

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Sixteenth Congress
First Regular Session

House Bill No. **3859**



Introduced by AKBAYAN Representatives
Ibarra "Barry" M. Gutierrez III and Walden F. Bello

EXPLANATORY NOTE

At no other time in the history of humanity does speech and expression, the cornerstones of democracy, should be truly free as it should be today. With continued technological improvement each and every Filipino can form an opinion and share it with the broader public in a matter of seconds. Today, information from across the globe is readily accessible in real time from the comfort of one's home. And all this is made possible through blogs, social networking sites, and other platforms available on the Internet.

The Internet is a model of technological ingenuity that advances the freedom of speech and expression to its logical extent: it is the freest platform that is accessible to one and all, regardless of their age, gender, ethnicity, political or religious affiliations; it allows the free formulation and expression of any one person's opinions and identity without interference or discrimination. In a way, the Internet is the great equalizer, where any random average Filipino is as equally powerful as the politically influential and wealthy in their capacity to exchange information and participate in debate and discourse.

In 2012, Republic Act No. 10175 (otherwise known as the *Cybercrime Prevention Act of 2012*) was enacted into law. Not long after its enactment, at least fifteen (15) petitions were filed with the Philippine Supreme Court questioning the constitutionality of R. A. 10175 and resulted in the issuance of an indefinite temporary restraining order (TRO) which stopped its implementation.

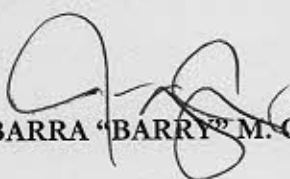
In fact, even the Office of the Solicitor General, in its Comment to the petitions, stated that certain provisions of R. A. 10175 are 'constitutionally impermissible' for permitting a 'form of final restraint on speech without prior judicial determination.'

That R. A. 10175 defeats the constitutional rights which the Internet advances does not mean that the Internet should not be exempt from regulation. There is a need to define cybercrimes to protect Internet users. The advancement of constitutional rights and the protection of citizens from cybercrime are the reasons why Akbayan pushes for the amendments to R. A. 10175.

In particular, the repeal of the provision that criminalized cyber libel is sought since invoking libel in cyberspace is a blatant violation of the freedom of the press as well as the free speech of private individuals who take to the Internet. It also expands the chilling effect of criminal liability to stifle the articulation of divergent ideas. This provision is a blatant violation of the Filipino people's right to free speech and expression; it goes against the very core of our *Constitution*.

Akbayan also seeks to refine the State's police powers online. While we recognize that competing individual freedoms may result into abuses and injury to persons in the Internet, we do not believe that the State should be given absolute police powers to collect, seize, disclose or restrict access to data available on the Internet. To improve the State's capacity to prevent abuses online, we believe that any sanctions the State will execute against any person or entity on the Internet must be authorized by a court warrant that proves the necessity for such act.

It is in this context, and in pursuit of these objectives that the following measure amending R. A. 10175 is proposed.


IBARRA "BARRY" M. GUTIERREZ III


WALDEN F. BELLO

Republic of the Philippines
HOUSE OF REPRESENTATIVES
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House Bill No. 3859

Introduced by AKBAYAN Representatives
Ibarra "Barry" M. Gutierrez III and Walden F. Bello

AN ACT
EXTENDING FREEDOM OF SPEECH, OF EXPRESSION, AND OF THE PRESS
TO CYBERSPACE, REPEALING FOR THIS PURPOSE SECTIONS 5, 6 AND 7,
AND AMENDING SECTIONS 4, 12 AND 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:

1 **SECTION 1.** Section 4 of Republic Act No. 10175, otherwise known as the *Cybercrime Prevention*
2 *Act of 2012* is hereby amended to read as follows:

3

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

6

7 x x x

8

9 (c) Content-related offenses:

10

11 (1) Cybersex.—The willful engagement, maintenance,
12 control, or operation, directly or indirectly, of any lascivious
13 exhibition of sexual organs or sexual activity, with the aid of a
14 computer system, for favor or consideration.

(2) Child pornography.—The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the *Anti-Child Pornography Act of 2009*, committed through a computer system: *Provided*, That the penalty to be imposed shall be one (1) degree higher than that provided in R. A. 9775.

