

CYBER LAW ON LIBEL*

ESSAY

*Miriam Defensor Santiago***

We have all seen how the Internet and the Web have introduced new ways of interacting, organizing, and doing business. The book entitled *CyberLaw*, written by several professors from various American schools, including Harvard University, makes this observation:

The Internet means advances in productivity, speed, and knowledge. It is the fastest, most cost efficient way to reach the widest possible audience. [...] It makes it possible for businesses to deliver targeted aids to users, based on their searches. The net effect of these technologies is nothing short of an information revolution where there is now almost universal access to both free information and free tools to disseminate information.¹

In the last few years, the Internet has made possible new and different business models. These new models are businesses, which exist only in and only because of the Internet, include such companies as Google, Facebook, Craigslist, and Instagram.²

One reason for the successful growth of the Internet ecosystem is that it offers free sites supported by a third-party advertising revenue model. The effect of the Internet on the Philippine economy is staggering, if we consider the following factors: consumers who make their purchases online; e-commerce companies, which provide jobs which with a multiplier effect, and hence produce other jobs in the economy; internet-related small businesses; and online advertising spending.³

According to the same book, the following are Internet-created industries that provide new jobs: Internet service providers; web-hosting

* Cite as Miriam Defensor Santiago, *Cyber Law on Libel*, 89 PHIL. L.J. 757, [page cited] (2015). This Essay was delivered during the De La Salle University's First Business Law Conference sponsored by Ley La Salle on 14 March 2014 at De La Salle University, Manila.

** Senator, Republic of the Philippines.

¹ GERALD R. FERRERA, MARGO E. K. REDER, STEPHEN D. LICHTENSTEIN, ROBERT BIRD & JONATHAN J. DARROW, *CYBERLAW TEXT & CASES* (3rd ed. 2011).

² *Id.*

³ *Id.*

services; hardware and software producers; search engines; content developers; information technology consulting, advertising networks; and web design.⁴

CYBERCRIME PREVENTION ACT OF 2012⁵

For the past decade, the Philippine government has had to wrestle with certain phenomena produced by the Internet. The Internet is “on” all the time. It is wide open, insecure, and easy to penetrate or disrupt. The Internet has a relatively anonymous nature, making it easier to deceive others. It has been said wisely: “Increased creativity means more possibilities for good and bad outcomes.”

As a factual matter, as in countries all over the world, technology and business practices have been running faster than legal responses and developments. Initially, in any country, businesses were taken aback because they were operating in a legal vacuum and initially they had no legal guidance. For example, initially in the United States, there were no laws regulating behavioral advertising. As a result, as in the Philippines, government has relied on industry self-regulation.

But Internet businesses have been challenged in court, particularly in the 2014 case of *Disini v. Secretary of Justice*,⁶ where the Philippine Supreme Court upheld some but rejected other provisions of the 2012 Cybercrime Prevention Act.

The problem with the cybercrime decision of the Supreme Court is that almost by definition, the Internet can only be managed by a loose regulatory arrangement. In effect, the Internet is a global connection of interconnected computers. It has been described as: “truly a peer-to-peer (p2p) system with many distributed nodes and no central point of control architecture.”⁷

As a constitutional law student, I have to emphasize that the structure of the Internet is by definition hostile to any desire to control, direct, manage, or supervise, whether that desire comes from the government, or from other interest groups. Experience has shown us that attempts to control the Internet will invariably fail. We should be instructed by the failed efforts of China to

⁴ *Id.*

⁵ Rep. Act No. 10175 (2012).

⁶ G.R. No. 203335, 716 SCRA 237, Feb. 11, 2014.

⁷ FERRERA ET AL., *supra* note 1.

regulate political content, the efforts of America to regulate Internet gambling, or the efforts of Australia to regulate certain speech. By its very nature, the Internet will always resist such controls.

INTERNET LIBEL

In the United States, from which we inherited the common law system as part of our mixed law system, digital media law no longer imposes strict liability upon libel defendants. In the 1971 case of *Time, Inc. v. Pape*,⁸ the United States Supreme Court created a “zone of protection” for errors of fact that occur in publication. In that case, the Supreme Court ruled that plaintiffs suing for defamation regarding a matter of public concern, must prove negligence or malice on the part of the defendant, as well as the falsity of the defendant’s statements.

Within this context, let us see very briefly how libel laws apply to traditional media defendants versus non-traditional or non-media defendants in a period in which our economy is producing digital media products.

Our Supreme Court has upheld the constitutionality of the legal provision prohibiting and penalizing online libel. This Supreme Court ruling raises many questions. Here are some questions: (1) Are bloggers and podcasters entitled to the same level of Free Speech Protection in libel cases? (2) Should bloggers and podcasters bear the same type of liability as traditional media for defamatory statements?

I have advocated the decriminalization of libel, in the sense that libel should no longer be punished by imprisonment, but simply by requiring the defendant to pay damages. The question is: How much in damages can be awarded to a plaintiff? In the 2008 case of *Orix Capital v. Super Futures Equities*,⁹ the court in Texas awarded \$2.5 million in compensatory damages, and \$10 million in punitive damages.

I humbly disagree with the ruling of our Supreme Court on digital libel, because it might precipitate libel suits related to posts on Twitter, Facebook, and Craigslist. A tweet is limited to 140 characters, and you might think that it would be difficult to commit libel with this limitation. But in a court in the United Kingdom, the plaintiff won a libel case, because a British politician posted on Twitter.¹⁰

⁸ 401 U.S. 279 (1971).

⁹ C.A. No. 3-06-CV-0271-B (N.D. Tex. 2008).

¹⁰ “Twitter libel: Caerphilly councillor pays rival £3,000,” BBC NEWS, Mar. 10, 2011,

A “SAFE HARBOR” PROVISION

Because of the dangers to free speech posed by the recent Supreme Court decision upholding online libel, I have filed a new bill in the Senate entitled “Magna Carta of Internet Freedom,”¹¹ which was written by crowdsourcing in the Internet. In light of the recent Supreme Court decision, I highly recommend that the Congress protect online service providers from liability for the posts made by their users. This is called the “Safe Harbor Provision,” under the U.S. Communications Decency Act.¹²

Under Section 230, operators of “interactive computer services” are free from liability for the defamatory comments made by their users. Section 230 provides: “No provider or user of an interactive computer service shall be tried as the publisher or speaker of any information provided by another information content provider.”

We have to, however, restudy the “Safe Harbor Provision,” because it can be abused. The provision exempts the website from liability, while its operators shield posters by means of coding that allows people to post anonymously. Thus, the courts might use the Safe Harbor Provision to dismiss complaints for invasion of privacy, misappropriation of trade secrets, cyberstalking, and negligence.

available at <http://www.bbc.com/news/uk-wales-south-east-wales-12704955> (“The man targeted by the tweet [...] says the statement left him open to ridicule.”); “Twitter claim costs councillor £53,000,” WALES ONLINE, Mar. 10, 2011 (updated Mar. 21, 2011), *available at* <http://www.walesonline.co.uk/news/wales-news/twitter-claim-costs-councillor-53000-1845308>.

¹¹ S. No. 53, 116th Cong., 1st Sess. (2013).

¹² 47 U.S.C. § 230.