

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Batasan Hills, Quezon City

SIXTEENTH CONGRESS
First Regular Session

House Bill No. 446



Introduced by
ACT TEACHERS Party-List Representative Antonio L. Tinio

EXPLANATORY NOTE

This bill proposes to remove from our statute books provisions of Republic Act 10175, or the *Cybercrime Prevention Act of 2012*, which endanger fundamental freedoms, particularly the right to free speech.

First is the insertion of libel, a crime defined by Article 355 of the *Revised Penal Code* (Act No. 3815, 8 December 1930). Due to the widely spreading view that it shackles free expression and press, the trend internationally is the decriminalization of libel. The Philippine Congress, however, reinforced the antiquated felony with a graver penalty. The insertion is made more offensive because it happened during the proceedings of the bicameral conference committee which consolidated the final versions of Senate Bill 2796 and House Bill 5808 approved by the two Houses in plenary during the Fifteenth Congress. Neither bill contained a provision on libel. Section 4(c)(4) is therefore an unlawful provision as it escaped the scrutiny of Congress.

Next are Sections 6 and 7. The first provision qualifies as a graver crime any act penalized by the RPC or any special law, assigning to it a penalty one degree higher than that provided for by the RPC or the special law. However, persons committing crimes by, through, and with the use of information and communications technologies have not been established to have a greater criminal intent, warranting the higher penalty. Worse, the accused will be subjected to double jeopardy through the application of Section 7.

Last is Section 19 is a censorship clause, which allows the Justice Secretary to restrict or block access to computer data such as a website or account upon mere *prima facie* evidence of cyber-libel or any other violation of RA 10175. This violates the rights to free expression and due process guaranteed by the Bill of Rights. A mere executive official—not a judge—is empowered to take away one's access to his or her computer data upon a passing examination.

This bill also seeks to amend Section 12 which authorizes real-time collection by law enforcement authorities of traffic data without a court warrant. This is an unreasonable seizure of personal information such as one's address, phone number, and bank account numbers, and an unacceptable intrusion into privacy of communication highly proscribed by the Constitution. Such great power over the said rights of the people requires the authority of the courts.

These contentious provisions of R.A. 10175 cast a chilling effect over the exercise of free online expression. They bring back the days of Martial Law when being critical, especially of public officials, is a crime and arbitrary law enforcement is the general rule rather than the exception. For any repressive state official or regime, no actual prosecution under R.A. 10175 is necessary. Just the threat of prosecution is enough to curtail criticism, analysis, even simple thought. The slightest hint of dissent would trigger the suppression of free speech and an invasion of privacy.

Approval of this bill is earnestly sought.



ANTONIO L. TINIO

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AN ACT
AMENDING REPUBLIC ACT 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:

SECTION 1. The following provisions of Republic Act 10175 or the "Cybercrime Prevention Act of 2012" are hereby repealed:

"SECTION 4(c)(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 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 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 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."

SECTION 2. The following provisions of Republic Act 10175 are hereby amended as follows:

"SECTION 12. Real-Time Collection of Traffic Data. — Law enforcement authorities, with due cause, **AND UPON SECURING A COURT WARRANT**, shall be authorized to collect or record by technical or electronic means traffic data in real-time associated with specified communications transmitted by means of a computer system.

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"All other data to be collected or seized or disclosed [will] **SHALL LIKEWISE** require a court warrant."

SECTION 3. All laws, decrees, resolutions, orders, or ordinances or parts thereof inconsistent with this Act are hereby repealed, amended or modified accordingly.

SECTION 4. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or one (1) newspaper of general circulation.

Approved,