

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

SENATE

COMMITTEE REPORT NO. 91

Submitted by the Committee on Public Order and Illegal Drugs on 28 AUG 2006

Re: P. S. Res. No. 303.

Recommending the adoption of the recommendations and their immediate implementation.

Sponsors: Senator Villar and the Members of the Committee on Public Order and Illegal Drugs.

MR. PRESIDENT:

The Committee on Public Order and Illegal Drugs to which was referred

Proposed Senate Resolution No. 303, introduced by Senator Villar, entitled:

**“RESOLUTION
DIRECTING THE COMMITTEE ON PUBLIC ORDER AND
ILLEGAL DRUGS TO CONDUCT AN INVESTIGATION, IN AID
OF LEGISLATION, ON THE ROLE AND CAPABILITY OF THE
PHILIPPINE NATIONAL POLICE AND OTHER LAW
ENFORCEMENT AGENCIES IN ADDRESSING THE ALARMING
PROLIFERATION OF CYBERSEX WHICH VICTIMIZES AND
LURES THE PARTICIPATION OF FILIPINOS INTO THIS
‘INTERNET SEX TRADE’, WITH THE END VIEW OF PROVIDING
THE POLICE FORCE WITH ENOUGH POWER TO CURB SUCH
PROLIFERATION AND ENACTING POLICY MEASURES TO
ADDRESS THE SAME”**

has considered the same and has the honor to submit the report on its investigation, in aid of legislation, back to the Senate recommending the adoption of the recommendations as contained in this report and their immediate implementation.

I. PREFATORY

In the light of the fast growing and advancing use of information technology in the Philippines, pornography in print media and through the internet has remained virtually unhindered by existing laws. Law enforcement

agencies are almost powerless, using outdated and obsolete laws to stop illegal activities accomplished through a new form of medium: the internet.

As such, on August 15, 2005, the Committee on Public Order and Illegal Drugs conducted a simultaneous public hearing together with the Committee on Public Information and Mass Media, chaired by Senator Ramon Bong Revilla Jr. on the aforesaid proposed Senate Resolution along with the following relevant measures which were primarily referred to the latter committee:

- **SENATE BILL NO. 480**, entitled, *An Act prohibiting the publication, sale, distribution, importation and exhibition of the obscene and pornographic materials and the performance or exhibition of indecent acts in public and providing penalties for violation thereof and for other purposes*, introduced by Senator Sergio Osmeña III;
- **SENATE BILL NO. 753**, entitled, *An Act prohibiting the publication of lewd pornographics and sex stories and articles in print media, providing penalties thereof and for other purposes*, introduced by Senator Manny Villar;
- **SENATE BILL NO. 752**, entitled, *An Act providing for the protection of Filipinos from obscene and indecent materials transmitted through computers amending for the purpose Article 201 of Act No.3815, otherwise known as the Revised Penal Code and for other purposes*, introduced by Senator Manny Villar;
- **SENATE BILL NO. 877**, entitled, *An Act prohibiting the demonstration, performance or exhibition in public of certain sexual acts, and the production, importation, sale or distribution, or public showing or display of pornographic materials, providing penalties therefore, and for other purposes*, introduced by Senator Ejercito Estrada;
- **SENATE BILL NO. 1186**, entitled, *An Act prohibiting of lewd photographs and sex stories and articles in tabloid and broadsheet newspapers, providing penalties therefore and for other purposes*, introduced by Senator Ramon B. Magsaysay, Jr.; and
- **SENATE BILL NO. 1892**, entitled, *An Act punishing the publication, broadcasting and exhibition of pornographic materials that appear in traditional media such as, but not limited to, paper, celluloid, film, magnetic tapes, or through airwaves, or through the use of computers, the internet, cyberspace, internet chat, web sites, electronic mails, optical media or other electronic media, and other technological advancements thereof, providing penalties and for other purposes*, introduced by Senator Ramon Bong Revilla Jr.

II. FINDINGS

Sometime in 21 January 2005, nineteen (19) women, most of whom were in their teens and some were suspected minors, were rescued by members of the Philippine National Police (PNP) from a cybersex den in Las Piñas City. According to Supt. Michel Filart of the Criminal Investigation and Detection Group

(CIDG) that raided the office of Orgasmic Studios, Inc., "They are victims of human trafficking,"¹

This raid came after more than two (2) months of surveillance. The raid of Orgasmic Studios, Inc.'s office in Pilar Village, Las Piñas City opened the eyes of the entire local community to the evils existing and almost undetected.

According to investigators, the victims did everything their client asked them to do, for a fee.² Payment was made through credit cards.

This incident, as well as the other cybersex den. raids in Angeles City and in Quezon City³ which provoked the urgency of S. No. 753, S. No. 752, and P. S. Resolution No. 303 which was referred to the Committee on the Public Information and Mass Media, and to the Committee on Public Order and Illegal Drugs. These matters dealt with the problems of cybersex, internet pornography, and other illegal acts.

The term "cybersex" is defined as sexual arousal involving communication through the internet,⁴ or as the online equivalent of a telephone sex line. It usually takes place in a chat room or IRC channel.⁵

"Internet pornography", on the other hand, is pornography that is distributed via the Internet, primarily via websites, peer-to-peer file sharing, or Usenet newsgroups. While pornography had been traded over the Internet since the 1980s, it was the invention of the World Wide Web in 1993 as well as the opening of the Internet to the general public around the same time that led to an explosion in pornography over the Internet.⁶ Like videotapes and DVDs, the Internet has proven popular for distributing pornography because it allows people to view pornography (relatively) anonymously in the comfort and privacy of their homes. It also allows access to pornography by people whose access is otherwise restricted for legal or social reasons.

A hearing was held jointly with the Committee on Public Information and Mass Media on August 15, 2005. The following resource persons were present: Director General Arturo Lumibao, Chief of the Philippine National Police; National Bureau of Investigation Director Reynaldo Wycoco; Atty. Afren Meneses, Jr., Chief, and Anti-Fraud and Computer Crime Division of the NBI; Ms. Juli Ana Sudario, Director, National Computer Center; Police Inspector Sotera Macatangay, Chief, Women and Children Complaint Division; and Mr. Raymond H. Ricafort, President, PIA.

1. Cybersex/Internet Pornography in the Philippines

A witness was called to testify on the activities of persons engaged in cybersex within the Philippines, Mr. Erwin Flancia. Mr. Flancia has admitted to engaging in internet chatting where cybersex, pornography, and even prostitution is usually conducted:

¹ "19 Girls Rescued from Cyber Exploitation"- by Nancy Carvajal, Inquirer News Service, January 22, 2005

² Ibid.

³ "2 foreigners killed in raid on cybersex den" Sun Star, Network Online, May 27, 2005

⁴ <http://www.wordreference.com/definition/cybersex>

⁵ PC Magazine, The Independent Guide to Technology, Encyclopedia - http://www.pcmag.com/encyclopedia_term/0,2542,t=cybersex&i=40644,00.asp

⁶ Wikipedia, Wikimedia Foundation, Inc. May 4, 2006

SEN. VILLAR Mahilig lang kayong mag-chat?

MR. FLANCIA Yes, sir.

SEN. VILLAR Ngayon parang nagkaroon ng masamang reputasyon 'yong pag-chat?

MR. FLANCIA Opo. Pero doon po kasi sa aming mga room, hindi po naming ikakaila, na nagkaroon ng ganitong tanawin sa internet kasi hindi po naming maiwasan na mayroong mga babae o lalaki na nagpapakita ng maseselang bahagi ng katawan nila. Kami po bilang mga...
X X X

SEN. ENRILE Ikaw ba ay customer o operator o chatter?

MR. FLANCIA Chatter po.

X X X

SEN. ENRILE Basta kayo ang tumitingin, nanonood?

MR. FLANCIA Nakakapanood po.

SEN. ENRILE Nanonood.

MR. FLANCIA Nanonood na din po.

SEN. ENRILE Nagbabayad ba kayo para makapanood?

MR. FLANCIA Hindi po.

SEN. ENRILE Ibig sabihin nito, you just do it accidentally or purposely,

X X X

SEN. ENRILE 'Yong mga iba na kino-komersyo 'yong katawan nagpapabayad

MR. FLANCIA Nagpapabayad po.

SEN. ENRILE Sino ang nagbabayad?

MR. FLANCIA 'Yon pong kausap nila.

X X X

MR. FLANCIA Sa pagkakaalam ko po, kumikita po sila, tulad po noong napanood natin, pagpapadala sa mga padalahan ng pera.

Kasi po sa aking karanasan, ang mga napapanood ay wala po doon sa mga katulad noong napanood natin studio o nasa cybersex

Mayroon po kasing - - ito lang po ang aking ano diyan, asi mayroon pong ginagamit na rin para mas madali ang pagta-transaksyon, kung бага ipapakita muna iyong katawan nila баго sila. . .

SEN. ENRILE Magtatagpo.

MR. FLANCIA ...magtatagpo.

SEN. ENRILE This is a channel for prostitution, iyong ipapakita ang katawan na walang physical contact.

MR. FLANCIA Mayroon po.

2. The Telecommunications Technologies and Violation of Franchises

The witness further testified on how and through which medium and technology cybersex, pornography, and prostitution is conducted:

MR. FLANCIA Internet po.

SEN. ENRILE Internet. It passes through any communication companies?

Kaya nga. Pero kung may Internet provider ka, mayroon kang linya, telephone line.

MR. FLANCIA Mayroon po.

SEN. ENRILE Kaya nga. So, they use Smart, Globe or PLDT, iyong mga local.

MR. FLANCIA Opo.

SEN. ENRILE Iyong mga provider, they subscribe to certain telephone lines.

MR. FLANCIA Opo.

SEN. ENRILE Iyong mga provider, they subscribe to certain telephone lines.

MR. FLANCIA Yes.

SEN. ENRILE Are they identifiable?

MR. FLANCIA Yes, Your Honor.

SEN. ENRILE All of these Internet providers na kung saan pinapanood ninyo iyong mga gumagawa ng malaswa?

MR. FLANCIA Yes, Your Honor.

X X X

THE CHAIRMAN (SEN. VILLAR) Sa tingin mo ba illegal iyong ganoon, iyong sa opinyon mo?

MR. FLANCIA Sa opinyon ko po, eh, nasa ano po ng tao iyon, eh. Kung - -

X X X

THE CHAIRMAN (SEN. VILLAR) Puwede silang - - kung da'awa lang.

MR. FLANCIA Kung gusto nilang dalawa, silang dalawa lang puwede.

It was also emphasized that the issue may be broader than mere illegal and immoral acts over the internet, and may even encompass the improper use of franchises and licenses of public utilities such as telecommunication companies and internet service providers. The issues of reviewing the very franchises of telecommunication companies, and the fact that internet service providers (ISPs) do not need franchises to operate but are merely issued licenses or required to register before the National Telecommunications Commission were also discussed to stress the point that there was very little regulation governing internet activity whether public or private.

SEN. ENRILE In my opinion, this issue is broader than just criminal liability of the actors. They are using public facilities, franchise facilities. These franchise facilities abused the privilege given to them by Congress, that they can use natural assets, like your airwaves and your radio communication system, to disseminate illegal acts by using their franchise.

We must not deal with this problem in a narrow band, you know. This is a very broad issue. It affects also the public utilities that we have here. And if you read the franchises of these public utilities, they are commanded by Congress to use their facilities for legal acts, not illegal.

THE CHAIRMAN (SEN. VILLAR) Just a question, pursuing the point of Senator Enrile, if it is a violation of the franchise, what happens if, in the future, the telecoms – the industry is deregulated and franchises will no longer be required?

SEN. ENRILE Well, I don't think we can deregulate because they are using natural resources. Either we close our eyes and we do not perform the sovereign function of regulating, or we really do what we must do and tell the PLDT, Smart or Globe, or whatever, including these Internet providers that, "If you continue doing this, we will cancel your franchise."

THE CHAIRMAN (SEN. VILLAR) Internet operators.

SEN. ENRILE The Internet providers, are they licensed by the government?

VOICE Yes.

SEN. ENRILE So, the fact that they are licensed by government, why should government be powerless to regulate them?

THE CHAIRMAN (SEN. VILLAR) Are they regulated, Internet providers?

MR. LOMIBAO By the NTC, Your Honors.

THE CHAIRMAN (SEN. VILLAR) Ah, by NTC.

MR. LOMIBAO National Telecommunications, yes.

THE CHAIRMAN (SEN. VILLAR) Now, I just would like to pursue the point.

General, ano ba ang regulasyon sa mga ibang bansa, sa Amerika, sa ibang mga advanced countries, sa larangan na ito? Ano ba sila? Papaano ang ginagawa nila ditto? Para at least mayroon tayong modelo na magagamit.

THE CHAIRMAN (SEN. REVILLA) Maybe we can ask Ms. Juli Ana Sudario. She is the director of National Computer Service.

Can you answer the question, Ms. Juli?

MS. SUDARIO I was just going to comment earlier, Your Honor, about the registration of *Internet service providers*.

ISPs are required to register with the National Telecommunications Commission, but they are not required to secure franchises unlike the telecommunications companies.

SEN. ENRILE If they are not requires, what is the purpose of their being required to get a license? Because they have to comply with the law, isn't it?

MS. SUDARIO (Nodding)

SEN. ENRILE If they cannot comply with the law, my goodness, why do you allow them to operate if they are operating immorally or violating our criminal laws? If we do not know how to enforce the law, my goodness, what kind of society are we?

THE CHAIRMAN (SEN. VILLAR) Who can answer that? Just for my curiosity because - - so that we can have a model. Do we - what do...Ano ba, ano ba ang ginagawa noong mga ibang bansa ditto? Kasi mas maganda rito kukuha na lang tayo ng modelo para mas madaling mag-craft ng law on this.

MR. LOMIBAO

I'll just refer this to my division chief of the Women and Children's Division, Your Honor.

MS. MACATANGAY

Kasi po sa ibang bansa, Your Honor, they have selective enforcement of the law on pornography because 'yong definition po ng pornography hindi po definite. Kung baga, sa ating bansa pagka medyo lumagpas sa boundary, malaswa na po sa atin because of our culture. Pero sa ibang bansa po, ang pornograpiya, mayroon pong sinasabi nilang pagka iyong adult, puwede siyang bumili ng pornographic materials but the minors cannot. May mga tindahan sila na nagtitinda ng mga pornographic materials na hindi puwedeng pumasok ang mga minors.

X X X

3. How Paid Cybersex Operates

Representatives of the National Bureau of Investigation gave an insight on how commercial pornography and cybersex operations are conducted, citing examples of the economic gains by the participants in the industry. The economic gains of participants or victims of cybersex dens were said to be astronomical and United States Dollar denominated.

MR. WYCOCO

Good afternoon, Your Honors.

The basic difficulty lies in the control of the independent service providers – internet service providers, Your Honor. It is very difficult to regulate them considering that their materials are coming from a foreign country. But it has been done in other countries, like the Honorable Senator Villar has mentioned and we have some proposals to do that. We can also do that if we will follow or we will consider some of the proposals we will submit to the Honorable...

If I may allow one of our resource persons to add something to that, Your Honor. Palmer Mallari is our top investigator when it comes to cyber pornography.

MR. MALLARI

Good afternoon, Your Honors.

Well, for purposes of explaining the operation of an internet pornography operator, ang isa pong internet pornography operator must be able to access the internet. And for him to be able to access the internet, kinakailangan pong mayroon siyang subscription with an internet service provider or mayroon siyang mabibili na tinatawag na prepaid dial-up internet card. So, if you are to maintain an internet pornography operation, before you can do that, you will have to register abroad duon sa mga principals na nagme-maintain ng website ng internet pornography operations. For example, one popular internet pornography site is I-

Friends (?). If you are in the Philippines, and I-Friends is based in the U.S.A., before you will be able to operate I-Friends in the Philippines, the operator will have to register himself with the principal abroad. And iyon pong pagre-registro will be done via internet. Bago po makapag-operate ang isang operator, kinakailangan pong maipakita noong local prospective operator na mayroon siyang models na magagamit sa kanyang operation. So, how will he notify the principal abroad? First, he will have to prepare identification cards in the form of a postal I.D. together with all the pictures of the intended models, ii-e-mail po niya iyan. Tapos iyong mga I.D.s po will be attached as attachments to the e-mail. Pagkatapos po idownload nuong prospective operator ditto sa Pilipinas iyong application for registration sa abroad and then ii-e-mail niya po ulit iyan sa abroad. The moment the application has been approved already, the local operator will have to send back to the principal abroad iyong kanyang bank account kung saan ike-credit ang komisyon...

THE CHAIRMAN So, may membership siya?
(SEN. REVILLA)

MR. MALLARI Bukod po sa membership, mayroon pong kinakailangang ipadala siya na bank account kung saan ipapadala ang komisyon ng local operator. So, kapag mayroon na po siyang – kumpleto na pong lahat ang dokumentong ito, mayroon na po siyang subscription sa isang local internet service provider, mayroon na po siyang models, pupuwede na po silang mag-operate ng internet pornography operation using the website of the principal abroad.

THE CHAIRMAN So, may habol tayo diyan, may habol ba iyong batas?
(SEN. REVILLA)

MR. MALLARI Ang nangyayari po kasi diyan, Your Honor, the moment the model makes a live chat session, the principal abroad collects from the client \$3.99 for every minute of chat session.

THE CHAIRMAN Chat session.
(SEN. REVILLA)

MR. MALLARI So, kapag ang modelo po nakipag-chat for, let's say 60 minutes, the principal abroad would be collecting from the client 60 minutes times \$4. So, that would be more or less \$240 a minute. The model...

MR. WYCOCO Per hour.

MR. MALLARI Per hour, I mean. So, kung \$240 po iyan sa loob ng isang oras, ang isang modelo po will be getting \$1 per minute and the operator in the Philippines will be getting another dollar per minute. Iyong komisyon po

ipapadala ngayon ng principal from abroad duon sa bank account noong tao na nag-o-operate ditto sa Pilipinas.

THE CHAIRMAN (SEN. REVILLA) Ito iyong mga professionals na 'yan, ano? What about iyong local natin?

MR. MALLARI Opo. Sila po iyong mga nag-me-maintain.

MR. MALLARI Bago po iyon, Your Honor, I would like to explain the reason why nag-mutate na iyong operation. Nuon pong simula na nagre-raid ang PNP at ang NBI ng mga internet pornography operations, ang isang operator would have to 20 to 25 computers and 20 to 25 models. Kapag na-raid na po ng NBI o ng PNP iyan, natatangay lahat iyong computers, nahuhuli lahat ng models, nahuhuli pati ang operator. So, malaki po ang loss na na-incur ng isang operator. So, what they did, to be able to minimize the loss, just in the event that the NBI or the PNP would pursue them in their operations, biniyak na po nila iyan. Ginawang - instead na dalampu sa isang lugar, gagawin nilang lima-lima o kaya tatlo-tatlo. Iyon pong mga operator, they would be thinking na, "Probably the reason why we were arrested by the NBI or the PNP is because mayroon isng modelo na nag-report sa atin." Ngayon, kung tig-lima kayo, at least iyong operation ninyo would be independent from the operations of the rest. Kung mahuhuli man kayo, tatlo lang ang modelo. So, ganoon po ang mangyayari. Naghiwa-hiwalay na sila.

Some of the models naman na hindi na nagdyo-join doon sa operation, among themselves, nakita nila na, "Hindi pala ako kailangang maging empleyado ng isang operator. Instead, pupuwede pala akong kumita on my own" sa pamamagitan ng pag-contact sa aking mga parokyano abroad. The moment I access the internet at nakita ng aking kliyente na naka-internet ako, naka-online ako through the messenger of the yahoo messenger, we can have a private chat session even in the confines of my residence or in the internet cafes."

4. Difficulty of Prevention & Enforcement Due to Obsolete Laws

The resource persons of the NBI made a valid point that the statutes in place at present do not respond to the current state of technology. There are no existing criminal legislation that specifically addresses cybersex, internet pornography or internet prostitution. The witness, Mr. Menesses clearly gives as an example the proponents of the "I love you" virus whose charges were dismissed due to the non-existence of any law punishing the acts done.⁷ Current law enforcement agencies rely on antiquated laws⁸ which do not address the use

⁷ This was prior to the enactment of the E-commerce Law, which was designed to penalize certain acts such as the propagation of viruses that cause destruction of property or information.

⁸ Such as the Revised Penal Code, Child & Youth Welfare Act, etc.

of information technology to accomplish acts which the State seeks to regulate or criminalize. Further, the definition of pornography under the law must be unified and all encompassing. Witness the following exchange:

THE CHAIRMAN
(SEN. REVILLA) The way I look at it, Mr. Chairman, ano, pagkatiningnan natin yung problema ngayon, talagang laganap na cia eh, ano? So how can we put a stop to it? Ang problema talaga natin dito hindi na yung above 18 or 21, yung minor na binibiktima nito. So, papano natin – Anong ---Kayo, sa experience ninyo sa mga nahihuli ninyo, meron bang nag-reklamo na mga minors diyan? Wycs

MR. WYCOCO Thank you, Your Honor. Ang basic difficulty po natin dito, kagaya rin ng ating difficulty when we started our campaign against pornography. Wala pa po yung cybersex or internet pornography. Dahil sa Republic Act 201 at saka Republic Act 9208, even the amendment na Presidential Decree No. 1969, ang problema po natin, wala po tayong definition ng pornography. Kaya nung kami ay nag-umpisa pong magkampanya laban sa pornography early on, nadi-dismiss po lahat yung kaso naming. Gaya po ng nabanggit ni Senator Villar, sasabihin nila bakit yung Penthouse, bakit yung Playboy hindi bawal, bakit yung nakikita sa Bulgar o sa Abante na frontal nudity, bakit bawal? Diyan po nag-uumpisa ang problema. And this problem will be carried over to internet pornography kung wala po tayong definition ng pornography. So kung ide-define po natin ang pornography as frontal nudity, for exmple, lahat ng frontal nudity bawal. But kung sasabihin nating anything that will arouse prurient desire, very ano po iyan, masyadong maraming gray area, very difficult to define. So hindi po natin maso-solve. Like what ... like our difficulty in solving pornography. Ang amin pong proposal nga, we define pornography and we stick to that definition and also based on ...

THE CHAIRMAN
(SEN. VILLAR) How did you define it? How did you define...I'm just curious, how did you define it in your proposal? Pornography.

MR. WYCOCO Doon ho sa aming proposal, any frontal nudity should be pornography. Kasi marami na pong definition ditto sa 9208, hindi naming maintindihan. Yung definition din sa Article 201 nung obscene and ...

THE CHAIRMAN
(SEN. REVILLA) Meron ding mga artistically done na nudity katulad yung sa mga stage, yung mga ganun. May mga silhouette sila, artistic daw yon.

MR. WYCOCO Yeah. Exactly what we experienced, Your Honor. When we confiscated some newspapers before, we were told that, "Have you gone to Florence? Have you gone to Rome? If you look at Sistine chapels, they are all nude. And they are nudity, they are not

pornography,” sabi po nila. So, what is pornography to a law enforcer, to a prosecutor, to an NGO might be an art form sa judge. Yun po ang aming nagiging problema.

**THE CHAIRMAN
(SEN. VILLAR)**

You know one possible...I think what we can do here is to start with, yung bawal talaga. I mean, as in for example, ginagamit mo iyong mga bata. Well, minor yan. So medyo may konting ano yan, ano. At you are doing it na talagang mag-recruit ka. Well, commercial tapos mga bata ang ginagamit mo. I mean, you know, I think that this is something na mas madali sabihin na bawal.

MR. LOMIBAO

Yes, Your Honor. What we are actually concerned about is the form which is widespread, systematic, organized, syndicated and transitional. Like what we discovered when we had our operations in Angeles. These are websites registered in the U.S. and these are registered in the Philippines. Buti na lang wala pa tayong registered na website which are catering to cybersex. So what we are really concerned about is yung cybersex dens, those who are propagating this from a transitional nature. So I think this could be incorporated, formulated in the law such that they can prevent this kind of form of cybersex.

Article 201 of the Revised Penal Code is aptly titled *Immoral doctrines, obscene publications and exhibitions, and indecent shows*. This legal provision however does not touch on the use or abuse of information technology. Hence, law enforcement agencies must also rely on other laws such as R.A. No. 9208 or An Act To Institute Policies To Eliminate Trafficking In Persons Especially Women And Children, Establishing The Necessary Institutional Mechanisms For The Protection And Support Of Trafficked Persons, Providing Penalties For Its Violations and R. A. No. 7610 or An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes.

However, none of these laws specifically define the acts sought to be policed within the internet and regulate the use of information technology within the country to stop the social evils caused by the abuse of such technology. The inadequacy of current laws was specifically mentioned in the following exchange during the hearing:

MR. MENESES

Your Honor, I just want to go back. I like yung umpisa nyo knina tungkol sa batas eh. We all started on this computer with the ...when the NBI conducted an investigation on the “I Love You” virus incident. It all started there. So wala tayong batas at that time. And then, we were investigating, we learned how to do it. However, the case was just dismissed because there was no law at that time. Despite repeated appeals, it was also laid down to rest. So from that time po, nung

2000, we started already conducting investigation of this cybersex and everything. Good that we have a law, the E-Commerce Law which is only Section 33 of the E-Commerce Law which says, "Hacking, cracking, introduction of virus into the computer system which alters, so on and so forth, which resulted in the destruction." Now, during the course of several...

X X X

MR. MENESES

Thank you. Your Honor, so far, ngayon we are always conducting raids based on—it is headlined, it says, "Cybersex raided—NBI/PNP raided". However, ang itsina-charge natin, malayo doon sa issue ng information technology. Either we charge them under Article 201 of the Revised Penal Law or under the special law. Siguro mas maganda kung appropriate cybercrime law. In fact, wala tayong cyber crime law, we have only the e-commerce law. Medyo isang section lang po ang nandoon. Siguro ho with the —kasi we have to touch on the bills, yung mutual cooperation po natin with other countries dahil lumalampas po yung ating ano, eh, yung boundaries natin sa cyber crimes. And then yung mutual cooperation, kailangan po natin yun.

**THE CHAIRMAN
(SEN. REVILLA)**

So meron na ba kayong napa-convict diyan? Wala pa?

MR. MENESES

Your Honor, all are pending before the — some — from 2000...

5. Proposed Methods of Policing Internet Activities

The resource persons present were of the consensus that internet cafes and websites be monitored to block obscene or pornographic material, or otherwise improper use of information technology facilities.⁹ Telecommunication companies must also be required to put up similar measures to ensure the integrity of the media posted through the internet. Caution however was stressed on the possible breach on the right to privacy of the individual, in contrast to telecommunication companies and service providers may be regulated or otherwise required by future legislation to prevent the propagation of paid cybersex, internet pornography, and other forms of indecent behaviour through the internet. To quote:

MS. SUDARIO

We support the suggestion made by Mr. Ricafort. Actually, we made some comments and we submitted it already to the secretariat. But basically, I'd just like to raise that among our suggestions, we are saying that—we are suggesting that internet cafes be required to automatically block access to the known or the listed pornographic websites. We are suggesting also that the same be required from the telecommunications companies...

⁹ Computers, web cameras and headsets.

THE CHAIRMAN Is that possible? Is that possible? Do you think we
(SEN. REVILLA) can do that?

Iba-block na natin?

MR. RICAFORT So alam na natin nagsolicit ng...

THE CHAIRMAN Through Act of what?
(SEN. REVILLA)

MR. RICAFORT Sabi nga noong NBI po, nila Director Wycoco, yung boss natin, meron cybercrime, so pag may violation, then we have the power to block. Kasi I don't think we can enforce dahil nasa ibang bansa. At ang mga batas nila doon puwede yung-they are open to pornography there. Eh dito hindi.

THE CHAIRMAN Dito hindi.
(SEN. REVILLA)

MR. RICAFORT Pero kung dito sila mag-solicit, all we do is block them

THE CHAIRMAN Okay. Baka meron pa kayong gusting idagdag. I'll
(SEN. REVILLA) just have to wit for Senator Villar baka meron pa siyang...

X X X

THE CHAIRMAN ...yon ba'y makikita? Sino puwedeng makialam
(SEN. VILLAR) doon, sino ang puwedeng tumingin sa – kunwari magnobyong kayo at naggaganoon kayo sa computer, thinking na kayong dalawa lamang ang nakakaalam sa ginagawa n'yo 'no, so nag-lock kayo, etcetera. So you're hoping na kayong dalawa lamang ang nakakaalam. Question. Mayroon po bang nakakaalam na iba? For example, 'yong internet provider or 'yong telephone company, do they have a record of this that can be used against you?

MR. RICAFORT Your Honor, wala po. Iyon 'yong ngang sinasabi naming sa individuals napaka-close to impossible na 'yong – parang sa telepono kung puwede man ay bawal kasi may right to privacy.

THE CHAIRMAN Ah, pero bawal, pero puwede? Technically.
(SEN. VILLAR)

MR. RICAFORT Technically, mahirap per puwede po.

X X X X

THE CHAIRMAN Oo, iyon nga ang inaano ko eh na you have to be
(SEN. VILLAR) careful din kasi kung – ini-imagine ko na kasi hindi naman tayo dapat nakikialam sa nagliligawan. Kung nagmamahalan sila, eh nasa abroad 'yong isa, remember we have nine million overseas Filipinos,

ang kung parang maging ordinary yan. Ngayon kasi maraming hindi gumagawa n'yan. Ngayon kasi maraming hindi gumagawa n'yan dahil hindi marunong. But suddenly, parang pag naging ano na lang 'yan, parang naging text or ordinary phone calls, you can just imagine the explosion that will happen in the volume. Kasi after a while we will reach a point where talagang pag nag-uusap na sa telepono talagang nagkakakita: na kayo.

MR. WYCOCO Sir, webcam 'yan.

**THE CHAIRMAN
(SEN. VILLAR)** O, hindi ba?

MR. RICAFORT Your Honor, in three years po, nandito na yan.

**THE CHAIRMAN
(SEN. VILLAR)** Three years na. O, ayun. So ang ina-anticipate ko lang na okay, eh papaano magkausap kayo ay biglang...papaano ang suot mo. You know, parang ... I'm trying to envision na this will become ... para mong sinabi na halimbawa nag-uusap kayo sa telepono, malaswa ang usapan n'yo, eh ngayon you can do that. Kung baga eh malaswa ang usapan n'yo and you cannot censor it. Doon naman nagkakakitaan kayo, kung medyo naging malaswa 'yong – again, it is hard to define which is frontal nudity. I mean – eh kasi kung asawa mo naman 'yon eh bagong gising ka. I mean these are realities. I mean, we – kasi kaya iniisip ko kasi how we will approach this eh. Ang gusto ko lang mapangalagaan 'yong mga nagagamit, bata. Pero 'yong – ang problema natin yung gray area na hindi mo masabing, “oo, nagpapagamit.” “Yong bata kasi maski nagpapagamit siya eh bata pa siya. So parang sinasamantala mo 'yong kanyang kakulangan ng kaisipan. Pero kunwari kuwareta'y singko anyos na, o iyan ba eh hindi pa n'ya alam ang ginagawa niya?

MR. WYCOCO Alam mo, Your Honor, me kasama pang magulang 'yong bata.

**THE CHAIRMAN
(SEN. VILLAR)** May kasamang magulang? Eh 'yong magulang ang dapat naming parusahan sapagkat iyon ang hindi maganda. To me, 'yon mas maliwanag 'yon. Pagka ikaw naman ay magulang ka at isinama mo ang anak mo sa ganya, ay hindi, palagay ko maliwanag 'yan. “Yang ganyang aspeto, maliwanag 'yan.

Ms. Sudario, you want to add something to this, sa computer center o wala naman?

MS. SUDARIO Earlier, Your Honor, when we were out, I raised a suggestion from our office the possibility of requiring the telecom companies and internet service providers to automatically block access to those listed pornographic websites. The same can be required from the internet cafes so that we will prevent the

minors from easily accessing such pornographic websites. Actually, the same can even be done for government agencies requiring ...

**THE CHAIRMAN
(SEN. VILLAR)**

Okay. Sa tingin ko sa ngayon, magagawa 'yon sa ngayon. I mean, yeah, sabi nga ni Mr. Ricafort that can be done now. But in the future, can we still do it? I mean, if it becomes very easy to open websites, etcetera. We can try. Sa tingin ko, I-focus muna natin doon sa 'yong maliwanag na violations by enumerating them.

Halimbawa, magulang ka, kasama mo ang anak mo, eh bakit mo isasama ang anak mo doon? I mean, you know, maliwanag 'yon na exploitation 'yan. Mayroong mga maliliwanag o kaya against your will, pinilit mo, ayan medyo ano 'yan. "yong iba, I have to be honest, we need experts to help us here legally kung paano. Kasi, as I said, 'yong censorship is a very, very ticklish issue, what should be censored. Napakahirap n'yan. But I would want you to help us, the Committee, because hindi lamang ito, pati 'yong cyber crime nga eh. Dumadami na kasi 'yong kulang natin, 'yong law on cyber, tapos 'yong sa cyber sex. Hindi ko alam kung paghihiwalayin ng committee 'yan o hindi. Andiyan 'yong anti-terrorism. They may be related in many aspects eh, but sa akin just to be sure that we pass anti-terrorism and we may have to skip this part because baka masabit lang 'yong anti-terrorism bill because of this feature.

So let's try to work on this. "Yon bang Netopia ito 'yong sa mga malls, 'yong mga ganoon?

VOICE

Opo.

**THE CHAIRMAN
(SEN. VILLAR)**

Marami bang klase ng Netopia na gumagawa nito on a commercial level?

MR. RICAFORT

Opo, there are about nine thousand internet cafes in the Philippines, and they account for about a hundred thousand...

**THE CHAIRMAN
(SEN. VILLAR)**

Parang nagiging feature na ngayon ito?

It was also recommended that a new regulatory body be organized specifically to regulate the practices and the use of information technology. At present, the National Telecommunications Commission (NTC) is the only government agency authorized by law to monitor and regulate telecommunications companies and internet service providers.¹⁰ Although local governments have taken steps to stop the proliferation of Cybersex and

¹⁰ NTC Charter: Executive Order No. 546, July 23, 1979, and other empowering laws do not specifically touch on the control of content in the internet.

pornography, there has been no national legislative thrust to address the issue.¹¹ It is worthy to note the following exchanges:

MR. RICAFORT Depende po doon sa magpapatakbo eh. Iyon nga 'yong isang na-mention naming sa NTC, baka kailangan po i-regulate na 'yong mga internet cafes. Kasi 'yong sala ng isa, sala ng lahat eh. Kamukha 'yong nangyari sa Bislig, eh internet café 'yon. So masama ang dating.

THE CHAIRMAN (SEN. VILLAR) Papaano mare-regulate, nagka-kape lang?

MR. RICAFORT Sabi nga puwede ho walang kape sa internet café pero kailangan may internet.

THE CHAIRMAN (SEN. VILLAR) Baka siguromkailangan may kape ka.

THE CHAIRMAN (SEN. REVILLA) Kailangan ba nating mag-create ng another body like MTRCB, VRB. MTRCB, sa film; VRB, sa mga videos; for cybersex, ganyan.

MR. RICAFORT Actually, puwede pong same body ang mag-regulate.

THE CHAIRMAN (SEN. REVILLA) Or maybe it should be under VRB or it should be under MTRCB.

THE CHAIRMAN (SEN. VILLAR) If I may give my comment, how, I mean, you know, parang mayroon tayong group of people who will be reviewing kung 'yong nudity nila ay artistic or not.

MR. RICAFORT Well, based on our experience, pag i-complain po ng kapulisan na itong website na ito eh may illegal na ginagawa, madali pong ...

THE CHAIRMAN (SEN. VILLAR) Shut down.

MR. RICAFORT Well, we don't shut down the website, but we block the website.

III. CONCLUSION AND RECOMMENDATIONS

The hearing conducted has made clear the urgent and important need for new legislation based on the following findings of fact which have been established based on the testimony of witnesses and resource persons presented during the hearing:

¹¹ Cebu City passed a Board Resolution to closely monitor internet cafes and asked the NTC for assistance under Republic Act No. 7925, which mandates that the NTC monitor telecommunications companies for public interest and public morals -- Freeman News Service, August 22, 2005

1. Cybersex, internet pornography, and/or internet prostitution activities have become prevalent and unhampered within the territorial jurisdiction of the State, and have become an undeniable social evil that the State should destroy;
2. Law enforcement agencies such as the PNP and the NBI are using antiquated and off-tangent laws on pornography, child abuse and trafficking to curb the operation of Cybersex dens;
3. The present laws in force within the territorial jurisdiction of this State do not criminalize the use of information technology or the internet as a medium for cybersex, internet pornography, and prostitution, and are *therefore inadequate for law enforcement purposes*;

There is a need to define what acts the State seeks to police that fall under the term "pornography" or even the terms "cybersex". Unless a unifying or comprehensive law address these issues, law enforcement agencies are left in the dark as to what to enforce and how to prosecute their cases. It seems that present laws have already become irrelevant to the current state of affairs.

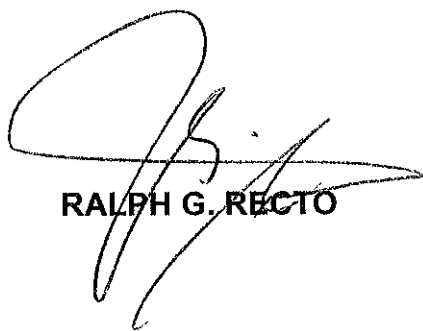
The findings assert the urgency and important need for legislation responsive to the social evils prevalent within the territorial jurisdiction of this State. It is therefore recommended that the bills and resolutions in agenda before this Committee be prioritized.

4. There is no specific government agency tasked and much less authorized to regulate and monitor the telecommunications companies and ISPs with respect to internet activities and website content in order to address the social evils mentioned. Hence, any future legislation must address the need to either empower existing regulatory agencies or create new agencies specifically authorized to regulate content and use of information technology.

Respectfully submitted:


MANNY VILLAR
Chairman

Members:



RALPH G. RECTO



RICHARD J. GORDON



RAMON BONG REVILLA JR.



MANUEL "LITO" M. LAPID



JUAN PONCE ENRILE



JINGGOY EJERCITO ESTRADA

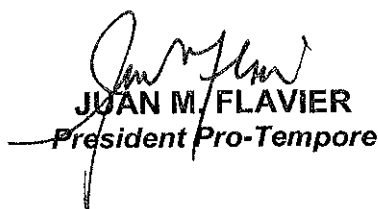


PANFILO M. LACSON

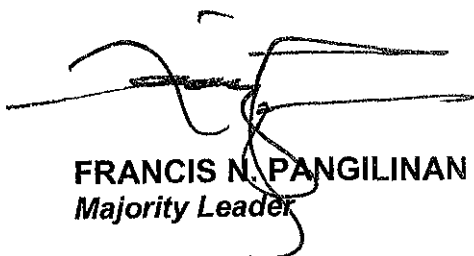


ALFREDO S. LIM

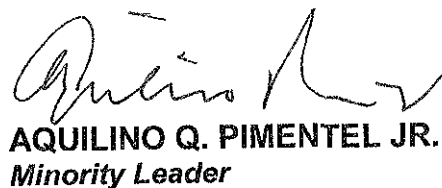
Ex - Officio Members :



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President Pro-Tempore



FRANCIS N. PANGILINAN
Majority Leader



AQUILINO Q. PIMENTEL JR.
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