In the Philippines, be careful of what you retweet

A new cybercrime law in the Philippines would give unfettered powers to the state to monitor internet users, take down websites and imprison citizens writes Purple S. Romero

Filipinos are fast becoming addicted to social media. The Philippines was recently ranked as the tenth largest user of Twitter in the world, with 9.5 million members according to to social media monitor Semiocast. Twenty-seven million Filipinos are on Facebook yet the Cybercrime Prevention Act of 2012 has provisions that critics say can lead to censorship and violation of freedom of expression - a disappointing development in a democratic country that boasts a vibrant and growing presence in social media.

One of the most problematic provisions of the Cybercrime Prevention Act is its penalising of electronic libel. The criminal sanctions for libel in the Philippines, according to a 2011 United Nations Committee on Human Rights already “constitute unlawful restrictions on the right to freedom of expression." As such, the laws go against the International Covenant on Civil and Political Rights, to which the Philippines is a signatory.

The main argument against the excessive criminalization of libel, according to various media groups, is that being imprisoned for something one has written (or, in the case of slander, spoken) creates a "chilling effect," discouraging critical reporting and diverse points of view.

The cybercrime law, however, not only reinforced the treatment of libel as a serious crime, but the penalty for it was also increased. Section 6 of the Cybercrime Prevention Act states that the penalty to be imposed "shall be one degree higher than that provided for by the Revised Penal Code." Under the Revised Penal Code, libel was punishable by imprisonment of between 6 months and 4 years; under the Cybercrime Prevention Act, the prison time is now between 6 and 12 years.

The provision on increased penalties for cybercrimes was removed in the version of the bill considered by the House of Representatives, but then was inserted again by the Senate (the Philippines has a bicameral legislature - a bill may either emanate from the House of Representatives or the Senate).

The public, however, was left in the cold.

Why should electronic libel be subject to graver penalties than that of ordinary libel? Assistant Secretary Geronimo Sy from the Department of Justice said this was because the Internet allows not only the faster dissemination of libelous information, but also its wider reach. Damage to someone's reputation is just one click away.

During the oral arguments in the Supreme Court on January 15, one of the Justices said that a Twitter user can just easily destroy someone's reputation, as a single tweet can reach hundreds of thousands, even millions of followers. The protection of private citizens is therefore considered to be a key responsibility of the state.

The language of the law is vague however, on who can be held responsible for electronic libel. Unlike in ordinary libel, which specifies the scope of culpability (from the writer or reporter to the publisher), ambiguity shrouds the compass of responsibility for electronic libel. Most particularly, questions have been raised over whether those who re-tweet or re-post a Facebook status will also be nabbed for the same crime.

Some assurance against this was given. Sy commented that it would not be feasible for the prosecutors to track down, probe and arrest every single person who made a re-tweet, adding that the authorities would only go after the source. Subsequent developments bring this into doubt, however.

The other provision of the law that give the government control over information is section 19, or the 'takedown clause,' which authorizes the Justice Department to restrict access to websites that contain harmful content based on prima facie evidence.

The government has backtracked on this and said that this provision should be nullified because it constitutes prior restraint.

That the president signed a law containing a provision that his own government would later deem unconstitutional only magnifies questions about how the law was made.

A study of the Filipino Congress' deliberations over the law shows the above provisions were passed with nary a debate. The provision concerning online libel, for instance, was added in a single plenary session.

Considerations over the distinct features and character of online communication were not addressed, details were not threshed out and the key stakeholders or experts were not consulted.

As an example of the harm caused by a lack of debate over the issue, there was limited discussion on what makes content "harmful." The only concerns raised on this issue were that authorities may misconstrue what is pornographic and what is not but critics of the cybercrime legislation noted how authorities and public officials could also label criticisms of the government as "harmful content."

If the law is upheld as valid, law enforcement authorities can also collect real-time traffic data without having to secure a court warrant. Traffic data, under the law, refers to “any computer data other than the content of the communication including, but not limited to, the communication’s origin, destination, route, time, date, size, duration or type of underlying service.”

Sy said this provision is helpful for monitoring the emails and text messages of suspected terrorists but since the collection of data is warrantless, there is the spectre of abuse. During the oral arguments on January 15 another Justice commented that the law did not explain how ordinary citizens could check if the authorities are really just collecting traffic data and are not also looking into the content of the emails, text messages, etc and so on.

The Supreme Court has stopped the government from implementing the cybercrime law. Even so, the government’s control on public speech has not been diminished. Anti-mining activist Esperlita Garcia has since been arrested over a Facebook post she made about the dispersal of a rally in October 2012.

A police chief also "invited" people to a police station for criticizing on Facebook the authorities' alleged failures in stopping robberies. None of the seven people who were asked to show up came, however. Superintendent Rico Tome said the police would just like to remind them that their defamatory remarks were punishable.

The cybercrime law was not even invoked in these incidents – the existing libel law proved sufficient to explain their actions. The chilling effect of the existing libel law makes it difficult for the

public to trust the state to not abuse the Cybercrime Prevention Act.The problem with the cybercrime law goes beyond the Act itself. Its weaknesses mirror a lawmaking process that is devoid of the spirit of debate, wanting of honest research and lacking of a mechanism for feedback that could turn the law into what they were initially envisioned to be - a potent tool against hacking, online pornography and identity theft.

Because there was no transparency and inclusivity in the drafting of the cybercrime law, there are also doubts that it will be implemented properly, and when it is enforced, that rights will be respected and due process observed. The lack of a public voice in the law-making process has created a cornucopia of fear. People say it will lead to e-martial law, a throwback to the time when the freedom to speak out against those in power was quelled brutally. Just as in 1986, however, Filipinos will fight for their right to speak freely. They cannot be silenced, both in the real and virtual world.

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