.

6. *Newsweek vs Intermediate Appellate Court*, 142 SCRA 171

While the 1987 Constitution, in reference to Article III, Section 1, does not explicitly provide for the protection of the right to privacy nor that of honor and reputation, the Supreme Court has consistently held that the enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty or property. The law recognizes the value of such reputation and imposes upon him who attacks it, by slanderous words or libellous publications, the liability to make full compensation for the damage done.⁷

For the foregoing reasons and purposes, the immediate passage of this proposed measure is earnestly sought.


ATTY. ROMEO M. ACOP, MNSA
Representative
2nd District, Antipolo City

⁷ Worcester vs. Ocampo, 22 Phil. 42



Republic of the Philippines
House of Representatives
Quezon City, Metro Manila

Fifteenth Congress

First Regular Session

House Bill No. 4031

Introduced by **HON. ROMEO M. ACOP**

AN ACT
DEFINING THE CRIME OF LIBEL IN THE INTERNET
AMENDING FOR THE PURPOSE ARTICLE 355 OF THE REVISED PENAL CODE OF
THE PHILIPPINES AS AMENDED, PROVIDING FOR INCREASES PENALTIES
AND FOR OTHER PURPOSES

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

SECTION 1. Title - This Act shall be known as the 'Internet Libel Law of the Philippines'.

SECTION 2. Definition of Terms – For purposes of this Act, the following terms and phrases shall mean :

- a) **Libel** - A public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, or omission, condition, status, or circumstance tending to cause the dishonour, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead;

- b) **Publication** - The posting of materials, remarks or matters through an Internet forum, newsgroup, message board, yahoo group, chat room, facebook, electronic mail (e-mail), or any other similar means when viewed or read by at least a third person;
- c) **Posting** - The sending of an electronic message to a website, an on-line forum or newsgroup in order to allow or would allow many people to see, read and view it;
- d) **Internet** - A computer network, or of interconnected computer networks over international communication backbones that use the TCP/IP (Transmission Control Protocol / Internet Protocol) network protocols and a shared naming system to facilitate data transmission and exchange between hosts;
- e) **Web site** - A set of interconnected webpages within the Web, including a homepage, containing a collection of files and related resources organized under a particular domain name, is generally located on the same server, and prepared and maintained as a collection of information by a person, group or organization;
- f) **On-line** - The condition of being connected to a network in the computer or other devices and allows subscribers to transmit data or communicate with one another either by e-mail messages or participate on internet for a;
- g) **Server** - A computer system or program using HTTP (Hypertext Transfer Protocol) whose primary purpose is to connect to the Internet and to serve electronic mailing (e-mail) or to download stored webpages and files to the user (client) when accessed or requested;
- h) **Web Host** - Individuals or companies providing server space, they own or lease, for use by their clients, and Internet connectivity services, including internet publications;
- i) **Electronic Mail (E-mail)** - A system of worldwide electronic communication involving the transmission and distribution of digital messages, information, facsimile of documents from one computer terminal to another, or to a large number of recipients instantaneously;
- j) **Internet Publication** - Refers to on-line and web-based production, distribution and posting of text and other interactive media;
- k) **Blogs** - A website usually maintained by an individual with entries of commentaries or graphics or video materials;
- l) **Facebook** - A social networking website for on-line applications such as communicating with friends, posting photos, sharing links and exchanging informations, and in which the platform is open to the general public;
- m) **Newsgroups** - An Internet-based discussion or forum connected via Usenet using NTP (Network News Transfer Protocol) where users post messages to a news server which then sends them to other participating servers;
- n) **Message Board** - Also known as a discussion board, a newsgroup or Internet forum;
- o) **Yahoo Group** - Organized discussion among Internet users;
- p) **YouTube** - A video sharing website that allows registered users to upload and share video clips on-line;
- q) **Chat Room** - A site on the Internet, or another computer network, where users have group discussions in real time by electronic mail but the messages are temporarily archived;

SECTION 3. - Article 355 of Act No. 3815, otherwise known as the Revised Penal Code of the Philippines, as amended, is hereby amended to read as follows :

SECTION 355. *Libel by means of writings, POSTINGS OR PUBLICATIONS IN THE INTERNET, or similar means* – A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by *prision correccional* in its minimum and medium periods **AND [or]** a fine ranging from **TEN THOUSAND (P 10,000) TO TWENTY THOUSAND PESOS (P 20,000)** [200 to 6,000 pesos, or both] in addition to the civil action that may be brought by the offended party.

LIBEL IS ALSO HEREBY COMMITTED BY MEANS OF POSTING OR PUBLICATION OF REMARKS, COMMENTS, ELECTRONIC MESSAGES OR SIMILAR COMMUNICATIONS AND MATERIALS IN ANY WEB SITE IN THE INTERNET SUCH AS BUT NOT LIMITED TO BLOGS, FACEBOOK, YAHOO GROUPS, YOUTUBE, MESSAGE BOARDS, CHAT ROOMS OR OTHER SOCIAL NETWORKING SITES OR INTERNET FORA.

SECTION 4. *Liability of Web Hosts* - Web hosts acting as service or fora providers in respect of the libellous message or document posted or published in their web sites by their clients or users shall be subject to civil and criminal liability under any of the following circumstances :

- a) The web host has actual knowledge, or is aware of the facts or circumstances from which it is apparent, that the making, dissemination, distribution and posting or publication of the remarks, comments, electronic messages or similar communications in its web site is libellous and unlawful;
- b) The web host knowingly receives financial benefit directly attributable to the posting or publication in its web site of the libellous remarks, comments, electronic messages or similar communications;
- c) The web host, after being requested by an offended party to remove from its web site the libellous remarks, comments, electronic messages or similar communications posted or published by its user or client against the offended party, refuses or fails to have the same removed immediately without any justification provided by law.

Provided, that the following persons shall be liable :

- 1) The owner of the web site or administrator of an internet forum if a natural person;
- 2) The president, chief executive, or general manager, as the case may be, in the case of juridical persons;
- 3) The editors in the case of internet publications

SECTION 5. *Venue and Jurisdiction* - Criminal and civil actions arising out of violations of this Act shall be filed by the offended party in the place :

- a) Where the alleged libellous publication or posting was committed; or,
- b) Where the offended party actually resides at the time of the commission of the offense.

Provided, that the civil action shall be filed in the same court where the criminal action is filed and vice versa; *Provided finally*, that the court where the criminal or criminal action was filed first, as the case may be, shall acquire jurisdiction to the exclusion of other courts.

SECTION 6. *Identity of the Offended Party* - The identity of the offended party shall be established on the basis of the contents of the libellous comment, remark, message or material posted or published, *Provided*, that where there are two (2) or more postings or publication of the material, the first of which did not mention any name or names but the succeeding publications or postings sufficiently and clearly indicate the identity of the person referred to in the first posting or publication, the entirety of the materials posted or published shall be taken to establish the identity of the offended party.

SECTION 7. *Implementing Rules and Regulations* - The Department of Justice, the Department of Transportation and Communication, the National Telecommunications Commission and the Commission on Information and Communication Technology shall, within sixty (60) days from the date of effectivity of this Act, formulate and issue the rules and regulations necessary for the effective implementation of this Act, *Provided*, that failure to issue the rules and regulations shall not in any manner affect the executory nature of the provisions of this Act.

SECTION 8. *Separability Clause* - If any provision or section of this Act is declared unconstitutional or invalid, such portions remaining thereby shall remain in full force and effect.

SECTION 9. *Repealing Clause* - All laws, corporate charters, decrees, rules and regulations, or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SECTION 10. *Effectivity Clause* - This Act shall take effect fifteen (15) days upon its publication in two (2) newspapers of general circulation.

Approved.