An Examination of Cyberlibel in the Philippines: A Study of the Current State of Online Defamation

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I. INTRODUCTION 1083
A. *The Existence of Cyberlibel*
B. *Preliminary Issues of Cyberlibel*
II. CYBERLIBEL IN THE PHILIPPINES 1091
A. *The Law on Libel*
B. *Jurisprudence on Libel: Observations of the Philippine Supreme Court's Rulings*
C. *Recent Events: The Existence of Cyberlibel*
III. THE TREATMENT OF CYBERLIBEL IN FOREIGN JURISDICTIONS 1106
A. *English Jurisdiction*
B. *Australian Jurisdiction*
C. *Japanese Jurisdiction*
D. *American Jurisdiction*
IV. CONCLUSION 1115

I. INTRODUCTION

A. The Existence of Cyberlibel

In the past, any written or printed word, which was offensive or caused offense, was easily determined as punishable either criminally or civilly. In the Philippine jurisdiction, the publication of offensive words is punished as libel, a criminal offense.[1] However, recent events have highlighted the issues

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surrounding libel, especially in the age of the Internet. In fact, there were some who implied that maintaining libel as a criminal offense is against the 1987 Philippine Constitution,[2] while still, others claim that libel as a crime is against the Philippines' obligations under international law.[3] In this day and age, where the Internet is so prevalent, with blogs, Facebook, Twitter, and comments made online, it is worth examining the subject matter of committing libel online, also known as cyberlibel.[4] Especially since, in the

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1. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 353 (1932).
2. Oral Argument at 44:00, Adonis, et al. v. Executive Secretary, et al., G.R. No. 203378, *available at* http://sc.judiciary.gov.ph/features/oral_arguments/cybercrime/index.php. *See also* Oscar Franklin Tan, Supreme Court Idol: The cyberlibel edition, *available at* http://www.rappler.com/thought-leaders/20089-supreme-court-idol-the-cyber libel-edition (last accessed Feb. 28, 2013).
3. Summary of the Petition for *Certiorari* & Prohibition of Adonis, et al. v. Executive Secretary, et al., *available at* http://sc.judiciary.gov.ph/features/oral_arguments/cybercrime/203378.php (last accessed Feb. 28, 2013). *See also* Petitions Challenging Republic Act No. 10175, *available at* http://sc.judiciary.gov.ph/features/oral_arguments/cybercrime/index.php (last accessed Feb. 28, 2013).
4. The term cyberlibel is used in academic circles, by laymen, and media. *See* Shaheen Shariff & Leanne Johnny, *Cyber-Libel and Cyber-Bullying: Can Schools Protest Student Reputation and Free Expression in Virtual Environments?*, 16 EDUC. & L.J. 307, 316-17 (2007). *See also* Jeremy Stone Webber, *Defining Cyberlibel: A First Amendment Limit for Libel Suits Against Individuals Arising From Computer Bulletin Board Speech*, 46 CASE W. RES. L. REV. 235, 254-61 (1995); Abbel L. Mansfield, *Cyber-libeling the gliteratti: Protecting the First Amendment For Internet Speech*, 9 VAND. J. ENT. & TECH. L. 897, 907-11 (2007); Barry J. Waldman, *A Unified Approach to Cyber-Libel: Defamation on the Internet, A Suggested Approach*, 6

words of one commentator, "'[c]yber[ ]libel,' [i.e.,] defamation claims for material posted on web-pages, in chat-rooms, or in electronic newspapers, has complicated defamation jurisprudence."[5] In the words of another author, "Cyber[-]libel is a sticky issue because cyberspace is a breeding ground for libel without boundaries."[6]

For the purposes of this Article, any form of online libel or libel committed online shall be referred to as cyberlibel.

Commentators have a number of views on cyberlibel. In the Philippines, some commentators believe that cyberlibel is subsumed under the current Revised Penal Code.[7] In fact, some courts and prosecutors have recently indicted people for libel committed online,[8] while some authorities have even arrested a respondent for online or cyberlibel,[9] despite the lack of a definitive and effective (i.e., implementable) cyberlibel statute. Other courts or officers in the past, however, have declined to prosecute libel committed online, or what would be called herein as cyberlibel.[10] In one case where

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RICH. J.L. & TECH. L. 1, 34 (1999); Tetch Torres, *SC justice says prosecution of cyber libel 'clearly infirm,'* PHIL. DAILY INQ., Jan. 15, 2013, *available at* http://technology.inquirer.net/22069/sc-justice-says-prosecution-of-cyber-libel-clearly-infirm (last accessed Feb. 28, 2013); & Jomar Canlas, *Court asked to throw out oppressive cyber-libel law*, MANILA TIMES, Jan. 31, 2013, *available at* http://www.manilatimes.net/index.php/news/nation/40489-court-asked-to-throw-out-oppressive-cyber-libel-law (last accessed Feb. 28, 2013).

5. Mansfield, *supra* note 4, at 907 (citing Bruce W. Sanford, *Who is the Plaintiff? The Public v. Private Person Determination*, *in* LIBEL AND PIRACY 13-18 (2d ed.)).

6. Cory Janssen, Cyberlibel, *available at* http://www.techopedia.com/definition/24877/cyber-libel (last accessed Feb. 28, 2013).

7. Tan, *supra* note 2. *See also* Shaira Panela, UP law professor says online libel isn't new, despite Anti-Cybercrime Law, *available at* http://www.gmanetwork.com/news/story/274898/scitech/technology/up-law-professor-says-online-libel-isn-t-new-despite-anti-cybercrime-law (last accessed Feb. 28, 2013).

8. Christine O. Avendaño, *CA affirms libel case vs teen blogger for 'maligning' another girl*, PHIL. DAILY INQ., Feb. 3, 2013, *available at* http://technology.inquirer.net/22725/ca-affirms-libel-case-vs-teen-blogger-for-maligning-another-girl (last accessed Feb. 28, 2013).

9. *See* UCAN Philippines, Activists hit first cyber libel arrest, *available at* http://philippines.ucanews.com/2012/10/22/activists-hit-first-cyber-libel-arrest/ (last accessed Feb. 28, 2013).

10. *See* Bonifacio v. Regional Trial Court of Makati, Branch 149, 620 SCRA 268, 273-74 (2010). The Court affirmed the 20 June 2007 Resolution issued by the Secretary of Justice by saying that "[t]he Justice Secretary opined that the crime of 'internet libel' was non-existent, hence, the accused could not be charged with libel under Article 353 of the [Revised Penal Code]." *Id.* at 273. *See also* Karen Flores, Court junks PH's first Facebook libel case, *available at*

libel was supposedly committed on Facebook, the trial court specifically held that the subject libel case could not prosper due to jurisdictional issues.[11] In one resolution by the Secretary of Justice, it was stated that the crime of online libel did not even exist.[12]

Perhaps to fill this supposed gap in Philippine law, Congress has chosen to make libel committed online punishable under the Cybercrime Prevention Act of 2012 or Republic Act (R.A.) No. 10175.[13] As of this writing, the statute's implementation is restrained and its very constitutionality is under question,[14] which seems to cause confusion in relation to cyberlibel, and puts into issue its very existence in the Philippines.

However, it must be noted that this Article will not delve into the constitutionality of the Cybercrime Prevention Act of 2012 or on the constitutionality of the Act's provisions on cyberlibel. This Article is limited solely to a study on cyberlibel as a concept. Should this Article make a reference to the said Act, it shall only do so on factual matters, or on matters which are already of public record such as audio recordings, news articles, or the provisions of the law itself.

In sum then, the question at present is whether or not cyberlibel or libel committed online exists under Philippine law, and what are its issues, features, and effects.

To answer this question, this Article shall: (1) introduce the concept of cyberlibel; (2) study libel under current Philippine laws and jurisprudence; and then (3) examine cyberlibel and defamation under different foreign

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http://www.abs-cbnnews.com/lifestyle/07/26/11/court-junks-phs-first-facebook-libel-case (last accessed Feb. 28, 2013).

11. Flores, *supra* note 10.

12. *See Bonifacio*, 620 SCRA at 273.

13. An Act Defining Cybercrime, Providing for the Prevention, Investigation, Suppression, and The Imposition of Penalties Therefor and For Other Purposes. [Cybercrime Prevention Act of 2012], Republic Act No. 10175, § 4 (c) (4) (2012). This Section provides that libel is "the unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed though a computer system or any other similar means, which may be devised in the future." *Id.*

14. *See* Petitions Challenging Republic Act No. 10175, *available at* http://sc.judiciary.gov.ph/features/oral_arguments/cybercrime/index.php (last accessed Feb. 28, 2013). *See also* Tetch Torres, *SC Issues TRO vs cyber law*, PHIL. DAILY INQ., Oct. 9, 2012, *available at* http://newsinfo.inquirer.net/285848/sc-stops-cyber-law (last accessed Feb. 28, 2013); Kelvin Lee & Roald Moy, *TRO and the Cybercrime Prevention Act*, SUNSTAR DAVAO, Oct. 11, 2012, *available at* http://www.sunstar.com.ph/davao/opinion/2012/10/11/lee-tro-and cybercrime-prevention-act-247594 (last accessed Feb. 28, 2013).

jurisdictions for the sake of guidance. Thereafter, it shall (4) prepare a conclusion on the state of cyberlibel.

B. Preliminary Issues of Cyberlibel

1. Existence of Cyberlibel

One of the more pivotal rulings on libel committed online is the 20 June 2007 Resolution of the Secretary of Justice of the Philippines, where the Secretary specifically stated that, "[t]he Justice Secretary opined that the crime of 'internet libel' was non-existent, hence, the accused could not be charged with libel under Article 353 of the [Revised Penal Code]."[15]

It is worth mentioning that Philippine authorities deemed cyberlibel sufficiently important enough that Congress enacted the Cybercrime Prevention Act of 2012,[16] precisely to deal with a number of crimes committed online, including cyberlibel or libel committed online.

It is common knowledge that there are many criminal acts committed online. It is recognized that an unchecked cyberworld would be disastrous for the online community[17] and perhaps even the offline community. Thus, there have been calls that existing international conventions or laws on the Internet should be more ambitious in their scope.[18] In fact, many developments have caused Congress in the United States (U.S.) to put a leash on the internet revolution by enacting various laws to deal with it.[19] It has been said that "[t]he growing public awareness of the Internet's unwieldy and chaotic side has led to calls for regulation and governance."[20] This presumably included libel committed online or cyberlibel as among those on the Internet's chaotic side, and which is thus in need of regulation.

Such a trend in the U.S. is mimicked here in the Philippines. It was because of various cybercrimes, not just cyberlibel, that the Cybercrime Prevention Act of 2012 was passed into law. As explained by the Spokesperson of the President of the Philippines, "[t]he Cybercrime

15. *See Bonifacio*, 620 SCRA at 273.

16. *See* Cybercrime Prevention Act of 2012, § 4 (c) (4).

17. Russell L. Weaver, *The Internet, Free Speech, and Criminal Law: Is it time for a new international treaty on the internet?*, 44 TEX. TECH L. REV. 197, 197-01 (2011).

18. *Id.* at 219.

19. *Developments in the Law — The Law of Cyberspace*, 112 HARV. L. REV. 1574, 1580-82 (1999).

20. *Id.* at 1581 (citing Geeta Anand, *Parents Want BPL to Block Porn on Internet*, BOSTON GLOBE, Feb. 12, 1997, at A28; Karen Kaplan, *AOL Drops Plans to Sell Members' Phone Numbers*, L.A. TIMES, July 25, 1997, at A1; & Aaron Lucchetti, *Plan to Reduce Volatility on Nasdaq Hits Hurdle*, WALL ST. J., Feb. 3, 1991, at C1).

Prevention Act was enacted by Congress to address legitimate concerns about criminal behavior on the Internet and the effects of abusive behavior[.]"[21]

2. Freedom of Expression vis-à-vis Libel and Cyberlibel

It must be emphasized that although there is a recognized need to address online criminal behavior such as cyberlibel, certain rights remain to be revered and should not be impaired.

For instance, in the U.S., it is generally settled that the First Amendment[22] rights of an American citizen should not be suppressed by law.

In *Ashcroft v. Free Speech Coalition*,[23] the Child Pornography Prevention Act (CPPA) of 1996[24] was found unconstitutionally overbroad because government may not suppress lawful speech as the means to suppress unlawful speech.[25] The U.S. Supreme Court held that

> [p]rotected speech does not become unprotected merely because it resembles the latter. The Constitution requires the reverse. '[T]he possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted[.]'[26]

Likewise, there was a similar position taken by the U.S. Supreme Court in the case of *Reno v. American Civil Liberties Union*,[27] wherein the U.S. Court struck down provisions of the Communications Decency Act

21. Kim Arveen Patria, Palace: Thou shall not fear cybercrime law, *available at* http://ph.news.yahoo.com/palace--thou-shall-not-fear-cybercrime-law.html (last accessed Feb. 28, 2013).

22. U.S. CONST. amend. 1. This Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. 1.

23. Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).

24. Child Pornography Prevention Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-26 (1996) (U.S.).

25. *Ashcroft*, 535 SCRA at 258.

26. *Id.* at 255 (citing Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973)).

27. Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).

(CDA)[28] passed by Congress for being unconstitutionally vague and for unduly affecting freedom of expression.[29]

This train of thought, that human rights such as freedom of expression should not be abridged by laws dealing with the Internet, is likewise present in the Philippines. No less than a Supreme Court Justice has implied, during oral argument, that libel *per se* may be unconstitutional.[30] His point seemed to be that libel under the Revised Penal Code was enacted before the 1987 Constitution. The Philippine Constitution included in its Bill of Rights the freedom of expression,[31] and as such, the Constitution and the Revised Penal Code on libel[32] are already in conflict. The Constitution being the Supreme Law, then, it follows that the Revised Penal Code's provisions on libel can already be considered unconstitutional.[33]

Jurisprudence has also balanced the conflict between libel and freedom of expression. It has been held by the Supreme Court that "the judiciary, in deciding suits for libel, must ascertain whether or not the alleged offending words may be embraced by the guarantees of free speech and free press."[34] In another case, the Court explained that "[l]ibel stands as an exception to one of the most cherished constitutional rights, that of free expression."[35]

It must be noted that to date, there has been no Supreme Court ruling invalidating the Revised Penal Code on libel. However, based on news reports, there has been a recent attempt at declaring the libel provisions of

28. Communications Decency Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (U.S.).

29. *Reno*, 521 U.S. at 882-85.

30. *See* Oral Argument at 42:30, *supra* note 2. *See also* Tan, *supra* note 2.

31. PHIL. CONST. art. 3, § 4. This Section provides that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances." PHIL. CONST. art. 3, § 4.

32. REVISED PENAL CODE, art. 355. This Article provides that

> [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 or a fine ranging from [₱200.00] to [₱6,000.00], or both, in addition to the civil action which may be brought by the offended party.

Id.

33. *Compare* PHIL. CONST. art. 3, § 4, *with* REVISED PENAL CODE, art. 355. *See also* Oral Argument at 42:30, *supra* note 2 & Tan, *supra* note 2.

34. Philippine Commercial & Industrial Bank v. Philnabank Employees' Association, 105 SCRA 314, 319 (1981).

35. Chavez v. Court of Appeals, 514 SCRA 279, 293 (2007).

the Revised Penal Code as unconstitutional by one group of petitioners in the pending Cybercrime Prevention Act case before the Supreme Court.[36]

3. Libel Tourism

An important issue in relation to cyberlibel, or even just libel in light of an age of global publication, is that of "libel tourism," or the shopping of an appropriate or comfortable venue or fora for the complainant.[37] As explained by one author, "[f]orum shopping in trans-national libel cases — 'libel tourism' — has a chilling effect on journalism, academic scholarship, and scientific criticism."[38]

This same author further expounds,

> The concern about such chilling effects is particularly pressing now that publication is global rather than local, because countries with the most speech-repressive libel laws can effectively set the limits on what can be said world[ ]wide. Most observers agree that libel tourism actions today pose a significant threat to free expression.[39]

To a certain extent, this observation by a foreign author is applicable in the Philippine context in this age of internet publication. It is certainly conceivable that an author can be sued for libel or cyberlibel anywhere in the Philippines, especially since the same remains a country where libel is a criminal offense.[40]

These many issues surrounding the concept of cyberlibel, such as:

(1) Whether or not there is even an actual need for a separate law on cyberlibel;

(2) Whether or not such a law will affect certain human rights, such as the right to freedom of expression; and

(3) How to deal with the matter of "libel tourism" for cyberlibel

remain to be resolved in the Philippines.

Thus, these topics shall likewise be explored and discussed through the research, laws, and jurisprudence in this Article.

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36. Shaira F. Panela, Anti-Cybercrime Law petitioners hit constitutionality of PHL penal code, *available at* http://www.gmanetwork.com/news/story/288016/scitech/technology/anti-cybercrime-law-petitioners-hit-constitutionality-of-phl-penal-code (last accessed Feb. 28, 2013).

37. Lili Levi, *The Problem of Trans-national Libel*, 60 AM. J. COMP. L. 507, 507 (2012).

38. *Id.* at 507.

39. *Id.* at 508-09.

40. *See* REVISED PENAL CODE, art. 355.

II. CYBERLIBEL IN THE PHILIPPINES

A. The Law on Libel

1. Revised Penal Code

In the Philippine jurisdiction, the crime of libel is defined in Article 353 of the Revised Penal Code as follows:

> [Article] 353. *Definition of libel.* — A libel is public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.[41]

Libel requires the presence of the following elements: (1) imputation of discreditable act or condition to another; (2) publication of the imputation; (3) identity of the person defamed; and (4) existence of malice.[42]

Notably, it has been explained by the Court that libel can also be acted upon as a purely civil action, and not just as a criminal case.[43] It ruled that

> [d]espite being defined in the Revised Penal Code, libel can also be instituted, like in the case at bar, as a purely civil action, the cause of action for which is provided by Article 33 of the Civil Code, which provides:
>
> 'Article 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.'
>
> The above elements of libel were adopted as well in a purely civil action for damages. As held by this Court in *GMA Network, Inc. v. Bustos:*
>
> 'An award of damages under the premises presupposes the commission of an act amounting to defamatory imputation or libel, which, in turn, presupposes malice. Libel is the public and malicious imputation to another of a discreditable act or condition tending to cause the dishonor, discredit, or contempt of a natural or juridical person. Liability for libel attaches present the following elements: (a) an allegation or imputation of a discreditable act or condition concerning another; (b) publication of the imputation; (c) identity of the person defamed; and (d) existence of malice.'[44]

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41. REVISED PENAL CODE, art. 353.

42. Vicario v. Court of Appeals, 308 SCRA 25, 29 (1999).

43. Yuchengco v. Manila Chronicle Publishing Corporation, 605 SCRA 684, 697 (2009).

44. *Id.* at 697-98 (citing GMA Network, Inc. v. Bustos, 504 SCRA 638, 650-51 (2006)).

Under Article 355 of the Revised Penal Code, libel can be committed in the following manner:

> [Article] 355. *Libel means by writings 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 or a fine ranging from [₱200.00] to [₱6,000.00], or both, in addition to the civil action[,] which may be brought by the offended party.[45]

Meanwhile, Article 360 of the Revised Penal Code also includes the following as those who can be held liable for libel, as well as the rule on venue for filing of libel cases:

> [Article] 360. *Persons responsible.* — Any person who shall publish, exhibit[,] or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.
>
> The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.
>
> The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the [C]ourt of [F]irst [I]nstance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense: *Provided, however*, That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila, or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published: *Provided, further*, That the civil action shall be filed in the same court where the criminal action is filed and vice versa: *Provided, furthermore*, That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts: And, *provided, finally*, That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions which have been filed in court at the time of the effectivity of this law.

45. REVISED PENAL CODE, art. 355.

> Preliminary investigation of criminal action for written defamations as provided for in the chapter shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such action may be instituted in accordance with the provisions of this article.
>
> No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de oficio* shall be brought except at the instance of and upon complaint expressly filed by the offended party.[46]

2. The Cybercrime Prevention Act

The Cybercrime Prevention Act of 2012 also provides for and penalizes libel which is committed electronically or what this Article has termed cyberlibel.

Under the Cybercrime Prevention Act, criminal liability is incurred under Section 4 (c) (4), which defines cyberlibel as "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."[47]

Interestingly, the Cybercrime Prevention Act of 2012 has also raised the penalty of all crimes under the Revised Penal Code, so long as they are committed through the use of computers or information and communications technologies, to wit:

> [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 [ ] degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.[48]

It is worth mentioning that the abovementioned cyberlibel provisions have garnered the most publicity in relation to the Cybercrime Prevention Act of 2012, even though there are opinions by some legal experts that cyberlibel can still be prosecuted even without the said law.[49]

As of this writing, it must be emphasized that the Cybercrime Prevention Act of 2012's implementation is enjoined by a restraining order. On 9 October 2012, the Supreme Court issued a 120-day restraining order,[50]

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46. REVISED PENAL CODE, art. 360.

47. Cybercrime Prevention Act of 2012, § 4 (c) (4).

48. *Id.* § 6.

49. Panela, *supra* note 7.

50. Gleo Sp. Guerra, Cybercrime Law Oral Arguments Set on January 15; Justice Abad Confers with Counsels for Orderly Oral Arguments, *available at*

a rarity for the Supreme Court. This was then followed by an indefinite restraining order, which remains effective as of this writing.[51] In short, the Philippine government currently cannot implement the Cybercrime Prevention Act of 2012's provisions on "cyberlibel."

Furthermore, whether or not cyberlibel will continue to exist under the Cybercrime Prevention Act of 2012 still remains to be seen as of this writing.

B. Jurisprudence on Libel: Observations of the Philippine Supreme Court's Rulings

Through the years, the Supreme Court has discussed and formulated rules on libel in its many decisions. A glance at Supreme Court jurisprudence would show that, from 1901 to mid-2012, there are currently 177 cases decided by the Supreme Court which dealt with libel.[52]

The crime of libel is defined as "a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status[,] or circumstance tending to discredit or cause the dishonor or contempt of a natural or juridical person, or to blacken the memory of one who is dead."[53]

The Supreme Court has expounded on libel, which it considers to be subsumed under defamation, as follows:

> Defamation, which includes libel and slander, means the offense of injuring a person's character, fame or reputation through false and malicious statements. It is that which tends to injure reputation or to diminish the esteem, respect, good will or confidence in the plaintiff or to excite derogatory feelings or opinions about the plaintiff. It is the publication of anything[,] which is injurious to the good name or reputation of another or tends to bring him into disrepute. Defamation is an invasion of a *relational interest* since it involves the opinion[,] which others in the community may have, or tend to have, of the plaintiff.[54]

The Court has likewise determined who may be held liable for libel. It is the position of the Supreme Court that

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http://sc.judiciary.gov.ph/pio/news/2013/01/01041301.php (last accessed Feb. 28, 2013).

51. Lorenz Niel Santos & JM Tuazon, Supreme Court stops cybercrime law indefinitely, *available at* http://www.interaksyon.com/article/54353/supreme-court-stops-cybercrime-law-indefinitely (last accessed Feb. 28, 2013).

52. The Author relied upon the result of the total number of cases indexed under the term "libel" in eSCRA. *See* Central Books, e-SCRA Library, *available at* http://www.central.com.ph/escra/ (last accessed Feb. 28, 2013).

53. REVISED PENAL CODE, art. 353.

54. MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc., 396 SCRA 210, 218-19 (2003) (emphasis supplied).

> not only is the person who published, exhibited[,] or caused the publication or exhibition of any defamation in writing shall be responsible for the same, all other persons who participated in its publication are liable, including the editor or business manager of a daily newspaper, magazine or serial publication, who shall be equally responsible for the defamations contained therein to the same extent as if he were the author thereof.[55]

Thus, based on the interpretation of the Supreme Court, all those who participated in the publication of a libel are also liable for the crime of libel.[56]

Such a position, when applied to the realm of cyberlibel or libel committed online, would certainly be fraught with complications. It would mean that anyone who participated in the publication of a libel online, may be held liable for libel. This would then include the website, an administrator of a website, or even those who *share* or *like* in social media sites such as Facebook or Twitter. Such an interpretation may unduly expand libel, and as applied to this day and age, expand cyberlibel's breadth, scope, and applicability.

The Court is aware, of course, of the various constitutional issues that may apply in relation to the issue of libel. As explained earlier, it has been held by the Supreme Court that "[t]he judiciary, in deciding suits for libel, must ascertain whether or not the alleged offending words may be embraced by the guarantees of free speech and free press."[57] In another case, the Supreme Court explained that "[l]ibel stands as an exception to one of the most cherished constitutional rights, that of free expression."[58]

One noted issue about libel is that of shopping for a convenient venue for the filing of a libel case. This is what commentators would call "libel tourism," and is a prevalent issue in other jurisdictions.[59] In the Philippines, this is likewise a most sensitive issue, so much so that the many cases reaching the Supreme Court on libel have touched on this.

The case of *Chavez* has an outstanding, though lengthy, disquisition of the issue and the current Philippine rule on venue for libel. The Court opines:

> *Agbayani* supplies a comprehensive restatement of the rules of venue in actions for criminal libel, following the amendment by [R.A. No.] 4363 of the Revised Penal Code:
>
> 'Article 360[,] in its original form[,] provided that the venue of the criminal and civil actions for written defamations is the province wherein the libel

55. Bautista v. Cuneta-Pangilinan, G.R. No. 189754, Oct. 24, 2012.

56. *Id.*

57. *Philippine Commercial & Industrial Bank*, 105 SCRA at 319.

58. *Chavez*, 514 SCRA at 293.

59. Levi, *supra* note 37, at 507.

was published, displayed or exhibited, regardless of the place where the same was written, printed or composed. Article 360 originally did not specify the public officers and the courts that may conduct the preliminary investigation of complaints for libel.

Before [A]rticle 360 was amended, the rule was that a criminal action for libel may be instituted in any jurisdiction where the libelous article was published or circulated, irrespective of where it was written or printed. Under that rule, the criminal action is transitory and the injured party has a choice of venue.

Experience had shown that under that old[,] the offended party could harass the accused in a libel case by laying the venue of the criminal action in a remote or distant place.

Thus, in connection with an article published in the Daily Mirror and the Philippine Free Press, Pio Pedrosa, Manuel V. Villareal[,] and Joaquin Roces were charged with libel in the [J]ustice of the [P]eace [C]ourt of San Fabian, Pangasinan.

To forestall such harassment, [R.A. No.] 4363 was enacted. It lays down specific rules as to the venue of the criminal action so as to prevent the offended party in written defamation cases from inconveniencing the accused by means of out-of-town libel suits, meaning complaints filed in remote municipal courts.

The rules on venue in Article 360 may be restated thus:

(1) Whether the offended party is a public official or a private person, the criminal action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published.

(2) If the offended party is a private individual, the criminal action may also be filed in the Court of First Instance of the province where he actually resided at the time of the commission of the offense.

(3) If the offended party is a public officer whose office is in Manila at the time of the commission of the offense, the action may be filed in the Court of First Instance of Manila.

(4) If the offended party is a public officer holding office outside of Manila, the action may be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense.'

The rules, as restated in *Agbayani*, do not lay a distinction that only those actions for criminal libel lodged by public officers need be filed in the place of printing and first publication. In fact, the rule is quite clear that such place of printing and first publication stands as one of only two venues where a private person may file the complaint for libel, the other venue being the place of residence of the offended party at the time the offense was committed.

...

Petitioner faults the Court of Appeals for relying on *Agbayani* and *Soriano*, two cases wherein the complainant was a public officer. Yet the Court has since had the opportunity to reiterate the *Agbayani* doctrine even in cases where the complainants were private persons.

Most telling of the recent precedents is *Agustin v. Pamintuan*, which involved a criminal action for libel filed by a private person, the acting general manager of the Baguio Country Club, with the [Regional Trial Court] of Baguio City. The relevant portion of the [i]nformation is quoted below:

'That on or about [17 March 2000], in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and malicious intent and evil motive of attacking, injuring and impeaching the character, honesty, integrity, virtue[,] and reputation of one Anthony De Leon, the acting general manager of the Baguio Country Club, and as a private citizen of good standing and reputation in the community and with malicious intent of exposing [ ] Anthony De Leon to public hatred, contempt, ridicule, discredit[,] and dishonor, without any justifiable motive, did then and there willfully, maliciously[,] and criminally prepare or cause to prepare, write in his column 'Cocktails' and *publish in the Philippine Daily Inquirer, a newspaper of general circulation in the City of Baguio* and in the entire Philippines[.]'

The phrase 'the Philippine Daily Inquirer, a newspaper of general circulation in the City of Baguio and in the entire Philippines' bears obvious similarity to the reference in the [i]nformation in this case to the publication involved as '[*Smart File*], a magazine of general circulation in Manila,' and both private complainants in *Agustin* and the case at bar were private citizens at the time of the filing of the complaint. Yet the Court in *Agustin* ruled that the failure to allege that Baguio was the venue of printing and first publication, or that the complainant therein was a resident of Baguio, constituted a substantial defect that could not even be cured by mere amendment. The rules on venue as laid down in *Agbayani* were restated in *Agustin*, retaining no distinction as to venue whether the offended party is a public official or a private person. In fact, the Court considered the phrase 'a newspaper of general circulation in the city of Baguio' as so utterly incapable of establishing Baguio as venue that the bulk of the discussion instead centered on whether the allegation that the complainant was the acting general manager of the Baguio Country Club sufficiently established that he was a resident of Baguio City. On that point, the Court ruled that it did not.

In *Macasaet v. People*, the complainant was again a private person. The [i]nformation for libel against a gossip columnist and the editors of the tabloid which published the column was filed with the [Regional Trial Court] of Quezon City, but it failed to state at all where the tabloid was printed and first published, or where the complainant resided. Even as evidence was presented during trial that complainant was a resident of Quezon City, the Court ultimately held that the allegations contained in the [i]nformation '[were] utterly insufficient to vest jurisdiction on the [Regional Trial Court] of Quezon City.' Again, the rules laid down in

Agbayani were cited as controlling. The Court further held that the evidence establishing the complainant's place of residence as Quezon City could not cure the defect of the [i]nformation, noting that 'it is settled that jurisdiction of a court over a criminal case is determined by the allegations of the complaint or information.'

Macasaet resolutely stated that, since the place of printing and first publication or the place of residence at the time are 'matters deal[ing] with the fundamental issue of the court's jurisdiction, Article 360 of the Revised Penal Code, as amended, mandates that either one of these statements must be alleged in the information itself and the absence of both from the very face of the information renders the latter fatally defective.' [The Court] affirm that proposition, which is fatal to this petition. There is no question that the [i]nformation fails to allege that the City of Manila was the place where the offending articles were printed and first published, or that petitioner was a resident of Manila at the time the articles were published.

Petitioner does submit that there is no need to employ the clause 'printed and first published' in indicating where the crime of libel was committed, as the term [*publish*] is 'generic and within the general context of the term [*print*] in so far as the latter term is utilized to refer to the physical act of producing the publication.' Certainly, that argument flies in the face of [the] holding in *Agustin*, which involved a similarly worded [i]nformation, and which stands as a precedent, [which the Court has] no inclination to disturb. Still, a perusal of the [i]nformation in this case reveals that the word 'published' is utilized in the precise context of noting that the defendants 'cause[d] to be published in [*Smart File*], a magazine of general circulation in Manila.' The [i]nformation states that the libelous articles were published in *Smart File*, and not that they were published in Manila. The place 'Manila' is in turn employed to situate where *Smart File* was in general circulation, and not where the libel was published or first printed. The fact that *Smart File* was in general circulation in Manila does not necessarily establish that it was published and first printed in Manila, in the same way that, while leading national dailies such as the *Philippine Daily Inquirer* or the *Philippine Star* are in general circulation in Cebu, it does not mean that these newspapers are published and first printed in Cebu.

Indeed, if [it would be held] that the [i]nformation at hand sufficiently [vested] jurisdiction in Manila courts since the publication is in general circulation in Manila, there would be no impediment to the filing of the libel action in other locations where *Smart File* is in general circulation. Using the example of the *Inquirer* or the *Star*, the granting of this petition would allow a resident of Aparri to file a criminal case for libel against a reporter or editor in Jolo, simply because these newspapers are in general circulation in Jolo. Such a consequence is precisely what [R.A. No.] 4363 sought to avoid.

...

For [the Court] to grant the present petition, it would be necessary to abandon the *Agbayani* rule[, which provided that] a private person must file the complaint for libel either in the place of printing and first publication,

> or at the complainant's place of residence. [The Court] would also have to abandon the subsequent cases that reiterate this rule in *Agbayani*, such as *Soriano*, *Agustin*, and *Macasaet*. There is no convincing reason to resort to such a radical action. These limitations imposed on libel actions filed by private persons are hardly onerous, especially as they still allow such persons to file the civil or criminal complaint in their respective places of residence, in which situation there is no need to embark on a quest to determine with precision where the libelous matter was printed and first published.[60]

Thus, in a sense, the Court has attempted to lay to rest the issue of libel tourism within the Philippine jurisdiction by laying down firm rules on venue.

Notably, in the case of *Bonifacio*, the Court further elaborated on the venue requirements for libel, in relation to supposedly libelous internet postings or cyberlibel.[61] The words of the Supreme Court specifically recognized the issue of libel tourism and acknowledged how this can be affected by the Internet in this wise:

> Venue is jurisdictional in criminal actions such that the place where the crime was committed determines not only the venue of the action but constitutes an essential element of jurisdiction. This principle acquires even greater import in libel cases, given that Article 360, as amended, specifically provides for the possible venues for the institution of the criminal and civil aspects of such cases.
>
> ...
>
> It becomes clear that the venue of libel cases where the complainant is a private individual is limited to only either of two places, namely: (1) where the complainant actually resides at the time of the commission of the offense; or (2) where the alleged defamatory article was printed and first published. The [a]mended [i]nformation in the present case opted to lay the venue by availing of the second. Thus, it stated that the offending article 'was first published and accessed by the private complainant in Makati City.' In other words, it considered the phrase to be equivalent to the requisite allegation of printing and first publication.
>
> The insufficiency of the allegations in the [a]mended [i]nformation to vest jurisdiction in Makati becomes pronounced upon an examination of the rationale for the amendment to Article 360 by [R.A. No.] 4363.
>
> ...
>
> Clearly, the evil sought to be prevented by the amendment to Article 360 was the indiscriminate or arbitrary laying of the venue in libel cases in distant, isolated or far-flung areas, meant to accomplish nothing more than harass or intimidate an accused. The disparity or unevenness of the situation becomes even more acute where the offended party is a person of sufficient

60. *Chavez*, 514 SCRA at 285-92 (emphasis supplied).

61. *See generally Bonifacio*, 620 SCRA at 278-80.

> means or possesses influence, and is motivated by spite or the need for revenge.
>
> If the circumstances as to where the libel was printed and first published are used by the offended party as basis for the venue in the criminal action, the [i]nformation must allege with particularity where the defamatory article was printed and first published, as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers, magazines or serial publications. This pre-condition becomes necessary in order to forestall any inclination to harass.
>
> The same measure cannot be reasonably expected when it pertains to defamatory material appearing on a website on the [I]nternet as there would be no way of determining the *situs* of its printing and first publication. To credit Gimenez's premise of equating his first *access* to the defamatory article on petitioners' website in Makati with 'printing and first publication' would spawn the very ills that the amendment to Article 360 of the [Revised Penal Code] sought to discourage and prevent. It hardly requires much imagination to see the chaos that would ensue in situations where the website's author or writer, a blogger or anyone who posts messages therein could be sued for libel anywhere in the Philippines that the private complainant may have allegedly accessed the offending website.
>
> For the Court to hold that the [a]mended [i]nformation sufficiently vested jurisdiction in the courts of Makati simply because the defamatory article was accessed therein would open the floodgates to the libel suit being filed in all other locations where the pepcoalition website is likewise accessed or capable of being accessed.[62]

As can be seen from the pronouncement of the Court, it chose to take a more restrictive interpretation when it comes to venue, precisely to stop the floodgates of libel suits being filed in all locations where the supposedly libelous website could be accessed.[63]

Interestingly however, in other jurisdictions such as the United Kingdom (U.K.), a resident of the U.S. was allowed to file a libel suit under English law because under such law, libel is committed where the publication takes place and internet publications are published where they are downloaded.[64] This is in stark contrast to Philippine jurisprudence.

In any case, the Supreme Court has acknowledged that

> [w]hile libel laws ensure a modicum of responsibility in one's own speech or expression, a prescribed legal standard that conveniences the easy proliferation of libel suits fosters an atmosphere that inhibits the right to speak freely. When such a prescribed standard is submitted for affirmation before this Court, as is done in this petition, it must receive the highest

62. *Bonifacio*, 620 SCRA at 278–81 (emphasis supplied).

63. *Id.* at 280.

64. *See* King v. Lewis, 2005 EWCA (Civ) 1329, 2 (2005) (Eng.).

> possible scrutiny, as it may interfere with the most basic of democratic rights.[65]

As such, the Court is aware that allowing any legal standard that would encourage the filing of libel cases should not be allowed, which may explain its ruling in the *Bonifacio* case and in *Chavez*.

Thus, a review of some of the more pivotal rulings of the Court on libel, indicates an awareness by the same of the issues surrounding libel, including its constitutional issues, as well as issues surrounding its expansion, scope, and venue. It would seem then that the balance, when it comes to libel, remains an uneasy one under jurisprudence.

C. Recent Events: The Existence of Cyberlibel

Despite the pendency of the ruling on the Cybercrime Prevention Act of 2012,[66] there are many pending cases before the lower courts, which essentially are cyberlibel cases. The differing treatments by various government entities, as well as different opinions by various commentators, shows the uncertainty of punishing libel under current Philippine law without the Cybercrime Prevention Act.

In the case of a girl identified only as JRV CICL-IS-NO. 08-1614 (JRV), libel charges were filed against JRV and a number of co-accused due to comments made online.[67] Different governmental bodies issued differing rulings. The Office of the Prosecutor of Marikina City initially dismissed the charges in August 2009.[68] Upon appeal by the complainant to the Department of Justice, the Department of Justice, in a resolution dated 24 March 2011, reversed the findings of the Prosecutor and held that all the elements of libel were present.[69]

Notably, this finding was made *after* the Resolution of the Secretary of Justice in 2007 which opined that internet libel was non-existent.[70] It must be recalled that in the case of *Bonifacio*, reference was made to the Resolution of the Secretary of Justice Raul Gonzalez dated 20 June 2007 where "[t]he Justice Secretary opined that the crime of 'internet libel' was non-existent, hence, the accused could not be charged with libel under Article 353 of the [Revised Penal Code]."[71]

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65. *Chavez*, 514 SCRA at 293.

66. *See* Guerra, *supra* note 50. *See also* Santos & Tuazon, *supra* note 51.

67. Avendaño, *supra* note 8.

68. *Id.*

69. *Id.*

70. *See Bonifacio*, 620 SCRA at 273.

71. *Bonifacio*, 620 SCRA at 273.

Returning to the matter of JRV, an information was then filed in the Regional Trial Court based on the 24 March 2011 Resolution of the Department of Justice (which directly contradicted the 20 June 2007 Resolution of the Secretary of Justice), before the Marikina Regional Trial Court.[72] In 6 May 2012, the Marikina Trial Court then found probable cause for the issuance of a warrant of arrest.[73] This was the subject of the petition for *certiorari* before the Court of Appeals.[74] The Court of Appeals dismissed the petition and found it bereft of merit.[75] This, therefore, paved the way for trial on the allegedly libelous acts.[76]

The case of JRV was explained in more detail in the news article:

> In an 11-page decision dated [28 December 2012], recently posted on its website, the [Court of Appeals] Special Ninth Division dismissed the petition of the girl, a minor identified only as JRV CICL-IS-NO. 08-1614, for a review of the [Regional Trial Court] branch 192 ruling early last year. The petitioner said the judge committed 'grave abuse of discretion.'
>
> The [Court of Appeals] decision paves the way for trial on the merits of the libel case even as the Supreme Court deliberates on the constitutionality of the Cybercrime Prevention Act of 2012, which essentially penalizes malicious posts on such sites as Facebook and Twitter, among many others.
>
> On [13 March 2012], an information for libel was filed in the [Regional Trial Court] against teenager blogger, as well as Justine Dimaano, Francesa Vanessa Fugen, Roberto Armando Hidalgo, Danielle Vicaldo[,] and Anthony Jay Foronda. The group was accused by Celine Quanico of maligning her on a blog posted by Dimaano on [6 April 2008], on the website Multiply.
>
> Quanico said that Dimaano put a Yahoo Messenger conversation between them on her blog she titled 'Meet My Backstabber Friend' but 'edited' her chat name into 'Jopay.'
>
> She said several persons commented on the blog 'further mocking me with contempt and insults.'
>
> 'Worse, details of confirming my identity were placed, like deliberate and obvious hints in a sarcastic fashion of a futile attempt to cover up,' Quanico said.
>
> One of those who commented was JRV who referred to the object of the blog as a 'bitch' and other derogatory names.

72. Avendaño, *supra* note 8.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

The libel charge against JRV and her co-accused was based on the [24 March 2011], recommendation of the [Department of Justice].

Quanico went to the [Department of Justice] after a Marikina prosecutor dismissed her libel complaint in August 2009. The prosecutor said malice could not be inferred and that there was no clear reference to the complainant as the object of the blog.

The [Department of Justice] reversed the prosecutor's findings and noted that 'all the elements of libel' were present in the case.

'Calling a person *backstabber*, *ugly*, *frikin face*, *mother frikin dead kid*, *loser*, *bakla*, *bitch*, *ass*[,] and *liar*, within the knowledge of other persons is defamatory because there is an imputation of a condition or a status, which tends to cause dishonor or contempt of the offended party,' the [Department of Justice] said.

The department also held it clear that the 'imputation was directed' at Quanico, contrary to the prosecutor's position.

'Basic is the rule that in order to maintain a libel suit, it is essential that the victim be identifiable, although it is not necessary that she be named,' it said.

The [Department of Justice] also noted that the affidavits of three witnesses of Quanico 'reveal that they recognized her as the object of the libelous statements not only probably but with a high level of certainty.'

Likewise, it noted that the facts and circumstances stated on the blog 'perfectly fit the description of the complainant.'

On [6 May 2012], the Marikina [Regional Trial Court] found probable cause for the issuance of arrest warrants against JRV and her co-accused. It also denied a motion for reconsideration filed by JRV.

In her petition for *certiorari* in the Court of Appeals, JRV accused the [Regional Trial Court] of grave abuse of discretion. She argued that the words *bitch* and *f*ck* were not libelous; that the blog did not give sufficient description to identify Jopay as private respondent Quanico and that she was 16 years old when the alleged offense was committed.

But in its ruling penned by Associate Justice Mario Lopez, the appellate court said JRV's petition was 'bereft of merit.'

'Probable cause is such set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the information or any offense included therein has been committed by the person sought to be arrested,' the [Court of Appeals] said.

In this case, the appellate court noted the [Regional Trial Court] judge made the finding of probable cause after examining documents submitted by the [Department of Justice] and the city prosecutor.

> The [Court of Appeals] observed that JRV 'never questioned how the trial court reached the conclusion that there was probable cause,' only questioned its conclusion.[77]

In another case, which according to news reports,[78] was likewise based on online posts (on Facebook) considered by the aggrieved party as libelous, there was also an indictment for prosecution before the Courts for libel.[79] Thus, probable cause was found by the Office of the Prosecutor that there existed a case for libel committed online. However, upon reaching the court, the case was dismissed due to jurisdictional venue issues.[80] Interestingly, this finding of probable cause by the prosecutorial arm of the government was also made after the 20 June 2007 Resolution of the Secretary of Justice that no online libel existed.[81]

Also notable is that the subject matter of both cases were libelous statements made online. Yet, there were some differences in the treatment of the two.[82]

Another interesting consideration is this: both cases were filed and hurdled the minimum threshold of probable cause in the prosecutorial level (in the JRV case, only after appeal to the Department of Justice) without using the provisions of the Cybercrime Prevention Act of 2012. Yet, the treatment of the courts was different for each case. One proceeded due to findings of probable cause, while in the other, there was a dismissal based on venue or jurisdictional issues.[83]

This circumstance of filing of the case even without the application of the Cybercrime Prevention Act of 2012 definitely puts into question the need or even necessity for said law[84] since there seems to be an acknowledgement that libel committed online can still be filed before the proper agencies under the current existing law on libel, which is the Revised Penal Code.[85]

In fact, one commentator has stated that

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77. *Id.*

78. *See* Avendaño, *supra* note 8. *See also* Flores, *supra* note 10.