(3) Unsolicited commercial communications.—The transmission of commercial electronic communication electronic communication with the use of computer system which seek to advertise, sell, or offer for sale products and services are prohibited unless:

- (i) There is prior affirmative consent from the recipient; or
- (ii) The primary intent of the communication is for service and/or administrative announcement from the sender to its existing users, subscribers or customers; or
- (iii) The following conditions are present:
 - (aa) The commercial electronic communication contains a simple, valid, and reliable way for the recipient to reject. Receipt of further commercial electronic messages (opt-out) from the same source;
 - (bb) The commercial electronic communication does not purposely disguise the source of the electronic message; and
 - (cc) The commercial electronic communication does not purposely include misleading information in any party of the message in order to induce the recipients to read the message.

(4) ~~Libel.—The unlawful or prohibited acts or 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 2.Section 5 of Republic Act No. 10175, otherwise known as the *Cybercrime Prevention Act of 2012*, and which reads:

“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.”

is hereby repealed.

SECTION 3. Section 6 of Republic Act No. 10175, otherwise known as the *Cybercrime Prevention Act of 2012*, which reads as follows:

“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.”

is hereby repealed.

SECTION 4. Section 7 of Republic Act No. 10175, otherwise known as the *Cybercrime Prevention Act of 2012*, which reads as follows:

“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.”

is hereby repealed.

SECTION 5.Section 12, Chapter IV of RA 10175 is hereby amended to read as follows:

1
2 ~~"Section 12. Real-time collection of traffic data~~Collection of computer data,
3 traffic data, or non-content data by law enforcement agencies and officers.—

4 ~~Law enforcement authorities, with due cause, shall be authorized~~
5 ~~to collect or record by technical or electronic means traffic data~~
6 ~~in real time associated with specified communications transmitted~~
7 ~~by means of a computer system.~~

8
9 ~~Traffic data refer only to the communication's origin, destination,~~
10 ~~route, time, date, size, duration, or type of underlying service, but~~
11 ~~not content, nor identities.~~

12
13 ~~Computer~~All other data, traffic data, or non-content data sought
14 to be collected or seized or disclosed by any law enforcement
15 agency or officer will~~shall~~require a court warrant.

16
17 ~~Service providers are required to cooperate and assist law~~
18 ~~enforcement authorities in the collection or recording of the~~
19 ~~above-stated information.~~

20
21 The court warrant required under this section shall only be issued
22 or granted upon written application and the examination under
23 oath or affirmation of the applicant and the witnesses he may
24 produce and the showing: (1) that there are reasonable grounds
25 to believe that any of the crimes enumerated hereinabove has
26 been committed, or is being committed, or is about to be
27 committed: (2) that there are reasonable grounds to believe that
28 evidence that will be obtained is essential to the conviction of any
29 person for, or to the solution of, or to the prevention of, any
30 such crimes; and (3) that there are no other means readily
31 available for obtaining such evidence."

32
33 **SECTION 6.** Section 19, Chapter IV of RA 10175 is hereby amended to read as follows:
34

1 “Section 19. Restricting or blocking access to computer data.—When in
2 the assessment of the Department of Justice, there is probably
3 cause to find that a computer data is *prima facie* found to be in
4 violation of the provisions of this Act, the DOJ shall file the
5 appropriate complaint or information before a court of
6 competent jurisdiction, and upon such filing, may pray for the
7 issuance of a court order to restrict or block access to
8 such computer data.

9
10 The court shall grant such prayer upon finding that there is *prima*
11 *facie* basis for holding that the computer data is in violation of this
12 Act.”

13
14 **SECTION 7. Repealing clause.**—All laws, decrees, order, rules and regulations or other
15 issuances, particularly of Republic Act No. 10175 (*Cybercrime Prevention Act of 2012*) are hereby
16 repealed, amended or modified accordingly.

17
18 Sections 4, 12 and 19 of Republic Act No. 10175 are hereby amended accordingly. Sections 5, 6
19 and 7 of Republic Act No. 10175 are hereby repealed in their entirety.

20
21 **SECTION 8. Effectivity clause.**—This Act shall take effect immediately after the completion
22 of its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved,