

**MEDIA
OWNERSHIP
MONITOR
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LEGAL ASSESSMENT

Media Ownership Monitor **Philippines 2023**

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Introduction

Less than a month before being sworn into office as President of the Philippines after a bitterly-fought elections in May 2016, former Davao City mayor Rodrigo Roa Duterte gave a warning: “Just because you’re a journalist you are not exempted from assassination, if you’re a s-n of a b-tch.”¹ The statement – given at a press conference where he was asked how he would solve the country’s high murder rate – ² would prove ominous. If at all, it revealed in chilling detail his attitude towards an institution long taken for granted as a pillar of democracy.

What followed were six years of a wrecking ball operation against key societal institutions, from the Roman Catholic Church, to the legislature, law enforcement agencies, courts, civil society, and of course, the Philippine media. It was unprecedented abuse of state power not seen since Martial law days. But it rode on deep dissatisfaction among the Filipino masses that the promises of the democratic institutions restored from the clutches of strongman rule in the bloodless EDSA 1986 revolution had utterly failed to make life better for them.

As President, Duterte was given to making putrid and virulent verbal attacks on his perceived political enemies, from uncooperative business interests to journalists, activists, and human rights workers. His tirades would be amplified by a well-organized and coordinated ecosystem of online trolls, bloggers, and enthusiastic supporters here and abroad, including a willing army of Overseas Filipino Workers. ³At one point, Facebook is said to have played host to 12 million accounts that created or distributed pro-Duterte messages or fake news.⁴ Duterte was the first Filipino Chief Executive to appoint to key government posts bloggers, who all invariably belonged to the

¹ Simon Lewis, “Duterte Says Journalists in the Philippines Are ‘Not Exempted From Assassination’” (Time.com 1 June 2016) <https://time.com/4353279/duterte-philippines-journalists-assassination/>

² Ibid.

³ Aranda, D. (2021). "Die-Hard Supporters": Overseas Filipino Workers' Online Grassroots Campaign for Duterte in the 2016 Philippines Elections. *Cornell International Affairs Review*, 14(2), 93–127.

<https://doi.org/10.37513/ciar.v14i2.618>

⁴ Ibid.

so-called Duterte Die-Hard Supporters (DDS) group.⁵ He could count on the DDS to spread “fake news” or disinformation in support of his political agenda, as well as unleash vicious online attacks on the political opposition, to cow them into silence.

Philippine media had a foretaste of what his vicious attacks can do to institutional integrity: in 2017, Duterte targeted the *Philippine Daily Inquirer*, one for its hard-hitting reportage, for running a “kill list”— or the names of victims of his drug war.⁶ He called the newspaper’s owners “sons of bitches” who “went too far” in their “nonsense,” warning them that “someday, karma will come.”⁷ Shortly after that, the newspaper owners entered into talks to sell their majority stake⁸ to San Miguel Corporation’s Ramon Ang, a businessman described by the President himself as his “fast friend.”⁹ What saved them were controls long in place that required an outside investor to buy out not just the newspaper but all its associated businesses.¹⁰ Ang was reportedly only interested in the newspaper.¹¹

This paper continues the Media Ownership Monitor’s assessment of media pluralism in the Philippines began in 2016. The primary focus of this assessment are two matters that are iconic of the difficult challenges faced by Philippine media during the Duterte administration, namely, in Part I, what is yet the biggest blow to the cause of media pluralism in the Philippines, the closure of the country’s largest broadcast network, ABS-CBN Corp., and in Part II, the all-out persecution of the online media company

⁵ Ibid.

⁶ Lauren Etter, “What Happens When the Government Uses Facebook as a Weapon?” (Bloomberg 7 December 2017)

<https://www.bloomberg.com/news/features/2017-12-07/how-rodrigo-duterte-turned-facebook-into-a-weapon-with-a-little-help-from-facebook>

⁷ Etter, *supra* note 6.

⁸ Daxim L. Lucas, “Ang in Talks to Buy Inquirer” (Philippine Daily Inquirer 17 July 2017)

<https://business.inquirer.net/233368/ang-in-talks-to-buy-inquirer>

⁹ Sunshine Lichauco De Leon, “A New Owner Of ‘Philippine Daily Inquirer’ Could Be Good News For Duterte” (Forbes 23 August 2017)

<https://www.forbes.com/sites/forbesasia/2017/08/23/philippine-daily-inquirer-ramon-ang-duterte/?sh=6f2945a43487>

¹⁰ Victor C. Agustin, *Heard Through the Grapevine: “Inquirer Admits to Change of Heart in RSA Marriage”* (The Philippine Star 11 June 2018)

¹¹ Ibid.

Rappler. Part III tackles concerted efforts on the part of the Duterte administration to suppress political dissent through a new anti-terror law, while Parts IV and V look at the political shifts that have since taken place under the Marcos administration and their impact on free expression and media pluralism.

I. The unthinkable closure of ABS-CBN network

In 2015, or one year before the Duterte presidency, ABS-CBN Corporation was the country's largest media network, with television presence through ABS-CBN 2, sports station Sports+Action, and regional channels.¹² On AM radio, it held court via DZMM and on the FM band, via the 101.9 radio station; it ran a strong online platform through abs.cbn.com.¹³ It even had a book and magazine business through The ABS-CBN Publishing Incorporated.¹⁴ As of December 31, 2015, ABS-CBN Corporation, which began operations in 1953 as Alto Broadcasting System, posted a revenue of P38.278 billion (\$817 million), mostly drawn from its broadcast operations, followed by its cable and satellite operations.¹⁵

Duterte had no qualms being public about the deep grudge he harbored against the media giant. By his own account, ABS-CBN had wronged him on two fronts: firstly, it aired on national TV an ad by his critic, former Sen. Antonio Trillanes IV, during the 2016 presidential campaign, portraying him as a foul-mouthed and ill-mannered man, with children asking if he was the right candidate¹⁶; secondly, ABS-CBN allegedly “swindled” him by taking in his own campaign ads but failing to air them.¹⁷ Duterte repeatedly attacked the

¹² *Reporters Sans Frontiers*, Philippines: Media Ownership Monitor 2016

<https://philippines.mom-rsf.org/en/owners/companies/detail/company/company/show/abs-cbn-corporation/>

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Pia Ranada, “Anti-Duterte ad by Trillanes Riles up Duterte Supporters” (Rappler 6 May 2016)

<https://www.rappler.com/nation/elections/131969-anti-duterte-ad-trillanes/>

¹⁷ Therese Reyes, The Vice Guide To The Right To Know: “Everything You Want to Know About the ABS-CBN Shutdown, Answered” (Vice.com 6 May 2020)

<https://www.vice.com/en/article/9359k8/abs-cbn-shutdown-duterte-philippines-explained>

broadcast network in public statements. In December 2019, at a public gathering in North Cotabato, he said it would be better for ABS-CBN's owners to sell the network, as it is unlikely that its franchise will be renewed by Congress.¹⁸ In his State of the Nation Address in 2020, less than a month before Congress closed down for good the broadcast network's operations, he dug up ABS-CBN's failure to air his campaign ads as the handiwork of "oligarchs" – the Lopezes, owners of the company.¹⁹ In his last SONA in 2021, he repeated the lie that the broadcast network was a tax evader.²⁰ It did not help that ABS-CBN, as a leading broadcast network, closely followed his drug war with critical reportage.²¹

ABS-CBN's legislative franchise to operate as a broadcast network approved by Congress, through Republic Act No. 7966, was to expire on March 30, 2020.²² But the assault on the broadcast network began with a *quo warranto* petition filed by Solicitor General Jose Calida in February 2020 before the Supreme Court, seeking the cancellation of ABS-CBN's still subsisting legislative franchise.²³ Among other claims, he charged that the network "has been broadcasting for a fee and operating a "pay-per-view channel in ABS-CBN TV Plus, the KBO Channel, without prior approval or permit from the National Telecommunications Commission."²⁴

¹⁸ Aika Rey, "Duterte to ABS-CBN: Better to Sell the Network" (Rappler 30 December 2019)

<https://www.rappler.com/nation/248223-duterte-abs-cbn-sell-network-than-renew-franchise/>

¹⁹ Camille Elemia, "Duterte Attacks ABS-CBN Within First 5 minutes of SONA (Rappler 27 July 2020)

<https://www.rappler.com/nation/within-first-5-minutes-of-sona-duterte-abs-cbn/>

²⁰ CNN Philippines Staff, "Duterte Rants vs ABS-CBN Anew in Final SONA (CNN Philippines 26 July 2021)

<https://www.cnnphilippines.com/news/2021/7/26/Duterte-ABS-CBN-tirades-final-SONA.html>

²¹ Fernando G. Sepe Jr, "Healing the Wounds of the Drug War" (ABS-CBN News Specials 2018)

<https://news.abs-cbn.com/specials/healing-drug-war>

²² ABS-CBN has made a useful timeline of events commemorating the cancellation by the House of Representatives of its franchise. See Job Manahan, "TIMELINE: The Vote that killed ABS-CBN's Franchise Renewal Bid" (ABS-CBN News 9 July 2021)

<https://news.abs-cbn.com/spotlight/multimedia/slideshow/07/09/21/abs-cbn-franchise-rejection-timeline>

²³ Nicole-Anne C. Lagrimas and Julia Marie Ornedo, "Gov't Files Quo Warranto Petition vs. ABS-CBN" (GMA News 10 February 2020)

<https://www.gmanetwork.com/news/topstories/nation/725424/gov-t-files-quo-warranto-petition-vs-abs-cbn/story/>

²⁴ Ibid.

Echoing the charge he would invoke against Rappler, the Solicitor General also charged that ABS-CBN had issued Philippine Depositary Receipts to foreigners in violation of nationality restrictions on mass media ownership.²⁵ In addition, he alleged that ABS-CBN Convergence, Inc. resorted to an "ingenious corporate layering scheme" to transfer its franchise "without the necessary Congressional approval."²⁶

The Supreme Court dismissed the Calida petition four months later, but only because by then, the ABS-CBN franchise had already expired on May 4, 2020, while its application for renewal was still being heard before Congress.²⁷ The very next day, on May 5, 2020, the National Telecommunications Commission issued a Cease-and-Desist Order (CDO) against ABS-CBN. The CDO was immediately executory.²⁸ That same day, at 7:52 p.m., the broadcast network as we knew it signed off the air for good.²⁹

In the congressional hearings,³⁰ all kinds of accusations were lobbed against the broadcast network – from labor violations, to tax evasion, to skirting of nationality ownership restrictions, to lack of proper documentation of ownership of its media assets – which all turned out to be false.³¹ Even the Philippine Competition Commission expressed concern that the closure of ABS-CBN would lead to market distortions, given that the broadcast firm controlled between 31 percent to 44 percent of the market.³² A PCC official testified before the Senate that just a 10 percent increase in market share of one media firm as a result of ABS-CBN's shuttering already "raises a red flag."³³ But no matter. And as the COVID-19 pandemic raged, on July 10, 2020,

²⁵ Ibid.

²⁶ Ibid.

²⁷ Lian Buan "Supreme Court Junks Calida's Quo Warranto vs ABS-CBN Corp For Being Moot" (Rappler 23 June 2020)

<https://www.rappler.com/nation/264581-supreme-court-junks-quo-warranto-vs-abs-cbn-corp-moot/>

²⁸ Ibid.

²⁹ Manahan, *supra* note 22.

³⁰ Ibid.

³¹ Ibid.

³² ABS-CBN, "Anti-Trust Body Flags Competition 'Concern' If ABS-CBN Closes Down" (ABS-CBN News 24 February 2020)

<https://news.abs-cbn.com/business/02/24/20/anti-trust-body-flags-competition-concern-if-abs-cbn-closes-down>

³³ Ibid.

the Lower House voted 70-11 to shut it down, following five months of hearings designed to convince Duterte's constituencies that the broadcast network deserved to be shuttered. The closure affected more than 11,000 jobs.³⁴

In 2019, the broadcast network was the "most watched" national television network, garnering an average audience share of 44% for the year, against the other network in the Philippine media duopoly of the time –GMA network – which won a 31% share.³⁵ It also reported revenues amounting to P 42.84 billion.³⁶ But in late 2020, it reported a drop of nearly 50 percent in revenues, to P21.42 billion, which is attributed to the loss of its congressional franchise.³⁷ But for the coup de grace, one week before he left the Office of the President, Duterte admitted he used his powers to close down ABS-CBN.³⁸

II. The Case of Rappler: Assault from All Sides

As one foreign observer would remark with some irony, when Duterte was a bottom-dwelling presidential candidate, Rappler, a social media outfit established in 2011, became "one of the vehicles that put him in office."³⁹ The social media outfit allowed him access to its "rapidly growing and politically engaged young audience and its dynamic platform to speak directly to

³⁴ Christian V. Esguerra, "House Committee Denies ABS-CBN A New Franchise" (ABS-CBN News 10 July 2020)

<https://news.abs-cbn.com/news/07/10/20/house-committee-denies-abs-cbn-a-new-franchise>

³⁵ ABS-CBN Corporate, "ABS-CBN, Most Watched Network Nationwide in 2019 (ABS-CBN News 8 January 2020) <https://www.abs-cbn.com/newsroom/tv-ratings/2020/1/8/abs-cbn-2019-ratings?lang=en>

³⁶ Statista, 'Consolidated revenues of ABS-CBN in the Philippines from 2014-2020' (Statista 2023) <https://www.statista.com/statistics/1067230/philippines-net-revenue-abs-cbn/>

³⁷Ibid.

³⁸CNN Philippines Staff, "Duterte admits using 'presidential powers' vs ABS-CBN " (CNN Philippines 27 June 2022)

<https://www.cnnphilippines.com/business/2022/6/27/Duterte-admits-using-presidential-powers-vs-ABS-CBN.html>

³⁹Tom Smith, "Why Is Duterte Trying to Ban Rappler? The Philippines' Duterte turns on the media that helped elect him" The Diplomat (18 January 2018) .

<https://thediplomat.com/2018/01/why-is-duterte-trying-to-ban-rappler/>

people through their phones.”⁴⁰ One recalls a De La Salle University forum organized by Rappler at the height of the presidential campaign period, which Rappler CEO Maria Ressa herself presided. At the forum, co-sponsored by Facebook (now Meta), Ressa gave Duterte a two-hour interview with questions gathered from the popular social media site.⁴¹ As a Bloomberg reporter would describe the event:

...Duterte, under bright lights, sat in a white leather chair as Ressa lobbed questions that had been crowdsourced on Facebook, the co-sponsor of the forum. This was a peak moment for both interviewer and subject. While the event elevated Ressa and her four-year-old company, it also gave the then-mayor of Davao City, known as “the Punisher” for his brutal response to crime in the southern Philippine city, an exceptional opportunity to showcase his views.⁴²

The event was “broadcast on 200 television and radio stations, and viewing parties on more than 40 college campuses across the Philippines tuned in as the event was livestreamed.”⁴³ Initially, Duterte’s campaign team had hesitated to cast him in his original image as the mayor who ruled Davao City with an iron hand. But they were allegedly convinced by controversial political consulting firm *Cambridge Analytica* to continue with his strongman profile.⁴⁴

Immediately after winning the elections, Duterte gave Rappler’s reporters an exclusive “ride-along” to his Davao City haunts, with a Rappler reporter writing on his “transformation”⁴⁵ from an expletive-spewing, smart-alecky, and flirty candidate to a reflective man preparing for his date with destiny as

⁴⁰ *Ibid.*

⁴¹ Etter, *supra* note 6.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ David Gilbert, “Cambridge Analytica’s Tools Turned “Kind” Duterte Into A “No-Nonsense” Strongman, (Vice News 5 April 2018), https://www.vice.com/en_us/article/xw7vyw/cambridge-analytica-duterte-strongman-2016

⁴⁵ Pia Rañada, “The Transformation of Rody Duterte” (Rappler 30 May 2016) <https://www.rappler.com/features/nation/elections/134743-transformation-rody-duterte-president/index.html>

the country's newly-elected President.⁴⁶ There was no indication in the report that Duterte had repented of his iron-hand rule in the city for nearly three decades, of his alleged hand in the creation and operation of the vigilante group Davao Death Squad (DDS) allegedly responsible for the deaths of hundreds of petty criminals and street children in the city.⁴⁷ Duterte went after Rappler following Ressa's three-part expose in October 2016 of the Duterte troll farms that weaponized Facebook through "disinformation" to advance his anti-democratic and bloody agenda.⁴⁸ Ressa wrote in part:

It's a strategy of "death by a thousand cuts" – a chipping away at facts, using half-truths that fabricate an alternative reality by merging the power of bots and fake accounts on social media to manipulate real people.

A **bot** is a program written to give an automated response to posts on social media, creating the perception that there's a tidal wave of public opinion. Since this is machine-driven, it can manufacture thousands of posts per minute.

A **fake account** is a manufactured online identity, sometimes known as a troll depending on the account's behavior. Not all trolls are part of a paid propaganda campaign, but for now let's focus [on the paid initiatives](#), which can pay a troll up to P100,000/month.

A small group of 3 operators, a source tells Rappler, can earn as much as P5 million a month. Because they often disregard truth and manipulate emotions, these networks easily [game Facebook's algorithm](#). In the Philippines and around the world, [political advocacy pages](#), made specifically for Facebook,

⁴⁶ Ibid.

⁴⁷ See Human Rights Watch Report, "You Can Die Anytime: Death Squad Killings in Mindanao" (8 April 2009) <https://www.hrw.org/report/2009/04/06/you-can-die-any-time/death-squad-killings-mindanao>

⁴⁸ Maria Ressa, "Propaganda War: Weaponizing the Internet" (Rappler 16 October 2016) <https://www.rappler.com/nation/148007-propaganda-war-weaponizing-internet/>

are cleverly positioned and engineered to take over your news feed.

That allows these propaganda accounts to create a social movement that is widening the cracks in Philippine society by exploiting economic, regional, and political divides. It unleashed a flood of anger against Duterte critics that has created a chilling effect. Often, dozens of these fake accounts work together along with anonymous pages, strengthening each other's reach for Facebook's algorithms. These networks can work with or without bots.⁴⁹

Like clockwork, following the publication of the expose, Rappler – and Ressa in particular – became the target of a perverse vilification campaign on social media.⁵⁰ Yet, as Ressa's own reporting showed, it was not much different from the experience for many Filipino journalists whose critical reportage of Duterte's policies, notably of his drug war and his government's persecution of dissenting political views, stood in the way of his political aims.

Less than two years into his presidency, Duterte would brand Rappler a “fake news outlet”⁵¹ just as the Securities and Exchange Commission (SEC) revoked Rappler's corporate registration for alleged violation of constitutional prohibition on foreign ownership of mass media.⁵² But characteristic of Duterte's approach to governance,⁵³ he denied he was after Rappler while throwing everything at it through government agencies under his control.⁵⁴

⁴⁹Etter, *supra* note 6.

⁵⁰Ibid.

⁵¹ Reuters, “Philippines' Duterte blasts news site Rappler, but denies stifling media” (Reuters 16 January 2016) <https://www.reuters.com/article/philippines-media-idINL3N1PB3I1/>

⁵² Art. XVI, 1987 Constitution states:

SECTION 11. (1) 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.

⁵³ Reuters, *supra* note 51.

⁵⁴ Ressa, *supra* note 48.

Revocation of corporate registration

The SEC's revocation of Rappler's corporate registration at the behest of Duterte's Solicitor General Jose Calida was premised on its alleged violation of the full Filipino nationality ownership requirement for mass media entities. Rappler violated the requirement when it issued Philippine Depositary Receipts (PDRs) through the Rappler Holding Company (RHC) to foreign investors, in particular, to Omidyar Network (ON) Fund.⁵⁵ RHC was incorporated in 2014 to consolidate all of Rappler's businesses.⁵⁶ It owns 98.84 percent of Rappler.⁵⁷

PDRs are documents that a holder pays for, in exchange for entitlement to dividends or interest from stocks of a company, which latter retains title of ownership over the stock.⁵⁸ A person called a "depository agent" sells the PDRs to the holders on behalf of the company and also collects the dividends and interest earned on behalf of the PDR holders.⁵⁹ Rappler has argued that PDRs were devised to allow foreign investors in fully nationalized industries in the Philippines without violating the constitutional proscription against foreign ownership, in whole or in part, of these industries.⁶⁰ There is however no jurisprudential precedent as of yet establishing the legality or constitutionality of the commercial instruments.

The ON PDRs, per the SEC, violated the nationality prescription since they contain a provision requiring Rappler to seek the vote of at least 2/3 of Omidyar PDR holders to "alter, modify or otherwise change the Company Articles of Incorporation or By-Laws or take any other action where such

⁵⁵ *In re Rappler Inc. and Rappler Holdings Corporation*, Decision [SEC Commission En Banc] SP Case No. 08-17-001 11 January 2018 at 2.

⁵⁶ Rappler/RHC Appeal, [Court of Appeals Thirteenth Division] C.A.-G.R. No. 154292 26 June 2018 2

⁵⁷ *In Re Rappler*, *supra* note 55 at 12.

⁵⁸ Raul J. Palabrica, "Misconception on PDRs" (Philippine Daily Inquirer 22 January 2018)

<https://business.inquirer.net/244546/misconception-on-pdrs>, cited in Rappler, "FAQs on the Rappler SEC case" (Rappler 22 January 2018)

<https://www.rappler.com/about/194165-frequently-asked-questions-rappler-sec-case/>

⁵⁹ *Ibid*

⁶⁰ Rappler SEC case FAQs, *ibid*.

alteration, modification, change or action will prejudice the rights in relation to the ON PDRs.”⁶¹

The SEC said this is evidence that Omidyar exercises effective “negative control”⁶² over Rappler:

the ON PDR imposes obligations not just on the Issuer of the derivative, Rappler Holdings Corporation, but also on the Company which issued the underlying shares, Rappler, Inc. The ON PDR instrument may be categorized as an equity derivative, since its value is dependent on the underlying equity. It follows that legal and economic rights granted to the [Omidyar] PDR Holders can be traced back to the legal and economic rights originally reserved to the shareholders. The Foreign Equity Restriction will prevent even the grant of minimal control through the ON PDR.⁶³

The Foreign Equity Restriction is very clear. Anything less than One Hundred Percent (100% Filipino control is a violation. Conversely, anything more than exactly Zero Percent (0%) foreign control is a violation.

Here, the stockholders must have prior discussion with and approval of at least 2/3 of the PDR Holders, meaning Rappler is at the very least under obligation to consult with Omidyar Network. The stockholder has become, in effect, subservient to the holder. It is neither 100% control by the Filipino stockholders, nor is it 0% control by the foreigner PDR holders.⁶⁴

Rappler had also contended that it is not a mass media entity as understood in the Constitution. The SEC noted that the primary purpose stated by

⁶¹*In Re Rappler*, *supra* note 55 at 12.

⁶² *Ibid.* at 13.

⁶³ *Ibid.* at 12.

⁶⁴ *Ibid.* 2.

Rappler in its articles of incorporation stated that the outfit was established "to design, develop, establish, market, sell, maintain, support, distribute, customize, sell, re-sell and/or operate news, information and social network services including but not limited to contents, platforms, systems and/or applications via web, internet, mobile, and other delivery formats; communications, advertising, corporate social responsibility, marketing, PR, events, brand affinity and other related services and packages provided it will not act as an internet service provider."⁶⁵ This, according to Rappler, is consistent with its business model as a start-up company providing "a service that has not been previously offered in the market,"⁶⁶ with its own "patent for its User-Based Response Cluster Generation System, which is a key instrument in carrying out its business."⁶⁷

Instead, the SEC said an entity established to create and distribute news and information, regardless of the medium (that is, whether via online technologies or traditional telecommunications) is a mass media outfit:

Rappler Inc. fits the description of Mass Media. The term "Mass Media" was not further defined in the Constitution itself, evidently to adapt to changing times and to new technologies that may arise after 1987. Precisely to adapt to changing times, wide discretion has been given to the legislature and to administrative agencies. Today's legislature considers internet or online media a type of Mass Media. The Commission, an administrative agency, has followed the lead of the legislature and considers internet or online media as Mass Media and subject to the Foreign Equity Restrictions of the Constitution.⁶⁸

Rappler appealed the SEC's decision to void the ON PDRs and revoke its corporate registration and that of RHC.⁶⁹ While the appeal was pending,

⁶⁵ Ibid. at 16.

⁶⁶ Rappler Appeal, *supra* note 56 at 6.

⁶⁷ Ibid.

⁶⁸ *In Re Rappler*, *supra* note 55 at 15.

⁶⁹ Rappler, "SEC Order Meant to Silence Us, Muzzle Free Expression" (Rappler 29 January 2018) <https://www.rappler.com/about/194752-sec-case-press-freedom-free-expression/>; Rappler Appeal *supra*

Omidyar waived its PDRs and then donated them to Rappler's Filipino staff.⁷⁰ Subsequently, the Court of Appeals (CA) upheld the SEC's findings that the ON PDRs constituted "some foreign control" but conceded that the waiver and the donation "show the intention to comply in good faith with the regulations of the SEC."⁷¹ In addition, the CA should allow Rappler "reasonable time" to correct its failure to comply with the nationality rule, citing previous practice adopted by the SEC in similar cases.⁷² The CA denied Rappler's partial motion for reconsideration but remanded the case to the SEC, asking the latter to review its previous order revoking Rappler's license and to consider the donation to Filipino managers of shares previously held by Omidyar Network.⁷³

However, the SEC stood its ground on its earlier findings, without affording Rappler an opportunity to take part in the review directed by the CA.⁷⁴ It argued that the sale of PDRs to Omidyar by Rappler cannot be cured by the donation because under Philippine law, the sale was void from the beginning.⁷⁵ It noted that the CA had already made conclusive findings on the unconstitutionality of the PDR sale to Omidyar.⁷⁶ Thus:

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.⁷⁷

⁷⁰Rappler, "Court of Appeals to SEC: Give Rappler Corrective Period" (Rappler 27 July 2018) <https://www.rappler.com/nation/208291-court-of-appeals-sec-rappler-corrective-period/>

⁷¹ Ibid, quoting the Court of Appeals.

⁷² Ibid.

⁷³ Rappler SEC case FAQs, *supra* note 58, citing the CA's 21 February 2019 resolution.

⁷⁴ *In re Rappler Inc. and Rappler Holdings Corporation*, Order [SEC Commission En Banc] SP Case No. 08-17-001 28 June 2022 2-4, 11.

⁷⁵ Ibid. at 4-11.

⁷⁶ Ibid. at 10-11.

⁷⁷ *In re Rappler 2022 Order*, *supra* note 74 at 11.

SEC issued the Order two days before Duterte stepped down from the Office of the President.⁷⁸ The SEC's latest pronouncement on the case gave rise to an important procedural question: whether or not the matter of the constitutionality of the ON PDRs has already been closed and may no longer be taken up to the Supreme Court. The SEC noted that the CA itself had issued a resolution declaring that its 2018 Decision has attained finality as of 21 March 2019.⁷⁹ Rappler's lawyers dispute this.⁸⁰ At the very least, Rappler may still be able to contest SEC's ruling on the legal effects of the Omidyar PDR donation to Rappler's Filipino staff. Nevertheless, this latest turn of events on the legal front has not stopped Rappler's operations. An internal memo issued to Rappler staff following the Order stated in part: "Meantime, it is business as usual for us. We will adapt, adjust, survive and thrive."⁸¹

This main case gave birth to several related cases instigated under the Duterte administration, namely tax evasion charges and violations of Philippine Securities Regulations and the Anti-Dummy laws. Rappler's issuance of PDRs became a basis for the Bureau of Internal Revenue to prosecute Ressa for four tax evasion charges before the Court of Tax Appeals⁸² and of one tax evasion charge before the Pasig City regional trial court.⁸³ The government's theory is that by issuing PDRs, Rappler earned taxable income as an entity in the business of selling securities.⁸⁴ Ressa and RHC executives were eventually acquitted of the criminal charges.⁸⁵ Just early this month, the Department of Justice also threw out the complaint filed

⁷⁸ Lian Buan, "SEC Issues Revocation Order vs Rappler in last 2 days of Duterte Presidency" (Rappler 29 June 2022)

<https://www.rappler.com/nation/securities-exchange-commission-issues-revocation-order-june-28-2022>

⁷⁹ *In re Rappler 2022 Order*, *supra* note 74 at 1-2.

⁸⁰ Rappler SEC case FAQ *supra* note 58; Buan, *supra* note 78.

⁸¹ Buan, *supra* note 78.

⁸² Lian Buan, "LIST: Cases vs Maria Ressa, Rappler Directors, taff since 2018" (Rappler 25 February 2019)

<https://www.rappler.com/nation/223968-list-cases-filed-against-maria-ressa-rappler-reporters/>

⁸³ *Ibid.*

⁸⁴ Buan, *supra* note 78.

⁸⁵ Lian Buan, "Philippine Court Acquits Nobel laureate Maria Ressa, Rappler of tax evasion" (Rappler 18 January 2023)

<https://www.rappler.com/nation/philippine-tax-court-clears-nobel-laureate-maria-ressa-rappler-of-4-cases/>; CNN Philippines Staff, "Maria Ressa, Rappler Acquitted of Last Tax Evasion Case" (CNN Philippines 12 September 2023)

<https://www.cnnphilippines.com/news/2023/9/12/ressa-rappler-final-tax-evasion-case.html>

against Ressa and other RHC executives for alleged violation of the Anti-Dummy law and the Securities Regulation Code.⁸⁶

⁸⁶ Agence France Presse, “Philippines Drops Foreign Ownership Case Against Nobel Laureate Maria Ressa” (Singapore Straits Times 13 December 2023)
<https://www.straitstimes.com/asia/se-asia/philippines-drops-foreign-ownership-case-against-nobel-laureate-maria-ressa>

Cyberlibel

When Republic Act (RA) 10175 or the Cybercrime Prevention Act was passed in 2012, media organizations and civil society groups questioned the constitutionality of key provisions, including its institution of what is called in the Philippines as “cyberlibel”, out of heightened concerns that these can be used to stifle lawful political dissent. In the 2014 case of *Disini v Executive Secretary*⁸⁷, the Supreme Court had upheld the law’s constitutionality, including its provisions on cyberlibel that dealt with libel committed through a computer system.⁸⁸ Previously, the Revised Penal Code, under its article 355⁸⁹, punished only libel committed through publishing technology of the analog era and therefore could not be applied to libelous material published digitally (or by means of a computer). Under the RPC, libel was also subject to a one-year statute of limitations.⁹⁰ Under Section 6 of the cybercrime law, the penalty for cyberlibel was raised to one degree higher. As will be shown below, this will have ramifications on courts’ understanding of the applicable statute of limitations on cyberlibel. Rappler became Exhibit A of the particularly pernicious and disproportionate consequences of the institution

⁸⁷So named after the first of 15 consolidated petitions decided by the Philippine Supreme Court on the constitutionality of the Cybercrime Law. *Disini v Executive Secretary* [2014] G.R. No. 20335, G.R. No. 203299; G.R. No. 203306; G.R. No. 203359; G.R. No. 203378; G.R. No. 203391; G.R. No. 203407; G.R. No. 203440; G.R. No. 203453; G.R. No. 203454; G.R. No. 203469; G.R. No. 203501; G.R. No. 203509; G.R. No. 203515; and G.R. No. 203518 [Supreme Court En Banc] 11 February 2014

⁸⁸ Sec 3 (g) of RA 10175, defines such a system as:

any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automated processing of data. It covers any type of device with data processing capabilities including, but not limited to, computers and mobile phones. The device consisting of hardware and software may include input, output and storage components which may stand alone or be connected in a network or other similar devices. It also includes computer data storage devices or media.

⁸⁹ Article 355 of the RPC states that:

Libel by Means Writings or Similar Means. — A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by prisión correccional in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party.

⁹⁰ Article 90 of the RPC provides that “[t]he crime of libel or other similar offenses shall prescribe in 1 year.”

of cyberlibel on free expression, especially in the hands of a government willing to abuse legal process to prove a point.

In brief, the case arose out of a 2012 story⁹¹ written by Reynaldo Santos Jr and published by the online publication on then Chief Justice Renato Corona's alleged use of a black Suburban allegedly owned by a businessman, Wilfredo Keng, who had been linked to human trafficking and smuggling.⁹² At that time, RA 10175, which criminalized cyberlibel or libel committed by means of a computer system, with a higher penalty, was not yet in effect. It would take effect some four months after the publication of the story on Chief Justice Corona, who was then undergoing an impeachment trial. However, on February 19, 2014, Rappler updated the published story with a small correction, which involved changing a misspelled word, "evation," to "evasion," as well as the universal resource locator of images.⁹³ In 2017, Keng would file a cyberlibel complaint against Rappler, on the logic that the update constituted an instance of republication.⁹⁴

At trial, Keng also testified that he repeatedly tried to have Rappler publish his side of the story to correct what he said were erroneous information in the story about him, but the publication refused to do so.⁹⁵ The trial court agreed with Keng that the February 19, 2014 update was actually a republication of the story:

The Court considers the update a republication of the article. An update connotes that a change was made to the article. Said updated version was the one published and still available on the website of Rappler, Inc. The Court is of the conclusion that the

⁹¹See Rappler, "FAQ: What you need to know about Rappler's cyber libel case" (Rappler 16 February 2019) <https://www.rappler.com/about/223545-frequently-asked-questions-cyber-libel-case/>

⁹²Reynaldo Santos Jr, "CJ Using SUVs of 'Controversial' Businessmen" (Rappler 29 May 2012) <https://www.rappler.com/newsbreak/6061-cj-using-suvs-of-controversial-businessmen/>

⁹³ Rappler Cyberlibel FAQ, *supra* note 91.

⁹⁴ *Ibid.*

⁹⁵ *People v Santos et al.*, Decision Crim. Case No. R-MNL-19-01141-CR, Manila Regional Trial Court Branch 46, (Presiding Judge, Hon. Rainelda H. Estacio-Montesa, 15 June 2020). This assessment references the Decision's text as reproduced in Philippine E-Legal Forum, <https://pnl-law.com/blog/decision-in-people-vs-reynaldo-santos-jr-maria-angelita-ressa-and-rappler-re-online-libel-full-text/>

original version was replaced by the updated one considering that it is no longer accessible in the Rappler's website. In other words, the original article published on 29 May 2012 can no longer be found. Only the 19 February 2014 version presently exists and accessible on the internet. Clearly, there was republication of the updated version of the subject article...⁹⁶

The trial court noted that Rappler was in fact given more than adequate opportunity by Keng to revise the offending article. Had Rappler done so, the online publication would have been able to show that the story did not show a "reckless disregard" of "whether it was true or not."⁹⁷ Moreover, the trial court also noted that Rappler did not present any evidence to support its contention that the change done to the original article on February 19, 2014 was merely cosmetic such that there could not have been a republication of the article in question.⁹⁸ This is otherwise known as one part of the two-pronged *Borjal* test for actual malice in respect of public figures.⁹⁹ Under the test, malice is not presumed if the complainant is a public figure.¹⁰⁰ The complainant has to prove in court that the journalist either failed to establish the veracity of the facts in the story (reckless disregard) or despite knowledge of its falsity, still published the story (knowing falsity).¹⁰¹ The Decision also did not take into account the *Disini* holding on an expanded actual malice test, in which even the gross or extreme negligence by journalists is not automatically actual malice, without considering other factors. Nevertheless,

⁹⁶Ibid.

⁹⁷ Ibid.

⁹⁸Ibid.

⁹⁹ *Borjal v CA* [1999] G.R. No. 126466 [Supreme Court Second Division] J14 January 1999

¹⁰⁰ The Supreme Court has defined a public figure as:

a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage.' He is, in other words, a celebrity. Obviously to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainment. The list is, however, broader than this. It includes public officers, famous inventors and explorers, war heroes and even ordinary soldiers, an infant prodigy, and no less a personage than the Grand Exalted Ruler of a lodge. It includes, in short, anyone who has arrived at a position where public attention is focused upon him as a person. *Ayer v Capulong* [1998] GR No. 82380 [Supreme Court En Banc] I 29 April 1988

¹⁰¹ *People v Santos et al.*, Decision, supra note 95.

that would not have been necessary from the trial court's point of view: it held that In Keng's case, the businessman was in fact a private person.¹⁰² Given this, Rappler had the duty to prove in court that it conducted journalistic due diligence in developing and publishing the story. The trial court also noted that both Santos and Ressa failed to take the witness stand to prove that "the article was published with good motives and for justifiable ends."¹⁰³

The trial court's republication theory trumped Rappler's argument that the action for cyberlibel had already prescribed. The jail term for traditional libel as punished under art. 335 of the RPC is 6 months and 1 day to 4 years and 2 months. Cyberlibel carries a longer jail term: from 4 years, 2 months and 1 day to 8 years – the penalty the trial court imposed on Santos and Ressa, in addition to an award of Php 400,000 in moral and exemplary damages it handed down in Keng's favor. While the cybercrime law did not provide a prescription period for cyberlibel, according to the trial court, the higher penalty also meant a longer prescription period appropriate to the new penalty, following section 1 of Act 3326¹⁰⁴, a law providing prescriptive periods for laws that are silent on the matter:

SECTION 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offences punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years, and (d) after twelve years for any other offence punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

The trial court held that the prescription period for cyberlibel is 12 years. Since Keng's complaint was filed only some four years after the fact, the action was still well within the prescriptive period.¹⁰⁵ On appeal, the Court of Appeals upheld the trial court's Decision convicting Santos and Ressa and slapping them with Php 400,000 in moral and exemplary damages.¹⁰⁶ Moreover, It even extended their sentence to a jail term of six years, eight months and 20 days.¹⁰⁷ It also held that an aggrieved person may file a cyberlibel complaint within 15 years from the time the alleged libel was published.¹⁰⁸ The case will now be heard by the Supreme Court, after the Court of Appeals rejected Rappler's motion for reconsideration.¹⁰⁹ While the case goes through the judicial appeals process, both Ressa and Santos are out on bail.

The persecution by the Duterte administration drew broad support here and abroad for Rappler's battle for survival, from media groups, lawyers' groups, parliamentarians, diplomats, academic institutions, to the Nobel Committee, which awarded Ressa a Nobel Peace Prize¹¹⁰ for "holding the line."

III. Attack on Civil Society and Free Expression

In the beginning, Duterte had appeared to have a cozy relationship with the country's largest progressive bloc. In Davao City, where he was mayor, despite his human rights record, it was no secret that he had the support of local leaders of the bloc.¹¹¹ When he became president, he appointed key

¹⁰⁵ Ibid

¹⁰⁶ Robertzon Ramirez, "CA Affirms Ressa's Cyber Libel Conviction, Raises prison term" (Philippine Star 9 July 2022)

<https://www.philstar.com/headlines/2022/07/09/2194094/ca-affirms-ressas-cyber-libel-conviction-raise-s-prison-term>

¹⁰⁷ Ibid.

¹⁰⁸ Tina G. Santos, "Rappler Chief Will go to Supreme Court as CA Junks Appeal," (Philippine Daily Inquirer, 12 October 2022)

<https://newsinfo.inquirer.net/1678584/rappler-chief-goes-to-high-court-as-ca-junks-appeal>

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ For an extensive discussion on this, see Joseph Scalice, "First as Tragedy, Second as Farce: Marcos, Duterte and the Communist Parties of the Philippines" (World Socialist Website 1 September 2020) <https://www.wsws.org/en/articles/2020/09/01/lect-s01.html>. For a defense of the position taken by

leaders of the bloc to his Cabinet. On this, he would bandy about the fact that he is a “socialist”¹¹² who drew inspiration from the late founder of the Community Party of the Philippines, Jose Ma. Sison, who was his college professor at the Lyceum of the Philippines University.¹¹³ Sison, who died early last year, had reciprocated praise for Duterte’s supposedly socialist thrust, saying that “he has been very cooperative with the revolutionary movement in ways beneficial to the people.”¹¹⁴

But the alliance with the biggest Left bloc in the country proved short-lived. Duterte then carried out a deadly campaign against activists identified with progressive groups. His six-year term also proved to be lethal to many lawyers, activists, and human rights defenders. Since the 1980s, some 133 lawyers have been killed in the Philippines; nearly half of the killings of lawyers –often by unidentified assailants – took place during his term in office from 2016 to 222.¹¹⁵ If environmentalists, unionists, and journalists were to count in the grim statistics, at least 250 have been killed under the Duterte administration.¹¹⁶ Under the Duterte government, peace talks with communist groups were suspended. His creation, the National Task Force to End Local Communist Armed Conflict (NTF-Elcac) took center stage in an all-out campaign against the Communist Party of the Philippines, the National Democratic Front, and the New People’s Army, as well as civil society groups sympathetic to the communist cause but are not involved in the

Sison-allied civil society groups in the Philippines on Duterte, see Jayson S. Lamcheck and Emerson M. Sanchez, “Friends and Foes: Human Rights, the Philippine Left and Duterte, 2016-2017” (2021) 45(1) *Asian Studies Review* at 28–47.

¹¹²Maricar Cinco, Duterte: I’m a Socialist, Not a Communist; Last Card” (Philippine Daily Inquirer, 18 April 2016) <https://newsinfo.inquirer.net/779984/duterte-im-a-socialist-not-a-communist-last-card>

¹¹³Ibid.

¹¹⁴Thea Alberto-Masakayan, “Joma Sison Eyes Ceasefire, Return to PH if Duterte Wins (ABS-CBN News 27 April 2016)

<https://news.abs-cbn.com/halalan2016/nation/04/27/16/joma-sison-eyes-ceasefire-return-to-ph-if-duterte-wins>

¹¹⁵Jim Gomez, “Rights Group: 59 lawyers slain in 6 years in Philippines” (*Associated Press* 15 October 2022) in ABC News

<https://abcnews.go.com/International/wireStory/rights-group-59-lawyers-slain-years-philippines-91547288>.

¹¹⁶Ana P. Santos, “Duterte and the Climate of Impunity in Philippines” (Deutsche Welle 7 July 2020)

<https://www.dw.com/en/dutertes-four-years-in-power-extrajudicial-killings-rights-abuses-and-terror/a-54082293>

communist armed struggle.¹¹⁷ With billions of pesos in funding, the NTF-Elcac under Duterte carried a vicious “red-tagging” campaign on social media and official statements, often “precipitating violence on those named.”¹¹⁸

In 2020, the Duterte administration also passed a new anti-terror law, Republic Act No. 11479, that many civil society and human rights groups questioned before the Supreme Court in unprecedented proceeding involving 37 consolidated suits. But the Supreme Court upheld most of the questioned provisions of the ATA, including those giving direct effect to UN Security Council Chapter VII Resolutions on terrorism and terrorist financing, survived the constitutional challenge. One of the provisions of the law challenged by the suits was its Article 25, which provided that:

“[p]ursuant to our obligations under United Nations Security Council Resolution (UNSCR) No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, group of persons, organizations, or associations designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group.

Request for designations by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR No. 1373.”¹¹⁹

The second paragraph of Article 25 on the second mode of designation was one of only two provisions¹²⁰ declared unconstitutional by the Supreme Court. The second mode of designation was “not the least restrictive means” to combat terrorism, according to the Supreme Court, since it gives the ATC “unbridled discretion” to grant requests for designation based on its own

¹¹⁷ Human Rights Watch, “Philippines: End Deadly ‘Red-Tagging’ of Activists” (17 January 2022) <https://www.hrw.org/news/2022/01/17/philippines-end-deadly-red-tagging-activists>

¹¹⁸ *Ibid.*

¹¹⁹ *Calleja v Executive Secretary* [2020] G.R. No. 252578 [Supreme Court En Banc] 3 November 2020. This is the lead case in a total of 37 petitions consolidated together by the Supreme Court. For brevity, the assessment will refer only to the lead case reference.

¹²⁰ *Ibid.* at 105-116.

determination”,¹²¹ and in the absence of what the Court considers to be adequate safeguards provided by the UN Security Council itself under the first mode of designation.¹²² The second clause struck down by the Supreme Court was the “not intended clause” in Section 4 stating “which are not intended to cause death or serious physical harm to a person, to endanger a person’s life, or to create a serious risk to public safety.” This was found to be so vague that it may lead to violations of the right to free expression.¹²³

The creation of the ATC under the Anti-Terror Act was seized by the Duterte administration as an opportunity to cripple groups critical of its policies. From 2020 to 2021, the ATC issued a series of orders designating key groups and public figures as terrorists belonging to the CPP-NDF. Then, on the basis of these orders, the National Security Council wrote the NTC to compel internet service providers in the Philippines to block the websites of groups it said are terroristic or are allies of groups designated as terrorists by the ATC.¹²⁴ Covering 27 websites, it included those of known alternative media groups, such as *Bulatlat* and *Pinoy Weekly*.¹²⁵ The NTC promptly complied with the NSC’s request.¹²⁶ This concerted action between the NSC and the NTC ran contrary to the Supreme Court’s *Disini* ruling requiring a court order for the blocking of websites.¹²⁷ Lawyers for the alternative media groups brought suit before the Quezon City regional trial court to challenge the constitutionality of NTC orders. They won a temporary retrieve, with the court issuing a restraining order on the NTC while it hears the petition filed

¹²¹ *Calleja v Executive Secretary*, *supra* note 119 at 169.

¹²² *Ibid.*

¹²³ *Calleja v Executive Secretary*, *supra* note 119.

¹²⁴ Lian Buan, “Esperon Uses Anti-Terror Law to Block Websites Including News Site” (Rappler 22 June 2022)

<https://www.rappler.com/nation/esperon-uses-anti-terror-law-block-access-progressive-websites-including-news-organization/>

¹²⁵ *Ibid.*

¹²⁶ Dexter Cabalza, Krixia Subingsubing and Tyrone Jasper C. Piad, “Telcos Ordered to Block 27 Websites with Alleged Communist Ties” (Philippine Daily Inquirer 23 June 2022)

<https://newsinfo.inquirer.net/1614978/telcos-ordered-to-block-27-red-tagged-websites>

¹²⁷ *Disini v Executive Secretary*, *supra* note 87.

by the lawyers against the NTC order.¹²⁸ The case is still being heard as of this writing.

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<https://www.philstar.com/headlines/2022/08/11/2201996/court-orders-ntc-stop-blocking-bulatlat-websites>

IV. The Shifting Political Winds

Duterte's successor to the Office of the President, Ferdinand "Bongbong" Romualdez Marcos Jr., son of the late dictator Ferdinand E. Marcos Sr, won a landslide victory in the 2022 presidential elections, thanks to a carefully orchestrated campaign began many years ago; it is one anchored on historical revisionism and misinformation easily distributed through social media channels.¹²⁹

His winning tandem with Duterte's daughter, Sara Duterte, was dubbed the "Uniteam." It was touted as an alliance of four parties, namely Marcos' Partido Federal ng Pilipinas (PFP), the convenor of the alliance, the younger Duterte's Hugpong ng Pagbabago (HNP), former President Gloria Macapagal-Arroyo's Lakas-CMD and former President Joseph Estrada's Pwersa ng Masang Pilipino (PMP).¹³⁰

But barely two years later, the alliance has proven to be a fragile one. A rather early, but perhaps, inevitable, rupture in the Marcos-Duterte alliance triggered surprising political realignments and consequences.¹³¹ For one, unlike Duterte's pro-China stance on the South China Sea, Marcos instead adopted a foreign policy stance conciliatory to the United States.¹³² The House of Representatives under the present dispensation led by Marcos' first cousin Ferdinand Martin G. Romualdez shows how fleeting power could be.

¹²⁹ Anya van Wagtendonk, 'How 'Bongbong' Marcos Rewrote His Brutal Family History and Won in the Philippines' (*Grid* 11 May 2022)

<https://www.grid.news/story/misinformation/2022/05/11/how-bongbong-marcos-rewrote-his-brutal-family-history-and-won-in-the-philippines/>

¹³⁰

<https://newsinfo.inquirer.net/1519777/4-parties-form-uniteam-alliance-for-bongbong-marcos-sara-duterte-tandem>

¹³¹ Mara Cepeda, "Political shakedowns in the Philippines Threaten Marcos-Duterte Alliance (Singapore Straits Times 30 November 2023)

<https://www.straitstimes.com/asia/se-asia/political-shakedowns-in-the-philippines-threaten-marcos-duterte-alliance>

¹³² Kristel Limpot, "Navigating Power Rivalry: PH Foreign Policy During Marcos' First Year" (CNN Philippines 1 July 2023)

<https://www.cnnphilippines.com/news/2023/7/1/marcos-foreign-policy-first-year.html>

First to encounter its bitter taste was former President Gloria Macapagal-Arroyo, said to be instrumental in putting together the Bongbong Marcos-Sara Duterte tandem.¹³³ On rumors that she was leading a coup against Romualdez,¹³⁴ the House Speakers' allies quickly maneuvered to have her unseated as Deputy Majority Floor Leader.¹³⁵ She had held the senior post for less than a year.¹³⁶ The House Speaker is a rumored aspirant to the presidential elections in 2028 and therefore, a potential rival to VP Duterte's own presidential ambitions.¹³⁷

Sonshine Media Network Inc (SMNI), where citizen Rodrigo Duterte and other personalities identified with his former administration now hold court, has become the subject of a legislative investigation over one of its programs, which had criticized the House Speaker's alleged over-the-roof travel expenditures. SMNI, now known by its legal operating name Swara Sug Media Corporation because of the congressional investigations, is said to have been owned by long-time Duterte ally, the controversial Davao-based cultic televangelist Pastor Apollo C. Quiboloy, a self-proclaimed "Son of God" who has built a huge following in the Philippines and abroad through his megachurch, the "Kingdom of Jesus Christ, the Name Above Every Name Inc." He is also wanted by the US Federal Bureau of Investigation for alleged human and sex trafficking involving girls and women members of his Kingdom of Jesus Christ church.¹³⁸

Lorraine Badoy and Jeffrey Celiz, hosts of the SMNI Program "Laban Kasama ng Bayan", were cited in contempt by the House Committee on Legislative Franchises for their refusal to reveal their source for the allegations of

¹³³ Bea Cupin, "From GMA to Sara Duterte: The Ties That Bind" (Rappler 20 May 2023)

<https://www.rappler.com/nation/gloria-macapagal-arroyo-sara-duterte-history/>

¹³⁴ Faith Yuen Wei Ragasa, "Arroyo Denies Coup Plot vs. Speaker Romualdez (CNN Philippines 19 May 2023)

<https://www.cnnphilippines.com/news/2023/5/19/GMA-denies-coup-rumors.html>

¹³⁵ Cristina Chi, "Demoted Again: House Removes Arroyo from Deputy Speaker Position" (Philstar.com 7 November 2023)

<https://www.philstar.com/headlines/2023/11/07/2309672/demoted-again-house-removes-arroyo-deputy-speaker-position>

¹³⁶ Ibid.

¹³⁷ Cepeda, *supra* note 131.

¹³⁸ CNN Philippines Staff, "Quiboloy on FBI's Most Wanted List (CNN Philippines list 5 February 2022)

<https://www.cnnphilippines.com/news/2022/2/5/Quiboloy-wanted-FBI-.html>

overspending in his official travels by the House Speaker.¹³⁹ Badoy was an erstwhile official of the National Task Force to End Local Communist Armed Conflict (NTF-Elcac) under the Duterte administration. Celiz is a self-proclaimed former communist New People's Army cadre who has decided to blow the whistle on his former comrades. In one of the congressional hearings, the SMNI hosts were given a scolding by members of Congress for their ceaseless red-tagging activities on air and for allegedly serving as "tools of information."¹⁴⁰ Indeed, it is hard to believe that this turn of events was presided over by legislators who, just a couple of years ago, were supporters of the Duterte administration.

Badoy and Celiz were released after a few days in detention on "humanitarian grounds."¹⁴¹ But that did not mean that the worst was over for SMNI. The House Committee also passed a resolution asking the National Telecommunications Commission to suspend the SMNI franchise.¹⁴² In response, the NTC slapped SMNI with a 30-day suspension order.¹⁴³ This is still a mere slap on the wrist compared to what ABS-CBN suffered before the Lower House franchise renewal deliberations.

Yet another proof that political winds have shifted away from the elder Duterte's liking and control: in response to alleged death threats he had uttered in his SMNI show against Alliance of Concerned Teachers Party-List Rep. Francine Castro, the House of Representatives issued a resolution in her support.¹⁴⁴ Duterte's threatening words against Castro were made in the context of concerted action in the House of Representatives, following

¹³⁹ Ibid.

¹⁴⁰ Gabriel Pabico Lalu "House Reps Scold SMNI for Red-Tagging, Being 'A Tool for Misinformation' (Philippine Daily Inquirer 6 December 2023) <https://newsinfo.inquirer.net/1871265/smni-scolded-for-past-attacks-red-tagging-of-robre-do-solons-its-a-tool-for-misinformation>

¹⁴¹ Ibid.

¹⁴² Jannette L. Andrade, "House Resolution Urges NTC to Suspend SMNI franchise (Philippine Daily Inquirer 12 December 2023) <https://newsinfo.inquirer.net/1873942/house-reso-urges-ntc-to-suspend-smni-franchise>

¹⁴³ Bea Cupin, "Why the NTC Suspended SMNI for 30 days" (Rappler 21 December 2023) <https://www.rappler.com/philippines/ntc-suspends-smni-30-days-december-2023/>

¹⁴⁴ CNN Philippines Staff, "House Party Leaders Take 'Utmost Exception' to Duterte's Threats vs. Lawmaker (CNN Philippines 15 October 2023) <https://www.cnnphilippines.com/news/2023/10/15/dueter-vs-castro.html>

adverse public criticism, to cut off from his daughter Sara access to all intelligence funds.¹⁴⁵ In part, the statement issued by leaders of all political parties in the Lower House said:

“We, leaders of all political parties in the House of Representatives, take utmost exception to the remarks made by former President Rodrigo R. Duterte. Our institution, the House of Representatives, has been unwavering in its dedication to the Filipino people... it is deeply unfortunate that the former President chose to malign the very institution that for years supported many of his own legislative priorities....

“We call upon the former President and all parties involved to avoid making threats or insinuating harm against any member of the House or the institution itself. Dialogue and understanding should always be at the forefront, superseding divisive rhetoric.”¹⁴⁶

Rep. Castro, who is also a Deputy Minority Leader, subsequently filed grave threats charges against Duterte before the Quezon City Prosecutors’ Office. Less than two years since he stepped down from power, the tables were turned against the elder Duterte, who no longer has the immunity from suits he enjoyed when he was President.¹⁴⁷ This did not deter Duterte from allegedly issuing further threats against Castro.¹⁴⁸ However, after he was subpoenaed by the Quezon City Prosecutors’ Office in the preliminary

¹⁴⁵CNN Philippines Staff, “Ex-Pres. Duterte Denies Threatening Rep. Castro's Life” (CNN Philippines 15 December 2023)

<https://www.cnnphilippines.com/news/2023/12/15/duterte-denies-threatening-castro.html>

¹⁴⁶ Ibid.

¹⁴⁷CNN Philippines Staff, “Castro Files Grave Threat Complaint vs Ex-Pres. Duterte” (CNN Philippines 24 October 2023)

<https://www.cnnphilippines.com/news/2023/10/24/castro-files-grave-threat-complaint.html>

¹⁴⁸ CNN Philippines Staff, “Ex-President Duterte Threatens Castro Again After Court Summons” (CNN Philippines 16 November 2023)

<https://www.cnnphilippines.com/news/2023/11/16/duterte-court-summons-wednesday-tv-interview.html>. A necessary correction to this news report is that this is not yet a court summons but a subpoena arising from the preliminary investigation being conducted by the prosecutor in connection with the Castro grave threats complaint.

investigation process, Duterte issued a denial that he had threatened the Alliance of Concerned Teachers' party-list representative.¹⁴⁹

The Movie and Television Review Board (MTRCB) shortly after issued 14-day preventive suspension orders on the SMNI show of former president Duterte and that of Badoy and Celiz.¹⁵⁰ The suspensions were based on a number of complaints filed with the MTRCB over the death threats and foul language aired by the two programs.¹⁵¹

Rep. Castro's Makabayan political bloc in the Lower House had also raised the possibility of an impeachment proceeding against the Vice President over her use of some Php 125 million in intelligence funds in 2022 without congressional authorization.¹⁵² This however was dismissed by other House leaders as "baseless."¹⁵³ In any case, it appears that the Vice President has been hung out to dry by her supposed allies in the Marcos bloc in Congress, as the latter finalized the 2024 national budget shorn of intelligence funds allocated to her offices as Secretary of the Department of Education and Vice President.¹⁵⁴ She had earlier sought a total of Php 600 million in intelligence funds for her two offices.¹⁵⁵

But perhaps, next only to the Marcos backpedaling on foreign policy, the strongest sign that a political shift is taking place is the open-ness now being shown by the Marcos administration to the International Criminal Court's

¹⁴⁹ Ibid.

¹⁵⁰ Romina Cabrera, "MTRCB Suspends SMNI Shows of Duterte, Badoy" (The Philippine Star 20 December 2023)

<https://www.philstar.com/headlines/2023/12/20/2320180/mtrcb-suspends-smni-shows-duterte-badoy>

¹⁵¹ Ibid.

¹⁵² Janvic Mateo and Sheila Crisostomo, "Lawmakers eye impeachment case vs Vice President Sara" (The Philippine Star 26 August 2023)

<https://www.philstar.com/nation/2023/08/26/2291373/lawmakers-eye-impeachment-case-vs-vice-president-sara>

¹⁵³ CNN Philippines Staff, "House leader: Any Move to File 'Baseless' Impeachment Complaint vs. VP Duterte Futile" (CNN Philippines 17 November 2023)

<https://www.cnnphilippines.com/news/2023/11/17/dalipe-sara-duterte-impeachment.html>

¹⁵⁴ Cristina Chi, "Public Pushback vs Sara's Confidential Funds Kept it Out of 2024 budget — Senate Finance Panel Chair" (Philstar.com 18 December 2023)

<https://www.philstar.com/headlines/2023/12/18/2319765/public-pushback-vs-saras-confidential-funds-kept-it-out-2024-budget-senate-finance-panel-chair>

¹⁵⁵ Ibid.

investigation on the drug killings under the Duterte administration,¹⁵⁶ with the House of Representatives entertaining resolutions urging the government to cooperate with the international tribunal.¹⁵⁷

V. Concluding Remarks: Consequences and Implications

Under a vindictive government, even the most benign law or legal process can be turned into a weapon. Law becomes mere politics. It distorts legal norms designed for societal and institutional flourishing, to advance narrow political interests. Its consequences to free expression and media pluralism – to an open society founded on free and open deliberation of matters that concern the common weal – are dire, as seen in the impunity with which Duterte and his political allies persecuted its perceived political enemies. In *Chavez v Gonzales*, the Supreme Court held that even warnings or threats of prosecution issued by public officials that are not subsequently reduced into writing in the form of orders or circulars constitute content-based prior restraint:

it is not decisive that the press statements...were not reduced in or followed up with formal orders or circulars. It is sufficient that the press statements were made...in the exercise of... official functions.¹⁵⁸

The Supreme Court thus developed here an expanded notion of an “act” as a legal concept in relation to free speech and free press issues:

The concept of an “act” does not limit itself to acts already converted to a formal order or official circular. Otherwise, the

¹⁵⁶ Jairo Bolledo, “No Reason to Prevent ICC Investigators from Entering PH, says Guevarra” (Rappler 2 December 2022) <https://www.rappler.com/philippines/menardo-guevarra-says-no-reason-prevent-icc-investigators-entering-philippines/>

¹⁵⁷ Dellon Porcalla, “House Panels OK Resolutions For Phl Cooperation With ICC” (One News PH 30 November 2023) <https://www.onenews.ph/articles/house-panels-ok-resolutions-for-phl-cooperation-with-icc>

¹⁵⁸ *Chavez v Gonzales* [2008] G.R. No. 168338 [Supreme Court En Banc] 15 February 2008.

non-formalization of an act into an official order or circular will result in the easy circumvention of the prohibition on prior restraint. The press statements at bar are acts that should be struck down as they constitute impermissible forms of prior restraints on the right to free speech and press.¹⁵⁹

But under the cover of immunity from suits of an incumbent President, Duterte made vicious pronouncements as he pleased. These verbal attacks, according to jurisprudence, partook of the nature of prior restraint. Under the Philippine constitutional framework, the only available remedy for such unconstitutional pronouncements is impeachment. But in a country like the Philippines where democratic institutions are captive to politics, that avenue was not available under the Duterte administration.

Cyberlibel's potential to stifle political dissent was first articulated by petitioners in the *Disini* case. Although they failed to convince the court to declare both traditional libel and its computer derivative unconstitutional, they secured from the court a ruling (1) invalidating intermediary liability (reposting/retweeting/resending of allegedly libelous content is not actionable) as well (2) establishing the expanded actual malice test for complaining public figures. There is no precedent on all fours with the Rappler cyberlibel case. There is however, a case, decided by the Supreme Court only this year, which rejected the retroactive application of the cybercrime law's cyberlibel provisions. In *Peñalosa v Ocampo*, the Supreme Court upheld the dismissal by the trial court, on the public prosecutor's motion, of a case in which the alleged libel was published on Facebook in 2011, or a year before the Cybercrime Law was passed.¹⁶⁰ Speaking through J. Leonen, the Supreme Court held thus:

In Article 355, the associated words are "writing," "printing," "lithography," "engraving," "radio," "phonograph," "painting," "theatrical exhibition," and "cinematographic exhibition," clearly excluding "computer systems or other similar means which may be derived in the future" specifically added in Article 4(c)(4) of the

¹⁵⁹ Ibid.

¹⁶⁰ *Peñalosa v Ocampo* [2023] GR No. 230299 [Supreme Court Second Division] 26 April 2023

Cybercrime Prevention Act. If it were true that Article 355 of the Revised Penal Code already includes libel made through computer systems, then Congress had no need to legislate Article 4(c)(4) of the Cybercrime Prevention Act, for the latter legal provision will be superfluous. That Congress had to legislate Article 4(c)(4) means that libel done through computer systems, i.e., cyber libel, is an additional means of committing libel, punishable only under the Cybercrime Prevention Act.¹⁶¹

For that reason, the Supreme Court said that cyberlibel cannot be applied under Article 355 of the Revised Penal Code;¹⁶² to do so is to make a penal law “effective retroactively but unfavorably to the accused.” This, according to the Supreme Court, goes against Article 22 of the Revised Penal Code, which states that “[p]enal laws shall have a retroactive effect insofar as they favor the person guilty of a felony[.]”¹⁶³ It may be added that giving retroactive effect to the Cybercrime Law in the case would be tantamount to a constitutionally-proscribed¹⁶⁴ *ex post facto* law. An *ex post facto* law “is one which, among others, aggravates a crime or makes it greater than it was when committed or changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed.”¹⁶⁵ Given how the trial of the case unfolded – and assuming that the Supreme Court will still uphold the constitutionality of cyberlibel on appeal– Rappler’s case may solely hinge on whether or not the change made to the original article on February 19, 2014 constituted republication. The theory of republication made it possible for the trial court to skirt the argument that Keng’s right to pursue redress had already prescribed. If the Supreme Court holds that there was no republication, then, following its ruling in *Peñalosa v Ocampo*, the trial court could not retroactively apply the cybercrime law to Rappler’s case. It bears noting that late last year, a petition was filed in the Supreme Court to question once again the constitutionality of both traditional libel under the Revised Penal Code and cyberlibel under the Cybercrime Law. This concerns the cyberlibel case against former Akbayan party-list representative

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Section 22 of the 1987 Constitution states: “No *ex post facto* law or bill of attainder shall be enacted.”

¹⁶⁵ *Nasi-Villar v People* [2008] G.R. No. 176169 [Supreme Court Second Division] 14 November 2008

and sociologist Walden Bello.¹⁶⁶ The former legislator is facing two counts of cyberlibel filed by former journalist Jefry Tupas before the Davao City regional trial court Branch 10. After leaving journalism, Tupas has been working as an aide of Vice President Sara Duterte from the time she was Davao City mayor. Tupas claimed he was defamed online by Bello, who, following news reports, discussed on social media the alleged special treatment given by police to the former after he was allegedly caught in a drug raid in Davao City at the height of Duterte administration's deadly drug war.¹⁶⁷ It remains to be seen whether the Supreme Court will grant Bello's petition due course. But this and Rappler's case will provide the Supreme Court with an opportunity to revisit the law on libel in the Philippines. It may well be the opportune time for it to also reexamine the 2010 view issued by UN Human Rights Committee in the case of *Adonis v Republic of the Philippines*,¹⁶⁸ in which the UN body held that Philippine criminal libel is inconsistent with the country's obligations under Art. 19 of the International Covenant on Civil and Political Rights.

As this legal assessment went to press, the Supreme Court's Third Division released to the public on 19 January 2024 its decision on a cyberlibel case, *Causing v People of the Philippines* (GR No. 258, 524, 11 October 2023), which held that the prescriptive period for cyberlibel is one year, counting from the day the libelous post is discovered by the offended party, the authorities, or their agents, rather than from the date of publication. This rule is consistent with the jurisprudence on prescriptive period applicable to traditional libel. Thus far, the Supreme Court here continued to uphold the constitutionality of both libel and cyberlibel as penal remedies, but it has at least clarified one other key issue that animates Ressa's and Santos' appeal over their conviction for cyberlibel in the Keng case: the question of prescription. Recall that per the CA, the prescription period applicable is 15 years from the time the alleged libel was published. 2019. With that out of the way, the only remaining relevant question is the matter of whether there was indeed republication on 19 February 2014.

It will now be up to the Supreme Court to look at the factual findings of the trial court on when Keng came to know about the allegedly offending republished article, assuming it follows the trial court's republication theory. Keng's first witness, his business associate Marcelino Malonzo, had testified that he first read the republished piece sometime in January 2018. On the other hand, Keng's lawyer Leonard De Vera had told the Court as early as August 2016, he contacted Rappler about the alleged errors in the article in question to try to get these corrected. This means as Keng's agent, he came to know about the alleged libel around that time. Per *Causing v People of the Philippines*, the prescriptive period must be reckoned from the day the libelous post is discovered by the offended party, the authorities, or their agents, rather than from the date of publication. The earliest reckoning date, it would appear, would be that pertaining to De Vera, which is any date in August 2016. The prescriptive period would thus run from any day in August 2016 to any day of August 2017, or at the latest, the last day of August 2017. However, the trial court's records show that the Complaint

¹⁶⁶ Mike Navallo, "Facing cyberlibel cases, ex-VP bet Bello asks Supreme Court to decriminalize libel" (ABS-CBN News, 5 December 2023)

¹⁶⁷ <https://news.abs-cbn.com/news/12/05/23/walden-bello-asks-sc-to-decriminalize-libel>

¹⁶⁸ Ibid.

¹⁶⁸ CCPR/C/103/D/1815/2008/Rev.1 6 April 2012

The Anti-Terror Law, as feared by opponents, has now been used to stifle political dissent, as shown in the NSC-NTC actions to block websites of alternative media groups without the benefit of court orders. To be sure, the initial constitutional challenges in the Calleja consolidated petitions did not yet involve actual implementation of the law. If previous jurisprudence on prior restraint should hold, notably, that in *Disini*, in the absence of court orders, the website takedowns made by the NTC should be declared unconstitutional, all the way to the Supreme Court. This matter is but one aspect of the broader notion of net neutrality. As things stand, outside of existing liberal jurisprudence on political content¹⁶⁹, there is as of yet no law

¹⁶⁹ An exception to the court order requisite, as noted in the 2016 assessment, is the anti-child pornography law, RA 9775, the “Anti-Child Pornography Act of 2009, which empowers the NTC to compel internet service providers to screen against child pornography websites. This has not at all been challenged before the courts. Sec. 9 of the law required the NTC to issue implementing rules and regulations within 90 days of the law’s taking into effect for the installation of filtering software that will block access, to or transmission of any form of child pornography. Pursuant to this, on 30 June 2014, the NTC issued Memorandum Circular No. 01-01-2014 providing that:

1. All Internet Service Providers (ISPs) shall install available technology, program or software that will block access or filter all websites carrying child pornography materials within one hundred twenty (120) days from the submission of the list of carrier grade technology, program or software solutions by the ISPs to the Inter-Agency Council Against Child Pornography (IACACP).
2. The ISP shall submit list of at least three (3) carrier grade technology, program or software solutions to the IACACP for evaluation. If within five (5) days from the submission by the ISPs of the list, the IACACP does not object, the ISP shall acquire any of the carrier grade technology, program or software solutions from the supplier/s included in the list submitted.
3. The National Telecommunications Commission (NTC) shall furnish the list of identified pornographic websites provided by the IACACP to the ISPs for immediate blocking of access or filtering. The ISPs shall be free from any liability arising from its compliance with any order of the NTC for the immediate blocking of access or filtering of any such websites.

dealing specifically with net neutrality in the Philippines.¹⁷⁰ There are a few pending bills already filed, but it will take some time before they could clear the legislative mill.¹⁷¹

Still, the court challenges filed against the NTC orders show hopeful signs that even under the repressive hand of the Duterte administration, independent judges stepped in the gap to uphold the rule of law. Of late, activists and journalists have also begun to fight back with suits against those responsible for persistent red-tagging during the Duterte administration.¹⁷² However, Rep. Castro's grave threats suit against Duterte had just been dismissed by prosecutors.¹⁷³ She is expected to take this up on appeal.

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4. All ISPs shall submit to the IACACP within 5 days from the end of each month, a list of all websites carrying child pornography materials that were blocked. The list will contain all websites carrying child pornography materials that subscribers of respective ISPs attempted to access but were blocked by the installed carrier grade technology, program or software.
 5. All ISPs shall notify the Philippine National Police (PNP) or the National Bureau of Investigation (NBI) within seven (7) days from obtaining facts and circumstances that any form of child pornography is being committed using its services or facility.
 6. All ISPs shall preserve customer data records, specifically the time, origin and destination of access, for purposes of investigation and prosecution by relevant authorities. Nothing in this section shall be construed to require an ISP to engage in the monitoring of any user, subscriber or customer, or the content of any communication of any such person.

This Memorandum has not been revoked by the NTC, nor has it been challenged before the court, although it was initially met with protests by ISPs.

¹⁷⁰ Gabriel Pabico Lalu, "Leni Robredo: Research Found no Internet Neutrality in PH" (Philippine Daily Inquirer, 29 November 2022)

<https://newsinfo.inquirer.net/1699431/leni-robredo-says-research-proves-there-is-no-internet-neutrality-in-ph>

¹⁷¹ Androel Encarnacion, DICT Backs Senate Bill No, 2103 to Impose Net Neutrality in the Philippines" (Pinoy Geeks 9 May 2021) <https://www.noypigeeks.com/internet/net-neutrality-philippines/>

¹⁷² (GMA News 23 March 2022)

<https://www.gmanetwork.com/news/topstories/nation/826017/activists-sue-ntf-elcac-s-badoy-for-allegedly-red-tagging-robredo-campaign/story/>; CNN Philippines Staff, "Journalist Atom Araullo Files ₱2M Damage Suit vs. SMNI hosts Badoy, Celiz" (CNN Philippines 11 September 2023)

<https://www.cnnphilippines.com/news/2023/9/11/atom-araullo-damage-suit-smni-badoy--celiz.html>

¹⁷³ Mel Matthew Doctor, "Activists Sue NTF-ELCAC's Badoy for Allegedly Red-tagging Robredo campaign" (CNN Philippines Staff, Castro's Grave Threats Complaint vs. Duterte Junked" (CNN Philippines 12 January 2024);

Mass media as understood in the 20th century is no more. The rise of social media with an international – and potentially global reach – now poses a Philippine constitutional and legal challenge. Increasingly, media consumption today no longer takes place in the context of the “mass” (i.e. of people gathered around a mass medium, as in a family watching a television show together); where there is internet infrastructure, it may now mean a mass of people individually accessing media on their mobile phones or tablets simultaneously or at varying times. Moreover, this media phenomenon may happen in parallel or overlap with legacy media consumption. Thus, a person may watch on television in the company of her spouse an item on her favorite late night news show that she may then review on a video clip uploaded on YouTube the next morning, this time, via her mobile phone; she may later on post the same video clip on X (formerly twitter), and her followers – who may not even be regular viewers of her favorite late night news show – may watch the video clip as they see her post appear on their own X feed.

In its court submissions in response to the revocation of its corporate registration by the Securities and Exchange Commission, Rappler has foisted precisely such a technological argument¹⁷⁴ against a Philippine constitutional and legal framework that continues to assert its nationalistic and exceptionalist design., it has claimed that the Supreme Court did not class it as part of the legacy media like the big Manila-based television broadcast outfits (the “lead networks”) but as one belonging to a category all its own (along with international social media company Google). In this case, Rappler questioned as unconstitutional the limitations imposed on online coverage of the 2016 Presidential and Vice Presidential Debates organized by the Commission on Elections with various media outfits as partners. It said the Memorandum of Agreement (MOA) it was forced to sign with Comelec because of time constraints granted broadcast rights only to the country’s

<https://www.cnnphilippines.com/news/2024/1/12/castro-grave-threats-complaint-vs-duterte-junked.html>

¹⁷⁴ *Rappler v Andres Bautista* [2016] G.R. No. 222702 [Supreme Court En Banc] 5 April 2016, cited in *Rappler Appeal*, supra note 56.

largest commercial television companies and their hand-picked partners, edging out online media outfits like Rappler.

As the Supreme Court would put it, Rappler complained that:

[T]he MOA grants radio stations the right to simultaneously broadcast live the audio of the debates, even if the radio stations are not obliged to perform any obligation under the MOA. Yet, this right to broadcast by live streaming online the audio of the debates is denied petitioner and other online media entities, which also have the capacity to live stream the audio of the debates. Petitioner insists that it signed the MOA believing in good faith the issues it has raised will be resolved by the COMELEC [underlining supplied].¹⁷⁵

The Supreme Court partially granted Rappler's petition. It held that the MOA itself "allows the debates to be shown or live streamed unaltered on petitioner's and other websites subject to the copyright condition that the source is clearly indicated."¹⁷⁶ Contrary to Rappler's special case argument, the Supreme Court's holding in *Rappler v Bautista*, classed it as a mass media entity whose mode of delivery is primarily online. According to the ruling, all participating media outlets, as well as those who are not signatories to the MOA but who wish to use the content generated by the electoral debate, are considered mass media entities:

In fact, the MOA recognizes the right of other mass media entities, not parties to the MOA, to reproduce the debates subject only to the same copyright conditions. The freedom of the press to report and disseminate the live audio of the debates, subject to compliance with Section 184. I (c) of the IPC, can no longer be infringed or subject to prior restraint. Such freedom of the press to report and disseminate the live audio of the debates is now protected and guaranteed under Section 4, Article III of the Constitution, which provides that

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

“[N]o law shall be passed abridging the freedom x x x of the press”[underlining supplied]¹⁷⁷

In any case, even the so-called legacy media have also wized up to present technological realities (as the *Rappler v Bautista* case also shows); they have also been quick to adapt best social media practices that Rappler not too long ago could claim as its sole preserve. Every media entity now has an account on YouTube, Instagram, X (formerly Twitter), and Facebook, runs a podcast or two, and does livestreaming.

To be fair, both Rappler and the SEC seems to have overlooked an early Opinion issued by then Secretary of Justice Silvestre Bello in 1998 at the behest of then SEC Chair Perfecto Yasay Jr on whether “the internet” should be classified as “mass media”. In reply, the Justice Secretary clarified that mass media *“involves not only the transmittal but also the creation/publication, gathering and distribution of the news, information, messages and other forms of communications to the general public, it appears indubitable that the Internet business does not constitute mass media.”* He further opined: *“Accordingly, it cannot fall within the coverage of the constitutional mandate limiting ownership and management of mass media to citizens of the Philippines or wholly-owned and managed Philippine corporations.”*¹⁷⁸ The Opinion arrived at such a conclusion based on the following analysis:

Considering the nature and function of an Internet and the fact that it offers three broad types of services, *i.e.*, (1) electronic mail (e-mail) which is the computer version of the post office as it can transmit both text and still or moving visual messages to an addressee or multiple addresses in a mailing list; (2) Bulletin Board System (BBS) which emulates an ordinary bulletin board and; (3) World Wide Web (WWW) which consists of documents (with their respective addresses) stored in the Internet containing varied information in text, still images or graphics...it may be safely said that an Internet access provider is one engaged in offering to the owner of a computer the

¹⁷⁷ Ibid.

¹⁷⁸ DOJ Opinion No. 040, Series of 1998 [italics supplied]

services of inter-connecting the latter's computer to a network of computers thereby giving him access to said services offered by Internet.¹⁷⁹

The DOJ Opinion is relevant to understanding online media outfits like Rappler. Such outfits use the internet – a bundle of integrated online or digital technologies –for delivery of content (news, information, ideas, entertainment, communication, advocacy) to the public; their business is not to provide access to the internet, but to deliver content and related services through digital means. The internet service provider is not a mass media entity for that reason.

If Rappler's argument that it is not mass media is taken to its logical conclusion, any foreign media entity with an analogous or similar business model may simply set up shop in the Philippines without being subject to the corporate regulations that apply to Philippine media. A simple thought experiment is apropos to bring the point home: think of a foreign entity with a veiled and malicious plan to say, sway Filipinos to accept the hegemonic design of its client foreign nation-state. It can launch a social media-based business in the country following the Rappler model and then argue that as it is not mass media, it is not subject to nationality restrictions. The continuing relevance of the constitutional restrictions on mass media entities in the Philippines will then start to make sense.

Having said that, it must be stressed that the same constitutional and legal framework that presents nationality restrictions on mass media ownership also embodies strong commitments to free expression and media pluralism. The SEC could have simply given Rappler the opportunity to correct the infirmities it saw in the PDRs it had sold to Omidyar Network, following its past practice,¹⁸⁰ and more importantly, the jurisprudential preference given to free speech as a constitutional value.¹⁸¹

¹⁷⁹ Ibid.

¹⁸⁰ See the case of *Heirs of Gamboa v Teves* [2012] G.R. No. 176579 [Supreme Court En Banc] 9 October 2012, cited in Rappler's Appeal, supra note

¹⁸¹ *Philippine Blooming Mills Employees Organization v Philippine Blooming Mills*, [1975] GR. No. L-31195 [Supreme Court En Banc] 5 1975

By doing that, the SEC would have honored both the constitutional and legal proscriptions on nationality and its long-standing commitment to free expression. Instead, it opted for what unmistakably was prior restraint by another means – a more pernicious one, because permanent in nature, if not reversed by the Supreme Court.

The same could be said of the Lower House’s vote denying the renewal of ABS-CBN’s franchise. The denial meant the end to the country’s largest broadcast network. It was a massive blow to media pluralism and to free expression. Not only were thousands of jobs lost; access to information of ordinary citizens in the farthest reaches of the country –through the presence of the broadcast networks 21 regional stations¹⁸² - was effectively blocked.¹⁸³ The congressional action to shut down the broadcast network came with a heavy presumption of unconstitutionality, given the animus publicly shown by the President of the Philippines against ABS-CBN’s bid to renew its expiring primary franchise. Not even the Philippine Competition Commission’s concerns about the resulting serious market distortions could dissuade the House of Representatives from scrapping the broadcast network’s franchise. After all, the PCC is a mere creation of Congress.

ABS-CBN’s franchise renewal ordeal exposed a yawning gap in the policy arena. In this case, its franchise lapsed while Congress was still deliberating on its application for renewal. ABS-CBN challenged before the Supreme Court the NTC’s issuance of the CDO against its operations in the wake of the lapse of its franchise while its application for renewal was being heard in Congress. The Supreme Court however merely mooted the petition following the July 10, 2020 decision by Congress not to renew the broadcast network’s franchise.¹⁸⁴

¹⁸²Business World, “ABS-CBN Shutdown Leaves ‘Information Gap’ — Professor” (Business World 3 November 2020)

<https://www.bworldonline.com/editors-picks/2020/11/03/326419/abs-cbn-shutdown-leaves-information-gap-professor/>

¹⁸³ Ibid.

¹⁸⁴Rey A. Panaligan, “SC Dismisses ABS-CBN’s Petition vs. NTC’s Stop-Broadcast Order” (Manila Bulletin 25 May 2020)

<https://mb.com.ph/2020/08/25/sc-dismisses-abs-cbns-petition-vs-ntcs-stop-broadcast-order/>

Finally, with SMNI's – and its key personalities' – present travails, one might say, oh how have the mighty fallen! After Duterte stepped down from power, many of the public personalities associated with him found a home in SMNI's expanding non-religious programming. The former President himself started a new program with SMNI, "Gikan sa Masa." (SMNI's shift to programming for a wider public is of a piece with the present trend of previously religiously-oriented television stations now trying to appeal to audiences beyond their original constituencies. Zoe Broadcasting Network, identified with Bro. Eddie Villanueva's Jesus is Lord Movement, was first to do that. Today, it is joined by SMNI, *Ang Dating Daan's* UNTV, and Net 25 of the Iglesia Ni Cristo's Eagle Broadcasting Corporation).

Among progressives, there is little sympathy for SMNI, known for programs that endlessly red-tagged journalists and activists, as well as purveyed misinformation.¹⁸⁵ But as the ABS-CBN's shutdown underscores, a pragmatic and short-sighted view of things is no less problematic than allowing arbitrary or whimsical exercise of political power. Witness how ABS-CBN's frequencies were subsequently reallocated to business interests identified with his political allies, including SMNI.¹⁸⁶

Too, when ABS-CBN tried to enter into a deal with the Manny Pangilinan-led TV 5 that would have allowed both media entities to invest in each other's companies, Duterte's allies in Congress quickly opposed it.¹⁸⁷ Under the proposed P 2.16 billion-deal, ABS-CBN was to acquire up to 49.9 percent of TV 5 and Pangilinan's Signal cable interest was to purchase up to 61.1 percent of the Lopez-owned Sky Cable.¹⁸⁸ In the end, the companies scuttled the deal.¹⁸⁹

¹⁸⁵Ellson Quismorio, "Not The Same: Castro Cites Key Difference Between Cases of SMNI, ABS-CBN" (Manila Bulletin 21 December 2023)

<https://mb.com.ph/2023/12/21/not-the-same-castro-cites-key-difference-between-cases-of-smni-abs-cbn>

¹⁸⁶Aika Rey, "TIMELINE: NTC Distributes ABS-CBN Frequencies" (Rappler 27 1 2022)

<https://www.rappler.com/business/timeline-national-telecommunications-commission-abs-cbn-frequencies/>;

¹⁸⁷Ralf Rivas, "ABS-CBN, TV5 End Landmark Deal Amid Political Pressure (Rappler 1 September 2022)

<https://www.rappler.com/business/abs-cbn-tv5-end-deal-september-1-2022/>

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

The abrupt end of ABS-CBN as a primarily broadcast company and its rebirth as a “content creator”¹⁹⁰ led to another kind of unthinkable: block time or content provider collaborations between ABS-CBN and GMA and TV5 as well as with free-to-air A2Z channel (of Zoe Broadcasting Network) and streaming platforms.¹⁹¹ Not to be missed is ABS-CBN’s announced joint venture with Prime Media Collective Corp., an outfit said to be owned by House Speaker Romualdez, following the closure of the former’s money-losing digital TeleRadyo.¹⁹²

The joint venture set up TeleRadyo Serbisyo, a pay television channel that is now majority-owned by the Romualdez group, at 51 percent stake, with ABS-CBN keeping 49 percent.¹⁹³ It is an astute if pragmatic move on the part of ABS-CBN, given (1) the increasing political clout of the House Speaker, who ironically, was among those who had voted to deny the broadcast network a franchise renewal,¹⁹⁴ and (2) the fact that the joint venture will actually use the broadcast network’s old DZMM radio frequency, 630 kHz.¹⁹⁵

It’s a masterstroke in deal-making, if there ever were one. Simply stated, this joint venture is no less than ABS-CBN’s first big step to recover lost ground, but via the backdoor. For the House Speaker, the joint venture gives him access to ABS-CBN’s old national network, something that was not previously available to him under his old regional-based franchise. With the Marcoses in power, it would be easy to restore that national network. More

¹⁹⁰ ABS-CBN Corporate, “ABS-CBN Continues Digital Pivot as a Content Company” (ABS-CBN News 20 October 2021)

<https://www.abs-cbn.com/newsroom/news-releases/2021/10/20/abs-cbn-digital-content-company?lang=en>

¹⁹¹ Ibid.

¹⁹² Myla Iglesias, “TELERADYO TO CEASE OPERATIONS: Network Forms JV with Romualdez-led Firm” (Malaya 24 May 2023)

https://malaya.com.ph/news_business/teleradyo-to-cease-operations-network-forms-jv-with-romualdez-led-firm/

¹⁹³ Ibid.

¹⁹⁴ News 5 Staff, “ABS-CBN’s Deal with Romualdez’s Prime Media Has Ethical Issues, says Veteran Journalist” (News 5 25 May 2023)

<https://news.tv5.com.ph/breaking/read/power-play-abs-cbns-deal-with-romualdezs-prime-media-has-ethical-issues-says-veteran-journalist>

¹⁹⁵ Ibid

importantly, it gives Romualdez an edge over the Vice President, whose main media access for now appears to be SMNI. The upstart media network may very well have the financial resources, but it does not have the luxury of time, to expand its reach, under the circumstances.¹⁹⁶ And with the House of Representatives under the control of the House Speaker, the proverbial Sword of Damocles hangs over SMNI's franchise.¹⁹⁷

¹⁹⁶ In the congressional hearings, it came to light that SMNI's ownership had changed hands in 2022 –at least on paper. Quiboloy is no longer listed as an owner. Its ownership structure is now as follows: a nominal one share for Hannah Jane Sancho, 0.13% in the name of Marlon Rosete, 0.19% in the name of Jesus Christ Workers Members Cooperative, 46.22% in the name of Phoebus Capital Holdings Inc., and 53.46% in the name of the new executive pastor of the Kingdom of Jesus Christ, the Name Above Every Name Inc., Marlon Acobo. This may be part of SMNI's current move to broaden its audience base, and more importantly, shield it from the legal repercussions of Quiboloy's US human and sex trafficking cases. See CNN Philippines Staff, "Apollo Quiboloy Doesn't Own SMNI, Network's Lawyer Says" (CNN Philippines 30 November 2023) <https://www.cnnphilippines.com/news/2023/11/30/quiboloy-doesnt-own-smni.html>. In any case, under SEC rules, SMNI is required to disclose to the Commission who are its true beneficial owners. A beneficial owner is defined by SEC rules as "the natural person who: (1) ultimately owns or controls the corporation; or (2) exercises ultimate effective control over the corporation. Information on beneficial owners however is not publicly accessible, under the same rules. See SEC Memorandum Circular No. 15, Series of 2019 (Revision of the GIS for Domestic Corporations to Include Beneficial Ownership Information); SEC Memorandum Circular No. 30, Series of 2020 (Revision of the GIS for Foreign Corporations to Include Beneficial Ownership Information); and SEC Memorandum Circular No. 01, Series of 2021 (BO Transparency Guidelines). Publicly-listed corporations are required by law to observe transparency in their dealings with the public. Thus, their websites usually disclose copies of mandatory corporate filings, with the exclusion of the mandatory beneficiary ownership statements, which are only accessible to the SEC or to courts in a proper proceeding. The mandatory beneficial ownership statements is but one of the many reforms initiated over the last few years by the SEC. Also worth noting is that the SEC has likewise issued a memorandum that, among other things, encourages corporations with assets of at least Php 50,000,000.00 (the threshold qualifying a business entity as a "public company") to appoint independent directors as well as observe gender diversity in their boards. See SEC Memorandum Circular No. 24, series of 2019.

¹⁹⁷ There happens to be a pending bill in the Lower House to cancel SMNI's franchise: Syrah Vivien Inocencio, "Solon Files Bill Seeking SMNI Franchise Revocation" (CNN Philippines 13 December 2023) <https://www.cnnphilippines.com/news/2023/12/12/house-bill-smni-franchise-revocation.html>

It once again hammers on the point about law being reduced to politics. The ABS-CBN franchise kill was precedent-setting. Once Congress has partaken of the tree of knowledge of good and evil and there is no turning back. And yet, what we see is one of Philippine contemporary history's political ironies. It was the first Marcos regime that led to the closure of ABS-CBN under martial law; post-EDSA 1986, ABS-CBN recovered its old franchise and grew to become the country's largest network. Then it was shut down by Rodrigo Roa Duterte, who himself was a beneficiary of EDSA 1986. Just two years after Duterte stepped down from power, the late strongman's son and namesake's rise to power somehow has given ABS-CBN a backdoor re-entry to lose ground. But the question is: But at what cost?

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