79. *Id.*

80. Flores, *supra* note 10.

81. *See Bonifacio*, 620 SCRA at 273.

82. *Compare* Avendaño, *supra* note 8, *with* Flores, *supra* note 10.

83. *Id.*

84. *See generally* Petitions Challenging Republic Act No. 10175, *supra* note 3. This is a sentiment shared by 15 petitioners who filed a petition for *certiorari* before the Supreme Court, assailing the Cybercrime Prevention Act of 2012. *Id.*

85. *See* REVISED PENAL CODE, art. 355.

> [i]nternet libel has been punishable since the Internet's creation and was not created by the Cybercrime Law. In fact, existing [i]nternet libel charges are under the Revised Penal Code, [which was] enacted in 1930. The Cybercrime Law's legal issues are far more technical than the Reproductive Health Law's, which many distill into an individual's right to choose.[86]

Professor Jesus Jose Disini, widely acknowledged as an expert on internet law, has also been reported in news articles as stating that cyberlibel, or online libel as he called it, existed even before the Cybercrime Prevention Act was enacted.[87] To quote a news article:

> Contrary to notions about online libel as a recent invention — in Philippine terms — under the new Anti-Cybercrime Law, University of the Philippines law professor Jesus Jose Disini is saying otherwise based on a Supreme Court decision way back in 2010.
>
> [R.A. No.] 10175 or the Cybercrime Prevention Act of 2012 was signed into law on [12 September], and has since elicited criticisms — especially its online libel provision — from netizens and press freedom advocates.
>
> But Disini says an earlier Supreme Court decision had acknowledged libel's existence in cyberspace.[88]

The Supreme Court decision, which Professor Disini refers to, is the case of *Bonifacio*, which is a libel case stemming from the supposed libeling of a prominent Filipino family in relation to the liquidity problems of a company known as Pacific Plans, Inc., which went through corporate rehabilitation.[89] As a result of the said corporate rehabilitation, many of the plan holders who purchased plans from Pacific Plans, Inc. aired their grievances online against the prominent Filipino family that owned Pacific Plans, Inc.[90] This led to several libel cases being filed by a certain Mr. Gimenez on behalf of the prominent Filipino family.[91]

The *Bonifacio* case cited and referred to a Department of Justice Resolution dated 20 June 2007 from the Secretary of Justice which specifically said that "[t]he Justice Secretary opined that the crime of 'internet libel' was non-existent, hence, the accused could not be charged with libel under Article 353 of the [Revised Penal Code]."[92] It has been said that the Secretary of Justice's resolution was effectively overruled by the *Bonifacio*

86. Tan, *supra* note 2.

87. *See* Panela, *supra* note 7.

88. Panela, *supra* note 7.

89. *See Bonifacio*, 620 SCRA at 269-73.

90. *Id.*

91. *Id.*

92. *Bonifacio*, 620 SCRA at 273.

case. "It overturned the 2007 [R]esolution from then Secretary of Justice Raul Gonzales that 'the crime of [i]nternet libel was non-existent.'"[93]

The *Bonifacio* case effectively stated that libel can indeed be committed online, as a reading of the case shows no inclination to agree with the Secretary of Justice that "internet libel was non-existent."[94] The Supreme Court did not categorically state that libel cannot be committed online. Instead, in that case, the Court focused on the requirements of venue for a libel committed online.[95] This can be interpreted to mean an implied recognition of cyberlibel by the Court. Take note that this ruling was made in 2010, before the Cybercrime Prevention Act of 2012 was enacted.

In short, there is an implication that cyberlibel does exist under the Supreme Court's ruling in *Bonifacio* even without the Cybercrime Prevention Act of 2012.

In any case, the current state of the law on libel committed online, also known as cyberlibel, remains unclear and uncertain in light of the differing treatments by government authorities, the lack of definitive rulings by the Supreme Court, and the lack of an effective, implementable law.

III. THE TREATMENT OF CYBERLIBEL IN FOREIGN JURISDICTIONS

Considering the questionable circumstances afflicting cyberlibel in the Philippines, it is incumbent on the part of the Authors to discuss and delve into the varying treatments of cyberlibel in foreign jurisdictions in order to assess how cyberlibel could and should be treated under Philippine law. Though none of these treatments by foreign bodies are binding for the Philippines, these are persuasive authorities who can assist in any study on libel and cyberlibel. Thus, this Article shall embark on a brief study or overview of such authorities.

A. English Jurisdiction

Applicable English laws have some noteworthy rulings on cyberlibel.

For instance, English law is interesting in that jurisdiction of such cyberlibel cases depends on where the publication takes place. In the case of internet cases, it has been held by the English Lords of Law that internet publications are published where they are downloaded.[96]

93. Panela, *supra* note 7 (citing *Bonifacio*, 620 SCRA at 273).

94. *Bonifacio*, 620 SCRA at 273.

95. *See Bonifacio*, 620 SCRA at 278-80.

96. *See King*, 2005 EWCA (Civ) 1329 at 2.

In *King v. Lewis*,[97] a decision by Lords Woolf, Mummery, and Laws, it was explained that

> in relation to [i]nternet libel, bearing in mind the rule in *Duke of Brunswick v[.] Harmer* that each publication constitutes a separate tort, a defendant who publishes on the [w]eb may at least in theory find himself vulnerable to multiple actions in different jurisdictions. The place where the tort is committed ceases to be a potent limiting factor.
>
> In [*Gutnick v. Dow Jones*,] the High Court of Australia firmly rejected a challenge, in the context of [i]nternet libel, to the applicability of such established principles as that vouchsafed in Duke of Brunswick. In doing so[,] the [C]ourt made certain observations about internet publication which with respect, [may be usefully born] in mind:
>
> '39. It was suggested that the World Wide Web was different from radio and television because the radio or television broadcaster could decide how far the signal was to be broadcast. It must be recogni[z]ed, however, that satellite broadcasting now permits very wide dissemination of radio and television and it may, therefore, be doubted that it is right to say that the World Wide Web has a uniquely broad reach. It is no more or less ubiquitous than some television services. In the end, pointing to the breadth or depth of reach of particular forms of communication may tend to obscure one basic fact. However broad may be the reach of any particular means of communication, those who post information on the World Wide Web do so knowing that the information they make available is vailable to all and sundry without any geographic restriction.'
>
> '181. A publisher, particularly one carrying on the business of publishing, does not act to put matter on the Internet in order for it to reach a small target. It is its ubiquity which is one of the main attractions to users of it. And any person who gains access to the Internet does so by taking an initiative to gain access to it in a manner analogous to the purchase or other acquisition of a newspaper, in order to read it.'
>
> '192. [C]omparisons can, as [already exemplified], readily be made. If a publisher publishes in a multiplicity of jurisdictions[,] it should understand, and must accept, that it runs the risk of liability in those jurisdictions in which the publication is not lawful and inflicts damage.'
>
> So far, then, the Duke of Brunswick has well survived the Internet, certainly in the High Court of Australia. And the court's vindication of traditional principles relating to publication and jurisdiction in defamation cases marches with Lord Steyn's rejection, in [*Berezovsky*], of counsel's 'more ambitious proposition ... in respect of trans-national libels.'[98]

Another interesting case under English law is *Godfrey v. Demon Internet*,[99] which held "publishers" of cyberlibel may also be held liable.[100] In the point

97. *King*, 2005 EWCA (Civ) 1329 at 2.

98. *Id.* at 28-30.

99. Godfrey v. Demon Internet, Ltd., 2001 Q.B. 201 (2001) (Eng.).

of view of one commentator, this case essentially held that "internet service providers [(ISPs)] and others (such as bloggers and website publishers) are publishers of material on the [I]nternet and risk being liable in defamation."[101] To be clear, the Court in *Godfrey* pronounced that, since the publishers knew of the defamatory content of the online posting subject of the case, and did not take it down, they are not protected and may be subject to, and held liable for, defamation,[102] or cyberlibel.

In *Kasckhe v. Gray*,[103] the aggrieved party sought to hold the owner/provider/operator ("blog provider") of a blog liable even though the blog provider was not the one who posted the actual libelous article.[104] Another individual, who used the blog, was the one who posted the said article. The blog provider sought dismissal by way of summary judgment.[105] The Queen's Bench Division denied the request for summary judgment.[106] This decision strongly indicates that even the blog provider may be held liable for libel committed on the blog, even though the blog provider was not the one who actually posted the libelous article.[107]

In the Philippine context, this would be akin to holding the publisher liable for libel.[108]

Thus, it would seem that English law has taken a more strict application when it comes to cyberlibel. For one, English law states that the jurisdiction of libel cases occur where the libelous statement is downloaded.[109] For another, in at least two cases, "publishers" or owners of websites or blogs have been held liable for articles or comments posted on a website, even though someone else was the one who actually posted the libelous statement.[110]

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100. *Id.* at 205.

101. James Tumbridge, *Defamation — blogs and the lesson of Labourhome: Kaschke v. Gray*, 32 EUROP. INTELL. PROP. REV. 599, 600 (2009).

102. *See Godfrey*, 2001 Q.B. at 212-13.

103. Kaschke v. Gray, 1 W.L.R. 452 (2011) (Eng.).

104. *Id.* at 487 .

105. *Id.* at 457.

106. *Id.*

107. *Id.* at 487.

108. *See* REVISED PENAL CODE, art. 360.

109. *See King*, 2005 EWCA (Civ) 1329 at 2.

110. *See Godfrey*, 2001 Q.B. at 201. *See also Kaschke*, 1 W.L.R. at 452.

B. Australian Jurisdiction

Australian law seems to be just as strict as English Law when it comes to cyberlibel.

In the landmark case of *Dow Jones & Co. v. Gutnick*,[111] "the Australian High Court exercised jurisdiction over an American publisher simply because material was accessed 'on-line' from a computer located in Australia."[112] This has led one commentator to state that, "[t]he [*Gutnick*] decision could sound the death-knell for First Amendment protection in a digitized world, as smart plaintiffs will begin to file suits in Australian courts, where they are more likely to succeed."[113] This is precisely the problem of "libel tourism," which the Authors referred to earlier in this Article. It would seem that Australian jurisprudence has recognized that libel tourism, or shopping for a better venue for a libel case, is allowed.

As expounded upon by the same commentator:

> Legal scholars immediately criticized the Australian High Court's decision in [*Gutnick*], arguing that it 'places the Internet's utility as a form of mass communication at risk.' It was reasoned that 'the law of the country with the lowest level of speech protection would become the [*de facto*] law of the Internet.' One critic recognized the practical implications that the [*Gutnick*] decision will have on [i]nternet communications:
>
> 'The burden of liability that the [*Gutnick*] decision places on an [i]nternet media defendant will dry up the flow of information distributed via the Internet. A media entity prepared to place an article on the Internet will have to apprize itself of the gamut of international defamation law and make a calculated judgment whether or not to print based on a comparison of that law to the contents of the article. The effect of that will likely be one of two results: either (1) the media defendant will forego printing on the Internet because the potential liability is incalculable[;] or (2) the media defendant will have to go through a screening process that would make printing on the Internet unwieldy and delay information flow ... This self-censorship will cause a drastic speed bump in the fast lane that is information exchange on the Internet.'
>
> Reducing the level of speech protection to that provided by Australian law negates the First Amendment right to speech about public figures recognized by the Supreme Court in [*Sullivan*] and its progeny, and greatly restricts the ability of the American media to encourage frank speech on matters of public interest. As Dow Jones' general counsel predicted, the

111. Dow Jones & Co., Inc. v. Gutnick, 2002 HCA 56 (2002) (Austl.).

112. Mansfield, *supra* note 4, at 899 (citing *Dow Jones*, 2002 HCA at 56).

113. *Id.*

> [*Gutnick*] decision has created a 'kind of tyranny of the lowest common denominator and ... inhibit[s] free speech.'[114]

C. Japanese Jurisdiction

Japanese law likewise treats cyberlibel strictly. As explained by one author,

> in Japan, hundreds of people are arrested under criminal libel laws every year, and these numbers have actually increased over the past decade. The police get involved in such seemingly routine cases as online allegations that a particular company is 'the worst' and that 'the CEO is terrible' or that an [i]nternet auction seller provides 'counterfeit goods' of 'poor quality.' The police have actually arrested [i]nternet users who posted the name and phone number of an unwitting female victim on a 'women seeking men' website and posted allegations of a public official's 'bodily defects' and electoral misconduct on a local government message board.[115]

However, it seems that the strict treatment against cyberlibel by Japanese authorities stems more from a practical or policy choice, rather than a legal perspective. As explained by Professor Mehra

> Japan's decision to turn to criminal law to deal with online libel stems from a striking increase in the number of Japanese people who use the Internet. Additionally, the Internet has emerged as the location of a kind of hidden dark side of Japan. The unique way in which the Internet has become a widely-accessed 'other' Japan has posed a challenge for the social system of reputation and private ordering that Japan has relied upon for centuries.[116]

He further explained that

> Japanese prosecutors may have reason to see criminal libel cases as more winnable than their American counterparts, but the most notable aspect of Japan's criminal push in this area involves the police, rather than prosecutors. Japan has made a conscious commitment to 'maintain order' in the face of the Internet. Japan's police and prosecutors have dedicated resources and compiled annual reports covering a range of computer-related crimes, from unauthorized access to computer networks to Internet-related copyright infringement, and, of course, Internet-based criminal libel. As the number of Japanese [i]nternet users has increased, so too has the involvement of Japan's police in 'consultations' about instances of defamation. These 'consultations' — actually complaint filings that can lead to informal police action — can now even be made via the Internet.
>
> By seeking out and publicizing information about consultations and the conduct that triggers them, Japanese police encourage victims of online

114. Mansfield, *supra* note 4, at 909-10.

115. Salil K. Mehra, *Post a Message and Go To Jail: Criminalizing Internet Libel in Japan and the United States*, 78 U. COLO. L. REV. 767, 768-69 (2007).

116. *Id.* at 791.

> defamation to come forward. The police advertise their ability to help victims deal with offensive posts.[117]

It must be noted that, according to authors, Japanese law does not have *stare decisis*.[118] As such, there is no system of binding precedent in Japan,[119] which may be one reason cyberlibel prosecutions usually prosper in Japan, as there are few defenses which are, in the words of one author, "reliable."[120]

D. American Jurisdiction

Early cases in the American jurisdiction, which touched on cyberlibel were also subjected to conflicting rulings.

In the early case of *Cubby, Inc. v. CompuServe, Inc.*[121] an early cyberlibel decision, the U.S. District Court for the Southern District of New York employed a publisher/distributor analysis to determine if an ISP would be held liable for information available in its "electronic library." The Internet provider, CompuServe, was found not liable because it maintained "no editorial control and had no knowledge or reason to have knowledge of the defamatory content. The court analogized the information service to the maintenance of a for-profit library, thus establishing a high burden for the plaintiff."[122] Thus, the Court, in response to a motion for summary judgment made by CompuServe, found that the service provider was only a distributor, who maintained no editorial control and thus dismissed CompuServe as a defendant.[123] "The [C]ourt explained that CompuServe, as a mere passive conduit, without direct editorial control, could not be held liable."[124]

However, in another early case, *Stratton Oakmont v. Prodigy Services, Co.*,[125] under strikingly similar circumstances, the Supreme Court of New York held that Prodigy Services Co., an online service provider, is liable for statements made online in an [i]nternet bulletin board.[126] The court, in that case, distinguished itself from the *Cubby* case by stating, "first, that Prodigy held itself out to have content control; and second, that such control was

117. *Id.* at 781-82.

118. *Id.* at 781.

119. *Id.*

120. *Id.*

121. Cubby, Inc. v. Compuserve, Inc., 776 F.Supp. 135 (1991) (U.S.).

122. Waldman, *supra* note 4, at 37.

123. *Id.*

124. *Id.*

125. Stratton Oakmont, Inc. v. Prodigy Services, Co., 1995 WL 323710 (1995) (U.S.).

126. *Id.* at 7.

actually performed through the use of an automatic software screening program and the '[g]uidelines which [b]oard [l]eaders are required to enforce.'"[127] The Court explained that this constituted editorial control, and thus Prodigy was considered a "publisher" and held liable.[128] Prodigy filed a motion for reconsideration of this ruling, but since the parties settled with Prodigy apologizing, the case was subsequently dropped.[129]

Notably, in the words of one author, "[t]he court, therefore, while claiming to be in harmony with the decision in *Cubby, Inc. v. CompuServe, Inc.*, provides an apparently conflicting analysis to online service provider liability."[130]

It seems then, that even early on, in the American jurisdiction, there was also some confusion in the treatment of cyberlibel or online defamation. This is understandable in light of the then new nature of cyberlibel.

It bears discussion that with the passage of the CDA, the treatment of cyberlibel cases changed. In cases after the enactment of this law, significant protections ensured that the internet service provider would not be liable. In other words, under the CDA, broad immunity applied to ISPs.[131]

This was seen in *Zeran v. American Online, Inc.*[132] and in *Blumenthal v. Drudge*,[133] cases where libelous statements were made online on websites operated by ISPs, the courts held that no liability attached under the provisions of the CDA. Under those rulings, it has become more difficult to ascribe liability for cyberlibel against the internet service publisher in the American jurisdiction. Interestingly though, these rulings treated ISPs more as distributors rather than as "publishers."[134] Had they been treated as "publishers," they would have likely been found liable for online defamation or cyberlibel.

One more point on the *Zeran* case. Some authors consider this case to be the general precedent used by American courts to rule on internet abuse. As explained by Dr. Shareen Shariff,

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127. Waldman, *supra* note 4, at 41.

128. *See* Waldman, *supra* note 4, at 41-42.

129. *See* Peter H. Lewis, *After Apology From Prodigy, Firm Drops Suit*, N.Y. TIMES, Oct. 25, 1995, *available at* http://www.nytimes.com/1995/10/25/business/after-apology-from-prodigy-firm-drops-suit.html (last accessed Feb. 28, 2013).

130. Waldman, *supra* note 4, at 42.

131. *See* Shariff & Johnny, *supra* note 4, at 322.

132. Zeran v. America Online, Inc., 958 F.Supp. 1124 (1997) (U.S.).

133. Blumenthal v. Drudge, 992 F.Supp. 44 (1998) (U.S.).

134. *See* Shariff & Johnny, *supra* note 4, at 322.

> Myers explains that *Zeran v. America Online[,] Inc.* is the general precedent used by American courts to rule on [i]nternet abuse. This case resulted in no legal accountability for injuries caused by anonymous postings on the Internet. It involved a series of anonymous postings on America Online's (AOL) message board following the Oklahoma City bombings in April 1995. The messages claimed to advertise 'naughty Oklahoma t-shirts.' The captions on the t-shirts included 'Visit Oklahoma ... It's a Blast!!!' and 'Finally a Day Care Center That Keeps Kids Quiet — Oklahoma 1995.' The individual who posted the messages identified himself as Ken Z and provided Zeran's phone number as the person to call to order the offensive t-shirts. Zeran received abusive telephone calls and even death threats as a result and notified AOL, which in turn terminated the contract from which the messages originated. However, the perpetrator continued to set up new accounts with false names and credit cards. Zeran finally sued AOL, claiming negligence. The [C]ourt ruled that Section 230 of the CDA provided absolute immunity to AOL regardless of its awareness of the defamatory material.
>
> The [*Zeran*] ruling, Myers notes, maintains the status of [i]nternet providers as 'distributors' rather than 'publishers.' Publishers (e.g.[,] book publishers) are liable for defamation by third parties using their services, especially if they are made aware of them and fail to act to prevent the behaviour. The [*Zeran*] decision followed [*Stratton Oakmont, Inc. v. Prodigy Services, Co.*], a case in which an [i]nternet provider was elevated to the status of 'publisher[.]'[135]

In another case involving Prodigy services, *Lunney v. Prodigy*,[136] which reached the U.S. Supreme Court, a news report said that

> [t]he [U.S.] Supreme Court has upheld a ruling that [ISPs] are not responsible when someone is libeled in e-mails or bulletin board messages.
>
> It left intact a judgment by the New York Appeals Court[,] which ruled that an ISP should not be treated as a publisher but as a telephone company. In other words, it should be treated as a provider of equipment.[137]

As explained by reports on the *Lunney* case,

> [t]he Supreme Court rejected an appeal stemming from several obscene messages an impostor posted six years ago in the name of Alexander Lunney, then aged 15.
>
> Mr[.] Lunney, a New York high school student at the time, sued Prodigy Services[,] Co[.] after the impostor opened internet accounts under his

135. Shariff & Johnny, *supra* note 4, at 323-24.

136. Lunney v. Prodigy Services, Co., 94 N.Y. 2d. 242 (1999) (U.S.).

137. BBC News, US backs net free speech, *available at* http://news.bbc.co.uk/2/hi/science/nature/732796.stm (last accessed Feb. 28, 2013).

> name and sent a threatening, profane e-mail message to someone who then notified the police.
>
> Obscene bulletin board messages were also posted in Mr[.] Lunney's name. Mr[.] Lunney sued the ISP, but three New York state courts rejected his lawsuit.
>
> The New York Court of Appeals, the state's highest tribunal, said the service provider was not legally culpable for either the objectionable e-mail or the bulletin board message.
>
> 'Prodigy was not a publisher of the e-mail transmitted through its system by a third party,' the state court ruled unanimously.
>
> 'We are unwilling to deny Prodigy the common-law qualified privilege accorded to telephone and telegraph companies.'[138]

Cases of the U.S. Supreme Court, which touched on other online matters, are also instructive, as they show the importance that American authorities give to freedom of speech and expression.

In *Ashcroft*, the CPPA was found unconstitutionally overbroad because the government may not suppress lawful speech as the means to suppress unlawful speech.[139] The U.S. Supreme Court held that

> [p]rotected speech does not become unprotected merely because it resembles the latter. The Constitution requires the reverse. '[T]he possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted[.]'[140]

Likewise, in 1997, there was a similar position taken by the U.S. Supreme Court in the case of *Reno*, the U.S. court struck down the anti-indecency provisions of CDA passed by Congress because it would unduly affect freedom of expression and were in violation of the First Amendment.[141]

Though neither of these U.S. Supreme Court cases directly touched on cyberlibel, their holdings are instructive as they show the paramount importance of freedom of expression in relation to laws which touch on online matters.

In any case, a study of American cases show that cyberlibel indeed remains in flux and uncertain.

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138. *Id.*

139. *Ashcroft*, 535 U.S. at 258.

140. *Id.* at 255.

141. *Reno*, 521 U.S. at 885.

IV. CONCLUSION

This Article has shown that cyberlibel remains uncertain not only in the Philippine jurisdiction, but also in foreign jurisdictions as well. In both Philippine and American jurisdictions, there exist conflicting rulings and treatments. In other jurisdictions, there is a more strict treatment when it comes to cyberlibel, such that these jurisdictions violate the very issues this Article has brought up (i.e., libel tourism, freedom of expression violations, etc.).

It is, of course, beyond the scope of this Article to comprehensively comment on whether the treatment of other jurisdictions is correct or not. It is focused solely on the current state of cyberlibel in the Philippines. Nevertheless, this Article has shown that despite the lack of a law in many jurisdictions, even in the Philippines, cyberlibel does exist. This seems to be expected given the treatment of authorities on the concept of cyberlibel. No other jurisdiction has yet to claim that it does not. Notably, as far as the Authors are aware of, it seems that only in the Philippines was there ever a resolution that the crime of cyberlibel does not exist.[142] Despite this resolution, government authorities such as prosecutors still prosecuted cases of online libel[143] or cyberlibel. Notably, prosecution for cyberlibel in the Philippines continued despite the pendency on the issue of the constitutionality of the Cybercrime Prevention Act of 2012 before the Supreme Court.[144]

Thus, cyberlibel does seem to exist in the Philippines. In what form, or its manner of application, remains in question. Questions also exist as to how to treat cyberlibel in light of the many issues that exists under current law. For one, where can cases of cyberlibel be filed? How may the issue of libel tourism be avoided? Is it not possible that cyberlibel may infringe freedom of speech and expression? The questions go on.

In the absence of any definitive ruling, or even any correctly applicable law, the questions as to how cyberlibel could and should be correctly and properly applied in the Philippines, remain unanswerable. In the meantime, Philippine authorities and lawyers must simply muddle through.

Foreign jurisdictions, as seen in the discussion of this Article, do not offer much help in guiding Philippine treatment of cyberlibel. They all have differing treatments, or use laws which are not applicable in the Philippines, as basis. In fact, as seen above, some of the jurisdictions pay no heed to issues inherent here. The implicit approval of libel tourism under English and

142. *See generally Bonifacio*, 620 SCRA at 273.

143. *See* Avendaño, *supra* note 8. *See also* Flores, *supra* note 10. Specifically, refer to Part II (C) of this Article.

144. *See* Guerra, *supra* note 50.

Australian Law come to mind.[145] Both jurisdictions essentially allow a plaintiff or complainant to file cyberlibel cases wherever the libelous statements are read or downloaded. Understandably, in the day of the Internet, one can readily see the abuse that this will allow.

The Philippines should, therefore, learn from that. Any law or application of cyberlibel should deal with, and necessarily avoid, libel tourism.[146] The Philippines should also learn and apply the principle that any law or Supreme Court ruling that deals with cyberlibel must take notice of the constitutional right to freedom of speech and expression.[147]

In short, there is no question that cyberlibel exists here in the Philippines.[148] However, it bears repeating that cyberlibel's existence, application, and features are confusing. In fact, anything that touches on online matters in relation to crimes within the Philippines is currently in a state of flux.

It is incumbent then upon the Philippine legislature to come up with a law that clarifies properly online crimes, such as cyberlibel. Whether or not the Cybercrime Prevention Act of 2012 is that law still remains to be seen. Barring any such law, it is up to the Supreme Court to clarify the metes and bounds of cyberlibel in the proper case.

Until that happens, the legal boundaries of cyberlibel will remain blurry and confusing. The public will, until that day, simply have to be careful.

145. *See, e.g.*, *Dow Jones*, 2002 HCA at 56.

146. *See generally Bonifacio*, 620 SCRA at 278–80.

147. *See generally Chavez*, 514 SCRA at 293.

148. *But see Bonifacio*, 620 SCRA at 273.