June 29, 2022

STATEMENT ON AFFIRMATION OF REVOCATION OF RAPPLER'S CORPORATE REGISTRATION

The Securities and Exchange Commission (SEC) confirms the issuance of an order dated June 28, 2022 affirming the revocation of the certificates of incorporation of Rappler, Inc. and Rappler Holdings Corporation (RHC) for their violation of constitutional and statutory restrictions on foreign ownership in mass media.

To recall, the Commission *En Banc,* in a decision issued on January 11, 2018, found Rappler liable for violating the constitutional and statutory foreign equity restrictions in mass media when it issued questionable Philippine Depositary Receipts (PDRs) that granted Omidyar Network, a foreign entity, control over the media organization.

The PDRs included a provision requiring the Filipino stockholders of Rappler to seek the approval of Omidyar Network on fundamental corporate matters, a violation of the absolute constitutional and statutory prohibition on foreign control of mass media.

Accordingly, the SEC revoked the certificates of incorporation of Rappler, being the mass media entity that sold control to foreigners, and of RHC, being an alter ego that existed for no other purpose aside from effecting a scheme aimed at masking the former's Constitutional violation.

The SEC also declared the PDRs void pursuant to Section 71.2 of Republic Act No. 8799, or the Securities Regulation Code, for being a fraudulent transaction within the ambit of Section 26.1 of the law.

Rappler appealed the Commission's decision before the Court of Appeals (CA). While the appeal was pending, Omidyar Network, through its representative, Stephen King, announced its intention to donate the PDRs to the Filipino staff of Rappler.

In a decision dated July 26, 2018, the CA upheld the finding of the SEC that Rappler sold control to foreigners. The appellate court, however, directed the Commission to conduct an evaluation of the legal effect of the alleged supervening donation by Omidyar Network of the PDRs to the staff of Rappler and accordingly remanded the case to the Commission.

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Nevertheless, the CA affirmed and reiterated its 2018 decision in a resolution dated February 21, 2019.

The Supreme Court on September 25, 2019 then issued a resolution declaring the case closed and terminated. The CA proceeded to issue another *resolution* dated December 4, 2019 declaring that its 2018 decision has attained finality as of 21 March 2019. Consequently, an entry of judgment was issued in the instant case.

In compliance with the directive of the CA, the SEC, through the Office of the Solicitor General (OSG), filed on February 17, 2021 a manifestation containing the findings of a special panel convened by the Commission for the purpose of evaluating the legal effect of the supervening donation.

After a careful study of all the pleadings and arguments of the parties, the special panel concluded that the purported donation of the PDRs to the staff of Rappler neither created nor transferred any right in favor of the donees which would mitigate or cure the violation already committed.

On March 16, 2021, Rappler and RHC filed with the SEC their *Ex Abundanti Ad Cautelam* Motion for Reconsideration seeking the setting aside of the special hearing panel's compliance.

On March 19, 2021, Rappler and RHC filed with the CA their Counter-Manifestation informing the appellate court that they have filed a motion for reconsideration with the Commission.

On June 21, 2022, the SEC, through the OSG, received a copy of a document issued by the Court of Appeals (former Special Twelfth Division) quoting its resolution dated June 21, 2022, merely noting the Commission's manifestation and Rappler's counter-manifestation.

It is in this light that the SEC issued the order dated June 28, 2022 affirming the revocation of the certificates of incorporation of Rappler and RHC.

With the latest resolution issued by the CA, which noted the compliance of the Commission and the counter-manifestation of Rappler and RHC, the instant order is now warranted considering that the appellate court's 2018 decision has already attained finality.

The SEC notes that the revocation of the certificates of incorporation of Rappler and RHC was ordered by the Commission as early as January 11, 2018 and that the

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ground for such was affirmed by the CA repeatedly – first, on July 26, 2018; then, on February 21, 2019; and again, on December 4, 2019.

The decision of the CA has attained finality and the latest resolution of the appellate court only bolsters the Commission's position that Rappler and RHC violated the Constitution and that their certificates of incorporation should therefore be revoked.

The contentions raised by Rappler and RHC have been squarely and adequately addressed by the SEC and the CA in their respective decisions, resolutions and orders, including the latest issuance from the Commission.

In this light, the latest order issued by the Commission *En Banc* merely puts in effect its earlier decision and those of the Court of Appeals.

END

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Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

IN RE: RAPPLER, INC. AND RAPPLER HOLDINGS CORPORATION

x - x

ORDER

On 21 June 2022, this Commission, through the Office of the Solicitor General (OSG), received a copy of a document issued by the Court of Appeals (FORMER SPECIAL TWELFTH DIVISION) quoting its Resolution dated 21 June 2022 which provides, thus:

> "In view of the Decision dated July 26, 2018, the Resolution dated February 21, 2019, and the corresponding Entry of Judgment issued on December 04, 2019, the following are MERELY NOTED:
>
> a. Respondent SEC's Manifestation filed on February 17, 2021 praying that this Court notes the Compliance of the SEC Special Panel and its findings on the evaluation it conducted; and
> b. Petitioners' Counter-Manifestation filed via registered mail on March 19, 2021."

In relation to the issuances mentioned in the afore-quoted document, the Court of Appeals (CA), in its *Resolution*[1] dated 21 February 2019 (the "2019 Resolution") affirmed and reiterated its earlier finding embodied in its Decision dated 26 July 2018 (the "2018 Decision") that Rappler, Inc. (Rappler) is a mass media entity under Presidential Decree (PD) No. 1018 and Republic Act No. 9211, and its mere grant of control to a foreign entity through the Philippine Depositary Receipts issued to Omidyar Network (ON PDRs), regardless of the actual exercise thereof, already constitutes a violation of the foreign equity restriction on mass media prescribed under Section 11(1), Article XVI of the 1987 Constitution, to wit:

> "Therefore, contrary to petitioners' assertion that Rappler is not engaged in the business of mass media, this Court maintains its ruling that Rappler is a mass media entity."[2]
>
> "Mere grant of control, regardless of the actual exercise of such control, already constitutes a violation of the foreign equity restriction on mass media.[3]

With the issuance by the Supreme Court of a *Resolution* dated 25 September 2019, declaring the case closed and terminated, the CA forthwith

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[1] CA-G.R. SP. No. 154292.
[2] See page 8 of the 2019 CA Resolution.
[3] See page 15 of the 2019 CA Resolution.

issued a *Resolution* dated 4 December 2019 therein declaring that its 2018 Decision has attained finality as of 21 March 2019. Consequently, an Entry of Judgment was issued in the instant case.

However, in the 2018 Decision, the CA recognized the donation[4] by Omidyar Network (Omidyar) of all its PDRs in favor of the staff of Rappler, which prompted it to remand to the Commission the matter on the penalty of revocation which the latter earlier imposed on Rappler and Rappler Holdings Corporation (RHC). The CA specifically directed the Commission to re-examine the propriety of such sanction in light of the alleged supervening donation, to wit:

> "**WHEREFORE**, the *Petition* is **DENIED**. However, **the Securities and Exchange Commission** is hereby **DIRECTED** to conduct an evaluation of the legal effect of the alleged supervening donation made by Omidyar Network of all its Philippine Depositary Receipts to the Staff of Rappler, Inc. Accordingly, this case is hereby **REMANDED** to the Securities and Exchange Commission for this purpose.
>
> **SO ORDERED**." (Underscoring ours)

In compliance with the directive of the CA, and after a careful study of all the pleadings and arguments of the parties, the Commission, through the OSG, filed on 17 February 2021 a Manifestation with attached Compliance, which exhaustively discussed the findings of the Commission on the legal effect of the supervening donation.

On 16 March 2021, Rappler and RHC filed with the Commission their *Ex Abundanti Ad Cautelam* Motion for Reconsideration (the "Motion for Reconsideration") seeking the setting aside of the Special Panel's Compliance for allegedly being void for violation of due process.

On 19 March 2021, Rappler and RHC filed with the CA a Counter-Manifestation, therein informing the CA that they have filed the Motion for Reconsideration with the Commission.

With the issuance of the notice dated 21 June 2022 by the CA, which noted the Compliance of this Commission and the Counter-Manifestation of Rappler and RHC, the instant Order is now warranted considering that the 2018 Decision has already attained finality.

At this juncture, it should be pointed out that this Commission already imposed the penalty of revocation in its Decision dated 11 January 2018 (the

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[4] Donation executed on 19 February 2018.

"SEC Decision"), after the completion of proceedings before it, which was actively participated in by Rappler and RHC. Hence, **the 2018 Decision of the CA, which has attained finality, found and affirmed that Rappler and RHC were not denied their right to due process. They were properly notified of the charges against them, and they were able to explain their side through the pleadings that were submitted.**

Rappler and RHC have in fact continued to actively participate in the proceedings of the instant case after the Commission submitted its compliance to the directive of the CA. First, they filed the Motion for Reconsideration with the Commission on 16 March 2021, which exhaustively dealt on the alleged lack of procedural due process relative to the evaluation of the supervening donation. Second, they filed the Counter-Manifestation with the CA on 19 March 2021, informing the appellate court of the filing of the Motion of Reconsideration. All the while, however, the ground for the revocation of the Certificate of Incorporation of Rappler and RHC, i.e., violation of the Constitution and PD No. 1018, remained the same. In fact, no new ground can be introduced even by the Commission because the culpability of Rappler and RHC has been determined with finality by the CA. Verily, the basic demands of due process have been satisfied and complied with.

The foregoing finds support in the principle established in jurisprudence that in administrative proceedings such as the instant case, the demands of procedural due process are satisfied if the party is given an opportunity to explain his/her side or to seek a reconsideration of the action assailed by him/her.[5]

Moreover, emphasis should be made on the fact that in the above-quoted dispositive portion of the 2018 Decision, the directive to conduct an

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[5] "The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied. Ledesma vs. Court of Appeals elaborates on the well-established meaning of due process in administrative proceedings in this wise:

> x x x Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of." (Underscoring supplied) (Vivo vs. PAGCOR, G.R. No. 187854, 12 November 2013).

evaluation was addressed solely and exclusively to the Commission. The CA did not direct the conduct of another round of investigation considering that Rappler and RHC's violation of the Constitution in relation to PD No. 1018 has been conclusively established and attained finality. The use by the CA of the word "evaluate," unqualified by any other words renders baseless Rappler and RHC's insistence that investigation anew and reception of additional evidence were required. The directive given to the Commission to evaluate, which means to judge, or calculate the quality, importance, amount or quality of something,[6] called for the Commission's independent appreciation and determination of the legal effect of the supervening donation, free from the influence of any other person, including Rappler and RHC. Thus, the Commission's compliance with the said directive could not have violated the due process rights of Rappler and RHC because by the very nature and essence of the directive, Rappler and RHC were not entitled to participate in the said legal evaluation.

Coming now to the substance of this Order, the Commission, on the basis of the 2018 Decision, which has become the law of the case,[7] hereby resolves to affirm the SEC Decision revoking the Certificates of Registration of Rappler and RHC for violation of the mandatory and self-executing provisions of Section 11(1), Article XVI of the 1987 Constitution, in relation to PD No. 1018. The Commission finds that the subsequent acts and/or transactions undertaken or executed by Rappler, RHC and Omidyar, i.e. the Waiver and Donation, affirmed such violation.

As regards the Waiver, this Commission has already considered and passed upon the same in the SEC Decision and in the submissions with the CA. Significantly, the Commission's finding and position on the same remains unchanged—the Waiver affirmed Rappler's violation of the Constitution and PD No. 1018 because through it, Omidyar, a foreign entity, in effect admitted having control over Rappler.

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[6] See https://dictionary.cambridge.org/us/dictionary/english/evaluate.

