

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 6041



Introduced by **HON. LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.**

EXPLANATORY NOTE

The Budapest Convention on Cybercrime (2001) is the first international treaty harmonizing national laws to prevent and punish Internet and computer crime. On 15 May 2007, the Committee of Ministers of the Council of Europe (COE) invited the Philippines to comply with the Convention on Cybercrime during the 1026th meeting of the Ministers' Deputies.¹ In line with the treaty, Republic Act No. 10175, otherwise known as the Cybercrime Prevention Act of 2012, was enacted. It pursues a common policy to address cybercrime by adopting appropriate legislation and fostering international cooperation. In 2012, the Department of Science and Technology (DOST), Department of the Interior and Local Government (DILG), and Department of Justice (DOJ) acceded to the Convention by issuing Certificates of Concurrence (COCs), respectively.

However, the submission of the COCs to the Department of Foreign Affairs (DFA) was postponed because Cybercrime Law challenges the Constitution. In Section 24, Article II of the 1987 Philippine Constitution, the "State recognizes the vital role of communication and information in nation building." Article III further expounds on our rights to due process and equal protection of the laws (Section 1), right to be free from unreasonable searches and seizures (Section 2), right to privacy of communication and correspondence (Section 3), freedom of speech, of expression, and of the press (Section 4), and prohibition against double jeopardy (Section 21). Furthermore, the Philippines' ratification of the International Convention on the Civil and Political Rights (ICCPR) obligates the nation to adhere to its provisions. Of particular note is Article 19 of the ICCPR mandating the country to protect the right to freedom of expression.

Republic Act No. 10175 contradicts these rights and mandates when it introduced cyber libel and harsh provisions found in Sections 4 (c) (4), 5,6, and 7. **Section 4 (c) (4)** provides: "the following acts constitute the offense of cybercrime punishable under this Act:

(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."

The proclamation should be repealed because the application is so broad and vague that it is unconstitutional. It would affect previously made "publications" that remain in cyberspace. Finally, it holds great potential to infringe on a person's freedom of speech. In effect, punishment can be vetted for those who exercise freedom of speech in cyberspace.

¹ 2016-2017 Philippine Cybercrime Report. *Office of Cybercrime*, Department of Justice, retrieved from: https://doj.gov.ph/files/OOC/ooc_report_corrected.pdf

Section 5 provides: “The following acts shall constitute an offense:

- (a) Aiding or Abetting in the Commissions of Cybercrime. – Any person who willfully abets or aids in the commission of any 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.”

The overbroad reach of Section 5 violates Section 1 Article III of the Constitution. When applied to libel as stipulated in Section 4 (c) (4), the law punishes legally protected communications. Furthermore, Section 5 does not explicitly state the elements of aiding or abetting a cybercrime. It implicitly gives the ruling body free reign on what constitutes aiding or abetting a cybercrime.

Section 6 provides: “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.”

Since Section 6 increases the penalty to one degree, it violates a citizen’s right to the equal protection of the law as enshrined in the Constitution. The only distinction for the differing degree of punishment for the same offense is that the crime would be committed through a computer. Such a distinction is not substantial enough to validate a higher degree of punishment.

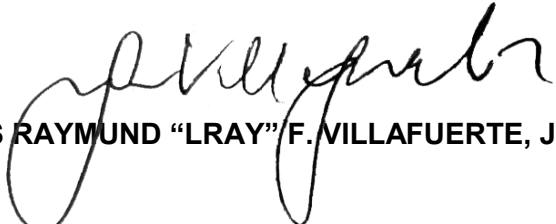
Section 7 provides: “A prosecution under this Act shall be without prejudice to any liability for violation of any provisions of the Revised Penal Code, as amended or special laws.”

Section 7 violates the constitutional prohibition of double jeopardy, which has long been settled.

Thus, the Cybercrime law, in its current state, is an overreach of the government’s powers as it violates the inalienable rights of its citizens and must be amended posthaste. With the passage of other bills dealing with cyberspace and technology such as the Data Privacy Act of 2012, there is a need to harmonize certain provisions to reduce contradictions among other laws.

This re-filed version of the bill intends to safeguard the many inalienable rights enshrined in the Constitution and protect the freedom of expression of the Filipino people.

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


LUIS RAYMUND “LRAY” F. VILLAFUERTE, JR.

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Introduced by **HON. LUIS RAYMUND “LRAY” F. VILLAFUERTE, JR.**

AN ACT
AMENDING 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. Sections 4(c)(4), 6, 7, 12 and 19 of Republic Act No. 10175, otherwise known as the Cybercrime Prevention Act of 2012, are hereby repealed. All laws, orders, issuances, circulars, rules and regulations or parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed or modified accordingly.

SECTION 2. Section 4(c)(1) is likewise hereby repealed; Provided, That the Anti-Trafficking in Persons Act of 2003 or Republic Act No. 9208 shall govern the offense of trafficking of persons committed through a computer system.

SECTION 3. Section 4(a) of the Act is hereby amended to read as follows:

"SEC. 4. *Cybercrime Offenses.* - The following acts constitute the offense of cybercrime punishable under this Act:

- (a) Offenses against the confidentiality, integrity and availability of computer data and systems, **AS CONSISTENT WITH THE DATA PRIVACY ACT OF 2012 OR REPUBLIC ACT NO. 10173: xxx"**

SECTION 4. *Separability Clause.* – Should any provision herein be subsequently declared invalid or unconstitutional, the same shall not affect the validity or the legality of the other provisions not so declared.

SECTION 5. *Repealing Clause.* – All laws, presidential decrees, executive orders, rules and regulations, other issuances, and parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed and modified accordingly.

SECTION 6. *Effectivity.* – This Act shall take effect fifteen (15) days after publication in the *Official Gazette* or in at least (2) newspapers of general circulation.

Approved,