The Lowdown: the ‘Anti-False Content Act’ to address fake news that was introduced in the Philippines

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The Senate of the Philippines had announced the introduction of the ‘Anti-False Content Act’ on 1st July 2019. The proposed anti-fake news bill, as filed by the Senator President Vicente Sotto III, aims to prohibit “the publication and proliferation of false content on the Philippine internet, providing measures to counteract its effects and prescribing penalties therefor.” The Senator, in the explanatory note to the Bill, said that “In the Philippines, widespread are headlines that are mere click-baits; made up quotes attributed to prominent figures; and digitally altered photos. Filipinos have fallen prey to believing that most of them are credible news…. In this regard, this bill seeks to protect the public from the deleterious effects of false and deceiving content online.”

On 25th July 2019, the international group Human Rights Watch (HRW) opposing the proposed law cited that the Bill is “sweepingly broad and threatens to stifle discussion on websites worldwide” and “would excessively restrict online freedom of speech”, in a news release. Linda Lakhdir, Asia Legal Adviser at HRW, further said that:

“The Philippines ‘false content’ bill, if passed, would make a government department the arbiter of permissible online material,” and that it poses “real risks for activists, journalists, academics, and ordinary people expressing their views on the internet.” She added that “A ‘fake news’ law would open the door for the government to wantonly clamp down on critical opinions or information not only in the Philippines, but around the globe. The bill should immediately be withdrawn and revised to meet international free expression standards.”
Key takeaways from the ‘Anti-False Content Act’

1. Declaration of Policy

The proposed Act declares that the policy of the State is “to protect people from any misleading or false information that is being published and has become prevalent on the internet”. In this regard, the State shall commit to:

1. Be proactive in preventing further exploitation of online media platforms for such purpose;
2. Counteract its associated harmful effects to public interest, while remaining cognizant of the people’s fundamental rights to freedom of speech and freedom of the press.

2. What is ‘online intermediary’?

It refers to “a provider of service which displays an index of search results that leads the internet users to a specific online location”, giving them access to “contents originating from third parties”, and “allows them to upload and download content”. It includes but not limited to social-networking sites, search engine services, internet-based messaging services, and video-sharing sites.

3. What constitutes ‘publication’?

It refers to the “act of uploading content on an online intermediary with an intent to circulate particular information to the public”.

4. What is ‘fictitious online account or website’?

It refers to those accounts and websites “that has an anonymous author or uses an assumed name in pursuing activities” in order to avoid punishment or legal consequences of such activities.

5. Counter-active measures

According to the Section 5 of the proposed Act, the Department of Justice (DOJ) Office of Cybercrime shall have the authority to issue a rectification order, a takedown order and/or a block access order to restrain the creation and/or publication of the content online that contains false information or that tend to mislead the public.

- **Rectification order** refers to an order directing the administrator of the online account or website to issue a notice indicating the necessary corrections to published content.
- **Takedown order** refers to an order directing the owner or administrator of the online account or website to take down the published content.
- **Block Access order** refers to an order directing the online intermediary to disable access by users to the published content.

These orders can be issued by the DOJ Office of Cybercrime in two following cases:
1. When there is a complaint filed with the DOJ Office of Cybercrime by an aggrieved party is valid and has sufficient basis;
2. In matters affecting the public interest, the same Office can issue the appropriate order on its own volition.

“Public interest shall refer to anything that affects national security, public health, public safety, public order, public confidence in the Government, and international relations of the Philippines.”

6. Appeal to cancel the order

According to Section 6 of the Bill, the online publisher or online intermediary who has been issued with Orders under Section 5 of the Bill, can appeal against such Order to the Office of the Secretary of the DOJ.

7. Punishable Acts under the proposed law

According to Section 4 of the Bill, the following acts shall be a punishable offense:

1. Creating and/or publishing content on one’s personal online account or website knowing or having a reasonable belief that the content online that contains false information or tend to mislead the public;
2. Use of fictitious online account or website for creating and/or publishing the content that contains false information or misleading the public;
3. Offering or providing one’s service to create and publish content online intentionally to deceive the public, regardless whether it is done for profit or not;
4. Financing an activity which has for its purpose the creation and/or publication of a content online containing false information or that would tend to mislead the public;
5. Non-compliance with any of the government’s Takedown orders, Rectification orders or Block Access orders issued under Section 5 of the proposed law, whether deliberate or through negligence.

8. Penalties

Section 8 of the Bill proposes following stringent penalties for the afore-mentioned punishable offenses such that:

1. If an individual found guilty of creating and/or publishing the false information online and mislead the public as provided under Section 4(a) of the proposed law, he/she will be punished with imprisonment of up to six years, or fine of not more than PHP 300,000, or both.
2. If an individual found guilty of using fictitious online account or website to create and/or publish the false information online and mislead the public as provided under Section 4(b), he/she will be punished with imprisonment of up to six years, or fine of not more than PHP 500,000, or both.
3. If an individual found guilty of offering or providing one’s services to create and/or publish the false information online with the intent to deceive the public as provided under Section 4(c), he/she will be punished with imprisonment of up to six years, or fine of not more than PHP 200,000, or both.
4. If an individual found guilty of financing an activity as provided under Section 4(d), he/she will be punished with imprisonment of up to twenty years, or fine of not more than PHP 100,000, or both.

5. If an individual found guilty of not complying with government’s orders as issued under Section 5 of the proposed law, he/she will be punished with imprisonment of up to twenty years, or fine of not more than PHP 200,000, or both.

9. Jurisdiction of the regional trial courts

Section 9 provides that the regional trial courts will have jurisdiction over Philippine nationals who commit the acts punishable under the proposed law, whether or not they were in the Philippines when the offense was committed.

10. Law Enforcement Authorities

The Cybercrime Division of the Philippine National Police (PNP) and the National Bureau of Investigation (NBI) will be responsible for the enforcement of the provisions of the Act.