[7] "The remand of the case to RTC Branch 40 was for the sole purpose of threshing out the correct amount of expenses and not for relitigating the accuracy of the award. Thus, the findings of RTC Branch 40, as affirmed by the appellate court in CA-G.R. No. 24684, were confined to the appreciation of evidence relative to the repossession expenses for the query or issue passed upon by the respondent court in CA-G.R. No. 56718-R (propriety of the award for repossession expenses) has become the "law of the case". This principle is defined as "a term applied to an established rule that when an appellate court passes on a question and remands the cause to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal." Having exactly the same parties and issues, the decision in the former appeal (CA-G.R. No. 56718-R) is now the established and controlling rule. Petitioner may not therefore be allowed in a subsequent appeal (CA-G.R. No. 24684) and in this petition to resuscitate and revive formerly settled issues. Judgment of courts should attain finality at some point in time, as in this case, otherwise, there will be no end to litigation." (*Agustin vs. Court of Appeals,* G.R. No. 107846, 18 April 1997) [Emphasis supplied].

Moreover, the fact that the Waiver was issued only during the pendency of the proceedings with the Commission clearly showed that its execution was merely an afterthought, and made for no other purpose than to make it appear and convince the Commission (and the CA) that Omidyar will not exercise control over Rappler even if the same was granted in the ON PDRs. This is supported by the fact that Omidyar specifically negotiated with Rappler and RHC to insert Paragraph 12.2.2 in the ON PDRs to ensure that its investments and interests therein are protected.[8] Thus, the consideration and the attendant circumstances in the purchase by Omidyar of the ON PDRs vis-à-vis the execution of the Waiver are simply irreconcilable and negate any feigned intent to actually waive the rights granted therein.

In any case, the Waiver did not and will not exculpate Rappler because as held in the 2018 Decision, the constitutional provision requiring full and absolute Filipino ownership in a mass media entity was violated the moment the ON PDRs, which granted control to a foreign entity, were issued. The finding of the CA in the 2019 Resolution is worth quoting, thus:

> "Hence, the grant of control to a foreign entity over a mass media entity, regardless of the actual exercise of such foreign control, **is already considered a violation**.
>
> Considering that Clause 12.2.2 in the Omidyar PDRs already granted Omidyar Network with control over corporate policies and affairs of a mass media entity, which must be wholly-owned and managed by Filipinos, **the actual exercise by Omidyar Network of the said control is irrelevant since a violation of the nationality requirement under the Constitution and pertinent laws was already committed**." (Emphasis supplied).

Apropos the Deed of Donation which Omidyar and the staff of Rappler executed, this Commission finds that the same did not, and will not cure Rappler's violation of Section 11(1), Article XVI of the 1987 Constitution, in relation to PD No. 1018 because the same is void for having an object that is contrary to law.

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[8] "It is important to remember that, **at the time Omidyar Network Fund LLC decided to purchase the ON PDRs**, NBM Rappler LP has already purchased PDRs from RHC. Also NBM Rappler purchased more PDRs than Omidyar Network Fund LLC.

On account of this situation, **Omidyar Network Fund LLC was concerned that it was at a disadvantage because of the possibility that RHC may later agree to NBM Rappler LP more benefits than Omidyar Network Fund LLC**. Also, Omidyar Network Fund LLC did not want to be placed at a further disadvantage if RHC sells PDRs to other investors.

For these reasons and to protect its investments, Omidyar Network Fund LLC had RHC agree to secure the approval of at least two-third (2/3) of all the PDR holders before RHC takes an action that would prejudice the rights of Omidyar Network under the ON PDR, which rights do not include ownership and management over Rappler or RHC." (Pp. 13-14 of the SEC Decision dated 11 January 2018).

A contract is defined as a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.[9] The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.[10]

Section 11(1), Article XVI of the 1987 Constitution specifically provides that:

> "The ownership and management of mass media **shall be limited to citizens of the Philippines**, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens." (Emphasis supplied).

When the ON PDRs were issued to Omidyar, a foreign entity, the afore-quoted constitutional provision was violated because as held by the CA, the same constituted a grant of control by a mass media entity to a foreign entity. The ON PDRs, being the instrument which facilitated the grant of control by a mass media entity to a foreign entity, were thus void for being contrary to the 1987 Constitution and PD No. 1018. Being a void and inexistent contract/document, the ON PDRs cannot and can never be a valid object of a donation.

Article 1409 (1) of the Civil Code provides:

> "The following contracts are inexistent and void from the beginning:
>
> (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy; xxx

In the instant case, considering that the object of the Donation (the ON PDRs) was void for being contrary to law, the Donation itself was void under Article 1409(1) of the Civil Code for being contrary to law and public policy. In *Sy Suan vs. Price Incorporated,*[11] the Supreme Court explained and emphasized that an agreement which violates a statute, among others, is illegal for being contrary to law and public policy, to wit:

> "It is a general rule that agreements against public policy are illegal and void. Under the principles relating to the doctrine of public policy, as applied to the law of contracts, courts of justice will not recognize or uphold any transaction which, in its object operation, or tendency, is calculated to be prejudicial to the public welfare, to sound morality, or to civic honesty. **The test is whether the parties have stipulated for something inhibited by the law or inimical to, or inconsistent with, the public welfare.** An

[9] Article 1305 of the Civil Code of the Philippines.
[10] Article 1306 of the Civil Code of the Philippines.
[11] G.R. No. L-9506, 30 June 1956.

agreement is against public policy if **it is injurious to the interests of the public, contravenes some established interest of society, violates some public statute**, is against good morals, **ends to interfere with the public welfare or society, or as it is sometimes put, if it is at war with the interests of society** and is in conflict with the morals of the time. An agreement either to do anything which, or not to do anything the omission of which, is in any degree clearly injurious to the public and an agreement of such a nature that it cannot be carried into execution without reaching beyond the parties and exercising an injurious influence over the community at large are against public policy. There are many things which the law does not prohibit, in the sense of attaching penalties, but which are so mischievous in their nature and tendency that on grounds of public policy they cannot be admitted as the subject of a valid contract. **The question whether a contract is against public policy depends upon its purpose and tendency, and not upon the fact that no harm results from it.** In other words, all agreements the purpose of which is to create a situation which tends to operate to the detriment of the public interest are against public policy and void, whether in the particular case the purpose of the agreement is or is not effectuated. *For a particular undertaking to be against public policy actual injury need not be shown; it is enough if the potentialities for harm are present.*" (Emphasis supplied).

Article 1409 of the Civil Code specifically provides that **a void contract cannot be ratified.** In a long line of cases, the Supreme Court has explained the said provision and its legal effects, to wit:

(a) "Coming now to the pivotal issue in this controversy. **A void or inexistent contract is one which** has no force and effect from the very beginning. Hence, it **is as if it has never been entered into and cannot be validated either by the passage of time or by ratification**";[12]

(b) "A void or inexistent contract has no force and effect from the very beginning. This rule applies to contracts that are declared void by positive provision of law, as in the case of a sale of conjugal property without the other spouse's written consent. **A void contract is equivalent to nothing and is absolutely wanting in civil effects.** It cannot be validated either by ratification or prescription";[13] and

(c) "And if the passage of time could not cure the fatal flaw in the inexistent and void contract, neither could an alleged ratification or confirmation thereof. Further, as in the case before us, reconveyance is proper. **The defect of inexistence of a contract is permanent and incurable, hence it cannot be cured either by ratification or by prescription. x x x** There is no need of an action to set aside a void or inexistent contract; in fact such action cannot logically exist. However, an action to declare the non-existence of the contract can be

[12] Francisco vs. Herrera, G.R. No. 139982, 21 November 2002.
[13] Tan vs. Hosana, G.R. No. 190846, 3 February 2016.

> maintained; and in the same action, the plaintiff may recover what he has given by virtue of the contract."[14]

On account thereof, **considering that the Donation is void for being contrary to law and public policy, the same cannot be ratified for the purpose of curing a violation of the Constitution and the law that was already committed by Rappler and RHC**. In fact, no amount of effort can salvage the legal existence of Rappler and RHC by virtue of the fact that the infirmity that tainted their Certificates of Incorporation is based on contracts that are void for being contrary to the Constitution and the laws. In *Tongoy vs. Court of Appeals,*[15] the Supreme Court emphasized that:

> "A void or inexistent contract is one which has no force and effect from the very beginning, as if it had never been entered into, and which cannot be validated either by time or by ratification. A void contract produces no effect whatsoever either against or in favor of anyone; hence, it does not create, modify or extinguish the juridical relation to which it refers. The nullity of these contracts is definite and cannot he cured by ratification. The nullity is permanent, even if the cause thereof has ceased to exist, or even when the parties have complied with the contract spontaneously." (Emphasis supplied).

At any rate, it does not escape the attention of the Commission that the subsequent execution of the Donation, just like the Waiver, was also an afterthought, carried out to salvage the existence of Rappler and its operations as a mass media entity.

In our jurisdiction, incorporation is a mere privilege granted by the State to those who are able to show, to the satisfaction of the Commission, that they have complied with all the statutory and regulatory requirements, and that they have not violated the Constitution and the laws.[16] The grant of corporate existence is therefore subject to the condition and continuing obligation on the part of the grantee to comply with, and not to violate the Constitution and the laws.

In this regard, the Commission is mandated to ensure and exact full compliance with all statutory and regulatory requirements. Thus, if the Commission subsequently finds, *motu proprio* or through a complaint, that a corporation has violated the Constitution or any law, rule or regulation, and/or has failed to comply with the same during its existence, the Commission is duty-bound to impose the appropriate penalties, including the ultimate penalty

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[14] Spouses Rongavilla vs. Court of Appeals, G.R. No. 83974, 17 August 1998.
[15] G.R. No. L-45645, 28 June 1983.
[16] See Care Best International, Inc. vs Securities and Exchange Commission (G.R. No. 215510, 16 March 2015).

of revocation, if warranted. The Commission was significantly granted ample power and authority to properly, fully, and effectively perform this mandate.

In the instant case, Rappler and RHC willfully violated the Constitution in relation to PD No. 1018 when they granted Omidyar control through the ON PDRs. The issuance of the ON PDRs was made during the lifetime of Rappler and to further its operations for the purpose, among others, of securing additional funding to make its business global.[17] Being a mass media entity, Rappler was fully aware of the nationality restriction on mass media under the Constitution, and has in fact consistently maintained that it is a Filipino company. However, in the interest of business advancement, Rappler nonetheless decided to grant control to Omidyar, which it considered a "relevant impact investor," in blatant violation of the Constitution and PD No. 1018.

The importance and significance of the constitutional provision requiring that mass media should be absolutely owned by Filipinos relate to the policy which the Constitution sets to implement, i.e. the protection of the best interests of the nation, that being the prevention of public opinion from being influenced by foreigners.[18] Otherwise, the country can be easily influenced, if not manipulated, by foreign entities. The overriding public policy involved in ensuring that mass media is controlled by corporations which are 100% Filipino-owned relates to the important role of mass media in shaping the minds of the people and influencing public opinion. The power of mass media is such that it can "attract and direct public attention", "persuade in matters of opinion and belief", "influence behavior", "structure definitions of reality", "confer status and legitimacy", and "inform quickly and extensively".[19] Thus, foreign entities acquiring control over the same will have the power and means to effectively control, shape, and influence public opinion. They will have the ability to direct public sentiment in any direction they so choose to the detriment of the Filipino people.

The foregoing explains why, unlike ownership of land in the Philippines by Filipino corporations (which may have 40% foreign equity) which is allowed under the Constitution, mass media is exclusively and absolutely reserved to Filipinos.[20] The categorical prohibition on any form of foreign participation or control in mass media leaves no room for any liberal interpretation; any transgression of the prescribed limitation must be struck

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[17] Verified Explanation dated 26 August 2017.
[18] DOJ Opinion No. 024, S. of 1986 (2nd Endorsement) February 17, 1986
[19] McQuail, Dennis, Mc Quail's Mass Communication Theory - 4th ed., (London: SAGE Publications, 2000), p. 63
[20] Article XVI, Section 11 (1) of the 1987 Constitution; Section 2, PD No. 1018. See also Article XII, Section 7 of the 1987 Constitution which recognizes hereditary succession as an exception to the prohibition.

down and sanctioned, lest the proscription of the highest law of the land be taken for granted. Thus, the cases where the Supreme Court recognized and allowed violations of the constitutional prohibition on acquisition of land to be cured are not applicable, and cannot be used in the instant case because as ruled by the CA, the foreign equity restriction on mass media implies "zero" foreign control, and the mere grant of such control already violates the Constitution.

Moreover, while we are mindful of the Supreme Court decisions which have recognized the curing or ratifying effect of subsequent transfers of ownership of land from foreigners to Filipinos, the same cases clearly do not favor schemes to circumvent the constitutional prohibition. In *Fullido vs. Grilli*,[21] the Supreme Court significantly stated:

> "**Where a scheme to circumvent the Constitutional prohibition against the transfer of lands to aliens is readily revealed as the purpose for the contracts, then the illicit purpose becomes the illegal cause rendering the contracts void**. Thus, if an alien is given not only a lease of, but also an option to buy, a piece of land by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land but also of the right to dispose of it — rights which constitute ownership. If this can be done, then the Constitutional ban against alien landholding in the Philippines, is indeed in grave peril." (Emphasis supplied).

The violation of the subject constitutional mandate was even criminalized under PD No. 1018, which sanctioned not only the cancellation of a permit, but also the imposition of the penalty of imprisonment or fine, or both, to wit:

> "**Section 5. Violation of the provisions of this decree shall subject the person or corporation guilty of such violation to cancellation of its permit**. In addition, any person **found guilty of violating this Decree shall be punished by imprisonment of from six (6) months to five (5) years or a fine of Ten Thousand (P10,000) Pesos, or both such fine and imprisonment at the discretion of the Court**.
>
> If the violation is committed by a corporation, the penalty shall be imposed on the officers or employees thereof who were responsible for or who committed the violation." (Emphasis and underscoring supplied).

In the instant case, the CA has in fact already made a conclusive finding that Rappler violated the Constitution and pertinent laws, including PD No.

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[21] G.R. No. 215014, 29 February 2016.

1018, which categorically provides that the ownership of mass media should be limited to Filipinos. Thus, the persons who committed such violation should be prosecuted accordingly before the proper forum. Rappler cannot be allowed to go scot-free by the simple expedient of a waiver and/or a donation, for what is otherwise a criminal offense.

Considering the seriousness and the gravity of the infraction, and that it was no less than the Constitution that was violated, this Commission finds and so holds that the penalty of revocation, which was already meted out against Rappler and RHC in the SEC Decision, should be affirmed and sustained. This is consistent with the State policy espoused by PD No. 1018 to fully implement the nationality restriction on mass media prescribed in the Constitution, to wit:

> "WHEREAS, it is imperative that this constitutional mandate be implemented by law, with appropriate sanctions, **to ensure that it is respected and carried out at all times**;" (Emphasis supplied).

Finally, public interest will be served if the revocation of the Certificate of Incorporation of Rappler and RHC is sustained because it will implement the policy of respecting and fully complying with the provisions of the Constitution, to which every Filipino owes allegiance. The same will underscore the policy that any violation of the Constitution, especially by grantees of a State franchise, will not be taken lightly. Compliance with the Constitution and the laws cannot be disregarded to further business interests. To rule otherwise would be to condone a blatant violation of the laws of the land, create a dangerous precedent, and worse, a "*violate now, cure later*" culture where mass media entities who violate the nationality restriction provisions of the Constitution are effectively accorded a preferential treatment than those that have religiously complied with the same requirement.

WHEREFORE, premises considered, the Commission finds that the Donation did not cure the violation by Rappler, Inc. and Rappler Holdings Corporation of Article XVI Section 11(1) of the Constitution and PD No. 1018, and hereby **AFFIRMS** the administrative penalties imposed in the *Decision* dated 11 January 2018 declaring **VOID** the ON PDRs pursuant to Section 71.2 of the Securities Regulation Code and **REVOKING** the Certificates of Incorporation of Petitioners Rappler, Inc. and Rappler Holdings Corporation.

The Company Registration and Monitoring Department is hereby DIRECTED to effect the revocation of the Certificates of Incorporation of Rappler, Inc. and Rappler Holdings Corporation in the records and system of the Commission.

Makati City, 28 June 2022.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner