



PHILIPPINES

FACT-CHECKER LEGAL GUIDE

**Fact-Checkers Legal
Support Initiative**



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INTRODUCTION

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1. This Guide summarizes the legal regime in the Philippines relating to rights and obligations that are potentially relevant to fact-checkers. As explained below, these include defamation, privacy rights, access to government records and courts, the use of confidential sources, and copyright.

DEFAMATION

A. *Introduction*

2. The Supreme Court of the Philippines (the “Supreme Court”) has explained that defamation is the “offense of injuring a person’s character, fame or reputation through false and malicious statements.”¹ Defamation in the Philippines is a criminal offense² as well as a civil tort.³

3. The Revised Penal Code (“RPC”), defines criminal defamation as:

the “public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.”⁴

4. The Supreme Court has held that this definition of defamation in the RPC also applies in civil cases and has set forth the elements for a successful defamation action (discussed below).⁵

5. Defamation may be in written form (libel) or verbal (slander).⁶

6. Under the RPC, defamation is punishable by a fine and imprisonment of up to four years and two months.⁷ A court can order a combination of imprisonment and fine as punishment. As discussed below, defamation committed online is also punishable under the Cybercrime Prevention Act of 2012.⁸

7. In civil proceedings, a person who has been defamed can seek moral damages for injury to his or her feelings and reputation as well as punitive or exemplary damages.⁹

8. In 2012, the United Nations Human Rights Council (the “UNHRC”) declared that the criminal defamation provisions of the RPC were “incompatible” with Article 19(3) of the International Covenant on Civil and Political Rights.¹⁰ The decision of the UNHRC came in response to the imprisonment of the Filipino radio journalist Alex Adonis in early 2007.¹¹ However, there has been no change to the law in light of the UNHRC decision, and the Supreme Court has since stated in *obiter* that the UNHCR did not require the Philippines to decriminalize defamation.¹²

B. *What Are the Elements of Defamation?*

9. The Supreme Court set out four elements of defamation in *People v. Gomez*. The elements are (1) the defamatory nature of the statement, (2) publicity, (3) the identifiability of the defamed person, and (4) malice.¹³ These elements apply to both criminal and civil defamation.¹⁴

1. Defamatory Nature of the Statement

10. A statement has a defamatory nature if it imputes a “discreditable act or condition” to a person.¹⁵ In determining whether a statement is defamatory, the Supreme Court has relied on both the content of the statement and its effect.

11. To be defamatory, the content of the statement (whether in terms of words, visual representations such as images or cartoons, or otherwise) must “expose a person to public hatred, contempt, ridicule, aversion, or disgrace, induce an evil opinion of him in the minds of right-thinking persons, and deprive him of their friendly intercourse in society, ... reflect on his integrity, his character, and his good name and standing in the community, and tend to expose him to public hatred, contempt, or disgrace.”¹⁶

12. The Supreme Court has held that when assessing whether a written statement is defamatory, the words in the allegedly defamatory statement should be read “in their entirety and taken in their plain, natural and ordinary meaning, as they would naturally be understood by persons hearing (or reading)” them.¹⁷

13. In addition, to be defamatory, a statement needs to “injure reputation or to diminish esteem, respect, goodwill or confidence in the plaintiff, or to excite derogatory feelings or opinions about the plaintiff.”¹⁸

2. Publicity

14. A defamatory statement is published “not only when it is widely circulated, but also when it is made known or brought to the attention or notice of another person other than its author and the offended party.”¹⁹ In other words, if Person A alleges that Person B defamed him, the publicity requirement is satisfied once Person B’s allegedly defamatory statement is made known or brought to the attention of just one additional person, C.

15. Courts in the Philippines have also held that each separate publication of a defamatory statement constitutes a separate crime. This is true even if the two separate publications are about the same set of facts, and even if one publication merely repeats the other, whether in full or in part.²⁰

3. Identifiability of the Defamed Person

16. A defamatory statement must also “refer to an ascertained or ascertainable person, and that person must be the plaintiff.”²¹ To be liable for defamation, the statement need not mention the defamed person by name so long as he or she can be identified. An implied or indirect reference to the offended person can be sufficient to satisfy the identifiability requirement.²²

17. A statement that does not refer to a specific person is not actionable, even if it is otherwise defamatory.²³ Therefore, statements aimed at a large group or an unidentified person are not actionable.²⁴

4. Malice

18. Finally, a defamatory statement must be made with malice, *i.e.*, in a state of mind that “connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm.”²⁵

19. Two categories of malice apply to defamation claims: (a) malice in fact (actual malice); and (b) malice in law (a presumption of malice).²⁶

a. Malice in fact (also called express malice, actual malice, real malice, true malice, or particular malice) is “a positive desire and intention to annoy and injure. It may denote that the defendant was actuated by ill will or personal spite.”²⁷

b. Malice in law (also called constructive malice, legal malice, or implied malice)²⁸ is presumed in all cases absent a showing of good intention or justifiable motive. The RPC provides that “[e]very defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown.”²⁹

20. As discussed below, the RPC identifies two exceptions to the statutory presumption of malice in law. However, the Supreme Court has held that these two exceptions in the RPC are not exhaustive, and that in addition to these statutory

exceptions, malice in law also does not apply to fair commentaries on matters of public interest.³⁰

a. *Private communication in the course of a duty:* Article 354(1) of the RPC provides that a defamatory imputation is not presumed to be malicious if it is “a private communication made by any person to another in the performance of any legal, moral or social duty.”³¹ Statements concerning these “absolutely privileged communications” are not actionable, even where there is actual malice.³²

b. *Mere recording of an official act:* Article 354(2) of the RPC protects statements that constitute “a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.”³³ Such statements are not presumed to be malicious for purposes of criminal defamation under the RPC. For example, a newspaper’s accurate summary of a witness’s testimony in court is not presumed malicious even if the witness’s testimony otherwise satisfies the requirements of a defamatory statement.³⁴ Such statements may, however, still be prosecuted if actual malice can be shown.³⁵

c. *By What Means Can Defamation Be Committed?*

21. Defamation can occur through various means. Article 355 of the RPC provides that defamation may be committed, for example, by writing, printing, radio, painting, theatrical or cinematographic exhibition, or any other similar means.³⁶ The Supreme Court has held that “other similar means” includes television broadcasts.³⁷

22. The Cybercrime Prevention Act of 2012 specifically extends the means of defamation listed in Article 355 of the RPC to “a computer system or any other similar means which may be devised in the future.”³⁸ The Supreme Court has explained that the Cybercrime Prevention Act “merely affirms that online defamation constitutes ‘similar means’ for committing libel.”³⁹ The Cybercrime Prevention Act has, however, opened up potentially greater criminal liability for defamation online.

D. *Who Can Bring a Defamation Action?*

23. Any natural person or corporation⁴⁰ who suffers damage to his or her reputation as a result of defamation may file a civil or criminal action.⁴¹ A criminal action can also be brought by the public prosecutor.⁴² However, where the criminal action involves defamatory statements related to seduction, abduction, and acts of lasciviousness, a criminal action can be commenced only if the person about whom the statement is made files a complaint.⁴³

24. In a civil case, a successful plaintiff must establish all the elements of his or her defamation case by a preponderance of evidence.⁴⁴ In a criminal case, guilt must be established “beyond a reasonable doubt.”⁴⁵

25. The standard of proof varies depending on whether the defamed person is a private or public figure. The Supreme Court has defined public figures broadly as any “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.’”⁴⁶ Public officers, *i.e.*, people working for the state,⁴⁷ are public figures, as are actors and sportspersons.⁴⁸

26. To prevail on a defamation claim, public figures must meet a higher threshold of proof on the malice requirement by showing that the person or organization that made the defamatory statement acted with actual malice.⁴⁹ Private figures, on the other hand, can rely on the lower evidentiary burden of malice in law.

27. It is unclear what standard of proof applies to private individuals who (voluntarily or involuntarily) become involved in an issue of public interest and thereby themselves become of public interest.⁵⁰ Therefore, it remains an open question whether for purposes of defamation law, individuals who became the object of widespread (and temporary) media coverage for “trending” or “going viral” online are public figures.⁵¹

E. *Who Can Be Liable for Defamation?*

28. A broad range of natural persons can be held liable for civil and criminal defamation. Article 360 of the RPC provides:

“Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same. The author or editor of a book or pamphlet, or the editor or business

manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.”⁵²

29. Corporations can be held liable for civil defamation but not for criminal defamation. In some cases, however, a corporation’s directors, officers, and/or employees can be held criminally liable for defamation.⁵³

F. Defenses

30. The following defenses are available to a defendant in civil and criminal defamation actions: (1) fair comment, (2) truth, (3) self-defense, and (4) privilege.⁵⁴

1. Fair Comment

31. The Supreme Court has held that “fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander.”⁵⁵ The Supreme Court has also held that in the case of an opinion concerning a public figure on any matter, or concerning a private figure where the matter is “a subject of public or general interest,”⁵⁶ it is immaterial whether the opinion is wrong “as long as it might reasonably be inferred from the facts.”⁵⁷

2. Truth

32. The Supreme Court has held that truth, when published with “good motives and justifiable ends,” is a defense to defamation.⁵⁸ Article 361 of the RPC provides:

“[i]n every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and, moreover, that it was published with good motives and for justifiable ends, the defendants shall be acquitted.”

33. What constitutes “good motives” and “justifiable ends” is assessed on a case-by-case basis. For example, a publication that seeks “merely to malign another person’s reputation” is not published with “good motives and justifiable ends.”⁵⁹ In one case, the Supreme Court held that informing the public about pending criminal cases against a radio commentator was “under the mantle of having been done with good motives and for justifiable ends.”⁶⁰

3. Self-defense

34. The Supreme Court has held that defamation is justified when used as a means of self-defense against another defamatory statement. The Court held that the law allows a person to “hit back with another libel which, if adequate, will be justified.”⁶¹ For example, in *People v. Hiong*, Hiong was accused of having obtained his citizenship by questionable means, and defended himself in a newspaper column in which he defamed the person that had defamed him. The Court held that Hiong’s defamation was in self-defense and therefore justified.⁶²

4. Privilege

35. The Supreme Court has held that “[u]tterances made in the course of judicial proceedings, including all kinds of pleadings, petitions and motions” are absolutely privileged.⁶³

G. *Statute of Limitations*

36. Both civil and criminal defamation cases must be commenced within one year of the allegedly defamatory statement being made.⁶⁴

37. Despite this short limitation period, recently there has been at least one well-publicized criminal defamation case arising out of much older publications. In April 2019, the Manila Regional Trial Court allowed prosecution against a journalist in relation to a story she had published in 2012, stating that the principle of “continuous publication” may apply to websites.⁶⁵ The criminal investigation for defamation was first commenced in 2017, but the National Bureau of Investigation subsequently dismissed the charges in February 2018 for, among other things, the expiry of the limitation period.⁶⁶ However, the case was reopened later in 2018, six years after the publication of the story, and criminal charges were brought against the journalist in February 2019.⁶⁷ The case is still pending before the Manila Regional Court.

PRIVACY

38. The following sections address (a) constitutional principles related to privacy; (b) privacy legislation; (c) the right to privacy online; (d) the privacy of public figures; (e) surreptitious recording; and (f) the right to be forgotten.

A. *Constitutional Principles*

39. The right to privacy is a fundamental right in the Philippines protected by the Constitution and various laws discussed below.⁶⁸ As also discussed below, a violation of a person's right to privacy can result in both civil and criminal liability.⁶⁹

40. There are two privacy guarantees in the Constitution:

- a. Article III Section 2 protects against unreasonable searches, seizures;⁷⁰ and
- b. Article III Section 3 guarantees the privacy of communication and correspondence.⁷¹

41. The Supreme Court has held that the right to privacy extends beyond the scope of these rights expressly mentioned in the Constitution.⁷² The right to privacy is, however, circumscribed by the constitutional right to information; Article III Section 7 of the Constitution provides that “[t]he right of the people to information on matters of public concern shall be recognized.”⁷³

42. Only natural persons enjoy the right to privacy. In *Valmonte v. Belmonte*, the Supreme Court held that a corporation had no right to privacy because “the entire basis of the right to privacy is an injury to the feelings and sensibilities of the party.”⁷⁴

B. *Privacy Legislation*

43. In addition to the Constitution, several legislative acts protect the right to privacy. As discussed below, the Civil Code protects the right to privacy in general and provides relief for various privacy violations. The Parliament has also enacted several acts that protect specific areas of privacy,⁷⁵ including the Data Privacy Act of 2012 and the RPC, while the Supreme Court has promulgated the Rule on the Writ of Habeas Data.

1. Civil Code of the Philippines

44. Articles 26 and 723 of the Civil Code protect the right to privacy. Violations of these provisions can give rise to actions for damages, restraint, or other relief.⁷⁶

45. Article 26 of the Civil Code provides:

“Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

(1) Prying into the privacy of another’s residence:

(2) Meddling with or disturbing the private life or family relations of another;

(3) Intriguing to cause another to be alienated from his friends;

(4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.”⁷⁷

46. The plain language of the provision makes clear, and scholarly commentary has also confirmed, that the scope of application of Article 26 is not limited to the four examples listed above, but also applies to “similar acts.”⁷⁸ The provision also provides that a civil privacy violation claim does not require a showing of damage to reputation (as would be required for defamation claims, as discussed in Section II).⁷⁹

47. Article 723 of the Civil Code protects the privacy of communications as follows:

“Letters and other private communications in writing are owned by the person to whom they are addressed and delivered, but they cannot be published or disseminated without the consent of the writer or his heirs. However, the court may authorize their publication or dissemination if the public good or the interest of justice so requires.”⁸⁰

48. Article 723 by its own terms only protects “private communications,” and therefore does not apply to open letters or other public communications.⁸¹

49. A claim for breach of privacy under Article 26 or Article 723 of the Civil Code must be commenced within four years of the violation.⁸²

2. Revised Penal Code

50. The RPC contains the following provisions related to privacy:⁸³

a. Articles 290 and 291 punish the discovery and revelation of secrets “through seizure of correspondence” by up to four years and two months imprisonment.⁸⁴ A court can also order a combination of imprisonment and fines as punishment.⁸⁵

b. Articles 229 and 230 also punish the “revelation of secrets” which have become known to a public officer by reason of his official capacity, including the wrongful delivery of papers in his charge.⁸⁶ The maximum sentence under these Articles of the RPC is four years and two months imprisonment.⁸⁷

51. Under the RPC, the statute of limitation depends on the maximum possible penalty.⁸⁸ For instance, for “discovering secrets through seizure of correspondence,” which has a maximum possible penalty of four years and two months, the statute of limitations is ten years.⁸⁹

3. Rule on the Writ of Habeas Data

52. The Rule on the Writ of Habeas Data was introduced by the Supreme Court in 2008 under the Court’s constitutional authority to “[p]romulgate rules concerning the protection and enforcement of constitutional rights.”⁹⁰ The Writ is a “remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.”⁹¹

53. The Supreme Court has explained that a petition for the Writ “requires the existence of a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other.”⁹² Among other things, a petitioner must provide a description of “the manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party,” identify what the petitioner has done to secure the data, and specify the relief sought.⁹³

54. The relief available for the Writ includes the updating, rectification, suppression, or destruction of the information gathered, collected or stored in violation of the petitioner’s privacy.⁹⁴

55. The filing of a Writ of Habeas Data does not preclude the filing of separate criminal or civil claim for violation of the right to privacy.⁹⁵ If a criminal action is filed after the filing of a petition for the Writ, the petition for the Writ will be consolidated with the criminal action.⁹⁶

4. Data Privacy Act

56. In 2012, Parliament enacted the Data Privacy Act to regulate the online collection, storage, processing, and use of information.⁹⁷ The Act provides specific rules for processing of sensitive personal information and provides for criminal penalties of imprisonment up to seven years and fines for a variety of data privacy violations, including unauthorized processing of data, the improper disposal of information, and unauthorized disclosure.⁹⁸

57. The complex set of rules and regulations introduced in the Data Privacy Act are beyond the scope of this Guide, but certain provisions relevant to fact-checkers are discussed below.

58. In particular, Section 4(4)(d) explicitly excludes the scope of application of the Act to personal information processed for “journalistic ... purposes,” but does not provide further guidance on how broadly this provision should be interpreted.⁹⁹

59. In addition, Section 5 of the Data Privacy Act refers to Republic Act No. 53¹⁰⁰ and provides that duly accredited reporters of any newspaper, magazine or periodical of general circulation cannot be compelled to reveal their sources or information provided in confidence:

“Nothing in this Act shall be construed as to have amended or repealed the provisions of Republic Act No. 53, which affords the publishers, editors or duly accredited reporters of any newspaper, magazine or periodical of general circulation protection from being compelled to reveal the source of any news report or information appearing in said publication which was related in any confidence to such publisher, editor, or reporter.”

c. *Right to Privacy Online*

60. The right to privacy also extends to the internet.¹⁰¹ However, as discussed below, courts have interpreted the right to privacy online very narrowly on the basis that a person posting something online cannot control who will see his or her post.

61. For example, in *Vivares v. St. Theresa's College*, the Supreme Court held that there could be no "expectation of privacy" for images posted on social media networks even under a "Friends Only" setting because the person posting had no control over whether his or her "friends" on the network would make that image available to the public at large. The Court explained that "[i]nternet consumers ought to be aware that, by entering or uploading any kind of data or information online, they are automatically and inevitably making it permanently available online, the perpetuation of which is outside the ambit of their control."¹⁰²

62. Similarly, in the case of *Belohenares v. Guevarra*,¹⁰³ the Supreme Court held that there was no expectation of privacy in a series of posts on a publicly accessible Facebook account. It held that the result would have been the same even if the posts had been limited to "Friends" because even "restricting the privacy of one's Facebook posts to 'Friends' does not guarantee absolute protection from the prying eyes of another user who does not belong to one's circle of friends" as content posted on Facebook might be "shared" or "tagged."¹⁰⁴

d. *Privacy of Public Figures*

63. As explained above (in Section II), the Supreme Court has held that there is "legitimate public interest" in public figures.¹⁰⁵ In *Ayer Productions Pty. Ltd. v. Capulong*, the Court held that public figures have a diminished right to privacy:

"The right of privacy ... like the right of free expression is not an absolute right. A limited intrusion into a person's privacy has long been regarded as permissible when that person is a public figure and the information sought ... constitute matters of public character. Succinctly put, the right of privacy cannot be invoked to resist publication and dissemination of matters of public interest."¹⁰⁶

64. The Supreme Court has cautioned, however, that public figures do not lose all rights to privacy merely because they are public figures. As the Supreme Court held in *Lagunzad v. de Gonzales*, "[b]eing a public figure ipso facto does not automatically

destroy in toto a person's right to privacy."¹⁰⁷ Specifically, the Court held that the "the right to invade a person's privacy to disseminate public information does not extend to a fictional or novelized representation of a person, no matter how public a figure he or she may be."¹⁰⁸

E. Surreptitious Recording

65. Surreptitious recordings are regulated by the Anti-Wiretapping Act of 1965. The Anti-Wiretapping Act penalizes wiretapping by any person to secretly overhear, intercept, or record any private communication or spoken word of another person without the authorization of all parties to the communication.¹⁰⁹ The Anti-Wiretapping Act only authorizes wiretapping of individuals suspected of crimes such as treason, espionage and the like, subject to a written court order.¹¹⁰ Violations of the Anti-Wiretapping Act are punishable by imprisonment for a period between six months and six years.¹¹¹

66. Despite the protections offered by the Anti-Wiretapping Act, it has been used against journalists. For example, a government officer brought charges under the Anti-Wiretapping Act against journalist Cecilia Lazaro, arguing that Lazaro's recording of a phone interview with the officer (with the officer's consent) constituted wiretapping. However, the trial court dismissed the case and held that it did not fall under the Anti-Wiretapping Act because an element of wiretapping is that it is done without the knowledge or consent of the parties to the communication.¹¹²

67. Philippine law also contains strict limitations on the government's power to surveil. The Anti-Wiretapping Act and the Human Security Act of 2007 permit government surveillance only under narrow circumstances, particularly in cases involving serious crimes such as treason, espionage, and terrorism.

68. Despite these legislative limits, several media reports have stated that surveillance has emerged as a "growing concern" in the Philippines.¹¹³ These concerns primarily stem from the fact that the government recently purchased high-tech spying equipment.¹¹⁴ President Rodrigo Duterte himself has also admitted to repeated illegal wiretapping:¹¹⁵

- a. In 2017, the President admitted surveilling the mayor of Iloilo City, who allegedly was involved in drug trafficking.¹¹⁶

b. In 2018, the President claimed that he had overheard a phone conversation between a New York-based philanthropist and another person, which alerted him to the International Criminal Court's decision to review his "war on drugs" even before the Court had made any formal announcement.¹¹⁷

F. Right to Be Forgotten

69. The Writ of Habeas Data and the Data Privacy Act both guarantee the right to be forgotten.¹¹⁸

a. The Writ of Habeas Data allows a court to order the deletion, destruction, or rectification of the erroneous data or information about a person.

b. Section 16(d) of the Data Privacy Act also protects the right to be forgotten under certain limited circumstances. An individual can "dispute the inaccuracy or error in the personal information and have the personal information controller correct it immediately and accordingly."¹¹⁹ Moreover, Section 16(e) authorizes suspension, withdrawal or the ordering of the blocking, removal or destruction of personal information where there is substantial proof that the personal information is incomplete, outdated, false, or had been unlawfully obtained.¹²⁰

70. However, the right to be forgotten as addressed through these acts is subject to limitations and, as one commentator has explained, "continued publication may be justified by constitutional rights to freedom of speech, expression and other rights."¹²¹

ACCESS TO GOVERNMENT RECORDS AND TO COURTS

A. *Access to Government Records*

1. Constitutional Provisions

71. The Constitution codifies the right to information from the government in Article III Section 7:

“The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.”¹²²

72. The Supreme Court has interpreted the right to information in the Constitution broadly. It has held that any citizen of the Philippines can vindicate this right in court by relying directly on the Constitution “without need for any ancillary act of the Legislature.”¹²³ In addition, a citizen vindicating this right need not make any showing of direct interest in the information sought.¹²⁴

73. However, by its terms the constitutional right to information is limited to “matters of public concern” and “subject to such limitations as may be provided by law.”¹²⁵

a. The Supreme Court has held that no “rigid” test can be applied to determine whether a request for information concerns a matter of “public concern,” and the determination must be made on a case-by-case basis.¹²⁶ The Court has explained that the term “eludes exact definition” because “public concern” encompasses a broad spectrum of matters that the public may want to know about “either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen.”¹²⁷

b. The Supreme Court has held that the right to information may be subject to “reasonable regulation.”¹²⁸ Reasonable regulation, the Court has explained, ensures that “[1] damage to, or loss of, public records may be

avoided, [2] undue interference with the duties of said agencies may be prevented, and [3] more importantly, that the exercise of the same constitutional right by other persons shall be assured.”¹²⁹ Therefore, the information sought will only be released if it is not “among the species exempted by law from the operation of the constitutional guarantee.”¹³⁰

74. A government agency opposing a request for information bears the burden of showing that the requested information is not of public concern or is otherwise exempt by law.¹³¹

2. The Freedom of Information Order

75. In 2016, the President issued the Freedom of Information Order (“FOI Order”),¹³² an Executive Order granting every citizen “access to information, official records, public records and to documents and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development.”¹³³ The FOI Order applies to the Executive Branch, which includes the national government and all its offices, departments, bureaus, offices, and instrumentalities, government-owned and government-controlled corporations, as well as state universities and colleges.¹³⁴

76. Section 6 of the FOI Order codifies “a legal presumption in favor of access to information, public records and official records.”¹³⁵ Every citizen of the Philippines can request information from any government agency using the FOI website.¹³⁶ If the government agency from which information is sought denies the citizen’s request, the citizen can appeal the denial before the administrative authority of that agency and, if still denied by the administrative authority, can file a claim in the courts.¹³⁷

77. Section 4 of the FOI Order lists 166 non-exhaustive exclusions from the right to information, and also provides that a request for information under the FOI will be denied “when the information falls under any of the exceptions enshrined in the Constitution, existing law or jurisprudence.”¹³⁸ The 166 exclusions in the FOI Order are broadly written¹³⁹ and include:

- a. Information covered by executive privilege;
- b. Privileged information relating to national security, defense, or international relations;

- c. Information concerning law enforcement or protection of public and personal safety;
- d. Information deemed confidential for the protection of the privacy of persons, particularly minors, victims of crimes, or persons charged with crimes;
- e. Records of court proceedings or information regarding those proceedings which, pursuant to law or relevant rules and regulations, are treated as confidential or privileged; and
- f. Matters considered confidential under banking and finance laws.

B. Access to Courts

78. Both civil and criminal proceedings in courts are usually public.¹⁴⁰ However, a judge may, at his or her discretion, remove the public from the courtroom “when the evidence to be adduced is of such nature as to require their exclusion in the interest of morality or decency,”¹⁴¹ or, in criminal cases, on motion of the accused.¹⁴²

79. The public also has a right of access to court records.¹⁴³ The Supreme Court has held that and the meaning of “court records” is broad, and applies to orders, judgments, or verdicts of the courts, as well as to the “official collection of all papers, exhibits and pleadings filed by the parties, all processes issued and returns made thereon, appearances, and word-for-word testimony which took place during the trial.”¹⁴⁴ Access to court records may be permitted at the discretion and subject to the supervisory and protective powers of the court, “after considering the actual use or purpose for which the request for access is based and the obvious prejudice to any of the parties.”¹⁴⁵ Courts therefore determine on a case-by-case basis whether the matter at issue is of public interest, and whether the person seeking access to court records has a legitimate interest.¹⁴⁶

1. The Municipal Court Information Officers Guidelines

80. The Supreme Court has also promulgated guidelines that require Municipal Court Information Officers (“MCIOs”) to provide “users” with court-related information. These guidelines define “users” broadly as “people who seek and can be provided access to court information for valid interests and objectives,” and include litigants, lawyers, and the general public.¹⁴⁷ The guidelines require MCIOs to provide such users with information about “actual cases as well as Rules issued by

the Court,”¹⁴⁸ including “information filed in or generated by the courts, including all official records, documents, and decisions.”¹⁴⁹

81. The guidelines prohibit MCIOs from disclosing confidential information, defined as “information not yet made a matter of public record relating to pending cases, such as notes, drafts, research papers, internal discussion, internal memoranda, records of internal deliberations, and similar papers.”¹⁵⁰ An MCIO also may not disclose any documents that record the court’s deliberations for any case even after the court has issued its decision.¹⁵¹

82. To access sealed documents or information from a court case, a citizen can file a petition for mandamus.¹⁵²

JOURNALISTIC SOURCES

83. A journalist’s right to protect the confidentiality of sources is codified in the Republic Act No. 53 of 1946,¹⁵³ also known as the “Sotto Law” after Senator Vicente Sotto y Yap, its principal author.¹⁵⁴ The Sotto Law recognizes that the protection of journalists’ sources is necessary for “the mission of the press to check and balance and expose wrongdoing.”¹⁵⁵

84. Section 1 of the Sotto Law provides:

“Without prejudice to his liability under the civil and criminal laws, the publisher, editor, columnist or duly accredited reporter of any newspaper, magazine or periodical of general circulation cannot be compelled to reveal the source of any news-report or information appearing in said publication which was related in confidence to such publisher, editor or reporter unless the court or a House or committee of Congress finds that such revelation is demanded by the security of the State.”¹⁵⁶

85. The Sotto Law does not provide any guidance on what constitutes “security of the State” for purposes of Section 1.

86. The Sotto Law was enacted in 1953 and, by its express terms, applies narrowly to print journalism, and does not cover television, online, or other journalism.¹⁵⁷ A bill is pending in the Parliament to amend the Sotto Law to broaden its protections to expressly apply to “a duly accredited journalist of any legitimate print, broadcast, internet, or wire service organization, station of network, including the publisher, station owner and/or manager, bureau chief, editor, news editor, writer or reporter, correspondent, opinion columnist or commentator, cartoonist, photographer, or other practitioner involved in the gathering, writing, editing of, or commenting on the news for mass circulation or broadcast.”¹⁵⁸

COPYRIGHT

87. This section gives an overview of the law on copyright. The Intellectual Property Code protects intellectual property in the Philippines.¹⁵⁹

A. *What Can Be Copyrighted?*

88. The Intellectual Property Code protects “original works.”¹⁶⁰ Section 172(2) emphasizes that works are “protected by the sole fact of their creation, irrespective of their mode or form of expression, their content, quality and purpose.” Because the Code dates back to 1998, it does not contain specific provisions on online copyright.

89. In addition to original works, the Intellectual Property Code also protects two forms of derivative works: (a) dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and (b) collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents.¹⁶¹

90. Section 175 of the Code includes a list of “unprotected subject matters,” which cannot be copyrighted. These include:

- a. Intangible intellectual product like ideas, concepts, and principles;
- b. “mere data”;
- c. “news of the day and other miscellaneous facts having the character of mere items of press information”; and
- d. “official text[s] of a legislative, administrative or legal nature” and their official translations.¹⁶²

91. Copyright grants exclusive economic rights, including the right to reproduce the work, the right to the first public distribution of the original, and the right to sell and publicly display each copy of the work.¹⁶³ The Code also confers certain “moral rights” to the author, including the right attributed to him or her, the right to make alterations to the work, and the right not to publish the work.¹⁶⁴

92. Any person infringing copyright may, among other things, be

- a. enjoined from further infringement;
- b. required to pay damages, including legal costs and other expenses, to the copyright holder;
- c. required to pay the copyright holder any profit the infringing party made from the illegal use of the copyright; and
- d. required to destroy infringing copies of the work.¹⁶⁵

B. *Who Holds the Copyright in a Work?*

93. As a general rule, in the case of original literary and artistic works, the copyright belongs to the author of the work.¹⁶⁶ In case of joint authorship, absent any contrary agreement, the copyright is jointly owned by the authors.¹⁶⁷ If the work was created in the course of employment as part of an employee’s “regularly-assigned duties,” copyright belongs to the employer.¹⁶⁸

C. *Limitations and Fair Use*

94. Quotations, fair use, and certain reproductions of copyrighted work do not amount to copyright infringement.

- a. **Quotations.** Quoting from a published work does not infringe copyright, provided that the title and author of the copyrighted work are identified, and the quotation constitutes fair use.¹⁶⁹
- b. **Fair Use.** Section 185(1) recognizes the “fair use” of a copyrighted work for criticism, comment, and news reporting. In determining whether a particular use of copyrighted material constitutes fair use, courts consider the following factors:
 - a. “The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
 - b. The nature of the copyrighted work;
 - c. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

d. The effect of the use upon the potential market for or value of the copyrighted work.”¹⁷⁰

c. **Reproductions.** The “reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topic, lectures, addresses and other works of the same nature” does not infringe copyright if the reproduction is for “information purposes,” copyright has not been expressly reserved and the copyrighted source is identified.¹⁷¹

END NOTES

¹ Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315). According to scholars in the Philippines, a person's reputation is a "personal asset achieved or accrued over time, slowly built up by integrity, honorable conduct, and right living." See A. Navarrete, *Unsolicited Notoriety: Establishing a Framework in the Application of the Public Figure Doctrine to Private Individuals Whose Lives Intersect with Public Interest*, Ateneo L J 2017, 534, 547, at <http://ateneolawjournal.com/Media/uploads/7f6ae3f5ff2ee5396c8a97e39259ba8c.pdf> (with further references).

² RPC, Art. 353.

³ Civil Code, Art. 33 ("In cases of defamation ... a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.") and Art. 2219, at Sec. 7.

⁴ RPC, Art. 353.

⁵ Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).

⁶ Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315); L. Reyes, *The Revised Penal Code: Criminal Law Book Two*, 17th ed., 2008, at p. 986 (cited in A. Navarrete, *Unsolicited Notoriety: Establishing a Framework in the Application of the Public Figure Doctrine to Private Individuals Whose Lives Intersect with Public Interest*, Ateneo L J 2017, 534, 553, at <http://ateneolawjournal.com/Media/uploads/7f6ae3f5ff2ee5396c8a97e39259ba8c.pdf>). See also RPC, Art. 358.

⁷ RPC, Art. 355.

⁸ See below, at para. 23.

⁹ Civil Code, Art. 2219, at Sec. 7. Decision of the Supreme Court of the Philippines, dated 22 January 1990, *Eulogio Occena v. Hon. Pedro M. Icamina et al.* (G.R. No. 82146); Decision of the Supreme Court of the Philippines, dated 28 May 1992, *M.H. Wylie et al. v. Aurora I. Rarang et al.* (G.R. No. 74135).

¹⁰ *Alexander Adonis v. The Philippines*, Communication No. 1815/2008, U.N. Doc. CCPR/C/103/D/1815/2008/Rev.1 (2012).

¹¹ *Alexander Adonis v. The Philippines*, Communication No. 1815/2008, U.N. Doc. CCPR/C/103/D/1815/2008/Rev.1 (2012); N. Make, *Prison Time for Libel Infringes Human Rights, UNHRC Decides*, The Bureau of Investigative Journalism, dated 7 February 2012, at <https://www.thebureauinvestigates.com/blog/2012-02-07/prison-time-for-libel-infringes-human-rights-unhrc-decides>.

¹² Decision of the Supreme Court of the Philippines, dated 18 February 2014, *Jose Jesus M. Disini, Jr. et al. v. Secretary of Justice et al.*

¹³ Decision of the Supreme Court of the Philippines, dated 25 June 1980, *People of the Philippines v. Hon. Amador E. Gomez* (G.R. No. L-32815).

¹⁴ For further case law, see Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315) with further references.

¹⁵ Decision of the Supreme Court of the Philippines, dated 17 October 2006, *GMA Network, Inc. et al. v. Jesus G. Bustos et al.* (G.R. NO. 146848).

¹⁶ Decision of the Supreme Court of the Philippines, dated 28 January 2003, *MVRS Publications, Inc. et al. v. Islamic Da'wah Council of the Philippines, Inc. et al.* (G.R. NO. 135306) (J. Austria-Martinez, dissenting opinion).

¹⁷ Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).

¹⁸ Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).

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- ¹⁹ Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).
- ²⁰ Decision of the Supreme Court of the Philippines, dated 9 November 1989, *Marcelo Soriano v. Intermediate Appellate Court et al* (G.R. No. 72383).
- ²¹ Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).
- ²² Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).
- ²³ Decision of the Supreme Court of the Philippines, dated 28 January 2003, *MVRS Publications, Inc. et al. v. Islamic Da'wah Council of the Philippines, Inc. et al.* (G.R. NO. 135306) (citing Mr. Justice Reynato S. Puno, also stating “[i]f no one is identified, there can be no libel because no one’s reputation has been injured.”).
- ²⁴ Decision of the Supreme Court of the Philippines, dated 28 January 2003, *MVRS Publications, Inc. et al. v. Islamic Da'wah Council of the Philippines, Inc. et al.* (G.R. NO. 135306).
- ²⁵ Decision of the Supreme Court of the Philippines, dated 14 January 1999, *Arturo Borjal et al. v. Court of Appeals et al.* (G.R. No. 126466); see also Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).
- ²⁶ Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).
- ²⁷ Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).
- ²⁸ Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).
- ²⁹ RPC, Art. 354.
- ³⁰ See Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).
- ³¹ RPC, Art. 354(1).
- ³² See A. Navarrete, *Unsolicited Notoriety: Establishing a Framework in the Application of the Public Figure Doctrine to Private Individuals Whose Lives Intersect with Public Interest*, Ateneo L J 2017, 534, 558, at <http://ateneolawjournal.com/Media/uploads/7f6ae3f5ff2ee5396c8a97e39259ba8c.pdf>; Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).
- ³³ RPC, Art. 354(2).
- ³⁴ Decision of the Supreme Court of the Philippines, dated 22 April 1977, *Manuel Elizalde v. Mario J. Gutierrez*.
- ³⁵ See A. Navarrete, *Unsolicited Notoriety: Establishing a Framework in the Application of the Public Figure Doctrine to Private Individuals Whose Lives Intersect with Public Interest*, Ateneo L J 2017, 534, 558, at <http://ateneolawjournal.com/Media/uploads/7f6ae3f5ff2ee5396c8a97e39259ba8c.pdf>; Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315).
- ³⁶ RPC, Art. 355.
- ³⁷ Decision of the Supreme Court of the Philippines, dated 18 February 2014, *Jose Jesus M. Disini, Jr. et al. v. Secretary of Justice et al.*
- ³⁸ Cybercrime Prevention Act 2012, Sec. 4(c)(4).
- ³⁹ Decision of the Supreme Court of the Philippines, dated 18 February 2014, *Jose Jesus M. Disini, Jr. et al. v. Secretary of Justice et al.*
- ⁴⁰ Decision of the Supreme Court of the Philippines, dated 17 January 2005, *Filipinas Broadcasting Network, Inc. v. AMEC-BCCM* (G.R. No. 141994) (holding that a corporation can sue for libel or any other form of defamation and claim moral damages).
- ⁴¹ A. Navarrete, *Unsolicited Notoriety: Establishing a Framework in the Application of the Public Figure Doctrine to Private Individuals Whose Lives Intersect with Public Interest*, Ateneo L J 2017, 534, 543, at <http://ateneolawjournal.com/Media/uploads/7f6ae3f5ff2ee5396c8a97e39259ba8c.pdf>. See also Civil Code,

Art. 33. When a criminal action is commenced, the civil action for the recovery of civil liability arising from the offense is deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action. Revised Rules of Criminal Procedure, Rule 111 Section 1.

⁴² Decision of the Supreme Court of the Philippines, dated 19 December 1955, *The People of the Philippines v. Juan B. Santos and Francisco Guballa* (G.R. Nos. L-7316 and L-7317).

⁴³ Revised Rules of Criminal Procedure, Rule 111 Section 5; see also RPC, Art. 360.

⁴⁴ Rules of Court, Rule 133, at Section 1.

⁴⁵ Rules of Court, Rule 133, at Section 2.

⁴⁶ Decision of the Supreme Court of the Philippines, dated 29 April 1988, *Ayer Productions Pty. Ltd. v. Capulong* (G.R. No. 82380).

⁴⁷ Decision of the Supreme Court of the Philippines, dated 29 April 1988, *Ayer Productions Pty. Ltd. v. Capulong* (G.R. No. 82380). RPC, Art. 203 defines public officers as “any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class.”

⁴⁸ See Decision of the Supreme Court of the Philippines, dated 29 April 1988, *Ayer Productions Pty. Ltd. v. Capulong* (G.R. No. 82380).

⁴⁹ See A. Navarrete, *Unsolicited Notoriety: Establishing a Framework in the Application of the Public Figure Doctrine to Private Individuals Whose Lives Intersect with Public Interest*, Ateneo L J 2017, 534, 537, at <http://ateneolawjournal.com/Media/uploads/7f6ae3f5ff2ee5396c8a97e39259ba8c.pdf>.

⁵⁰ See A. Navarrete, *Unsolicited Notoriety: Establishing a Framework in the Application of the Public Figure Doctrine to Private Individuals Whose Lives Intersect with Public Interest*, Ateneo L J 2017, 534, 539, at <http://ateneolawjournal.com/Media/uploads/7f6ae3f5ff2ee5396c8a97e39259ba8c.pdf>.

⁵¹ K. Jimeno, *Are Trending Victims Less Protected?*, Philippine Inquirer, dated 9 March 2014, at <http://opinion.inquirer.net/72388/are-trending-victims-lessprotected>.

⁵² RPC, Art. 360.

⁵³ See Decision of the Supreme Court of the Philippines, dated 6 February 2006, *Ching v. Secretary of Justice* (G.R. No. 164317).

⁵⁴ An apology, retraction or rectification may mitigate criminal sentences or civil damages. See Decision of the Supreme Court of the Philippines, dated 31 July 1970, *Lopez v. Court of Appeals* (G.R. No. L-26549) (citing *Sotelo Matti v. Bulletin Publishing Co.*, 37 Phil. 562, 565 (1918)). However, apologies, retractions and/or rectifications cannot act as defenses to a finding of defamation. They may at most mitigate any penalties after a finding of defamation.

⁵⁵ Decision of the Supreme Court of the Philippines, dated 14 January 1999, *Arturo Borjal et al. v. Court of Appeals et al.* (G.R. No. 126466).

⁵⁶ Decision of the Supreme Court of the Philippines, dated 14 January 1999, *Arturo Borjal et al. v. Court of Appeals et al.* (G.R. No. 126466).

⁵⁷ Decision of the Supreme Court of the Philippines, dated 14 January 1999, *Arturo Borjal et al. v. Court of Appeals et al.* (G.R. No. 126466).

⁵⁸ Decision of the Supreme Court of the Philippines, dated 25 November 2009, *Alfonso T. Yuchengco v. Manila Chronicle Publishing Corporation et al.* (G.R. NO. 184315); Decision of the Supreme Court of the Philippines, dated 30 September 2005, *Guinguing v. Court of Appeals* (G.R. No. 128959).

⁵⁹ A.K.P. Navarrete, *Unsolicited Notoriety: Establishing a Framework in the Application of the Public Figure Doctrine to Private Individuals Whose Lives Intersect with Public Interest*, Ateneo L J 2017, 534, 593, at <http://ateneolawjournal.com/Media/uploads/7f6ae3f5ff2ee5396c8a97e39259ba8c.pdf>.

⁶⁰ Decision of the Supreme Court of the Philippines, dated 30 September 2005, *Guinguing v. Court of Appeals* (G.R. No. 128959).

⁶¹ Decision of the Supreme Court of the Philippines, dated 20 October 1954, *People v. Federico M. Chua Hiong*, (51 O.G. 1932, 1936-38 [1954]).

⁶² Decision of the Supreme Court of the Philippines, dated 20 October 1954, *People v. Federico M. Chua Hiong*, (51 O.G. 1932, 1936-38 [1954]).

⁶³ Decision of the Supreme Court of the Philippines, dated 28 January 1961, *Carlos M. Sison v. Gonzalo D. David*, 110 Phil. 662 (1961); see also Decision of the Supreme Court of the Philippines, dated 15 November 1982, *Raymundo A. Armovit v. The Honorable Amante P. Purisima et al.* (G.R. No. L-3925).

⁶⁴ See Civil Code, Art. 1147; RPC, Art. 90.

⁶⁵ Reporters without Borders, *Philippine website accused of libel in seven-year-old article*, Reporters without Borders, 6 February 2019, at <https://rsf.org/en/news/philippine-website-accused-libel-seven-year-old-article>.

⁶⁶ L. Buan, *NBI junks cyber libel complaint vs Rappler*, Rappler, 22 February 2018, at <https://www.rappler.com/nation/196648-nbi-junks-cyber-libel-complaint-rappler>.

⁶⁷ H. Ellis-Petersen, *Maria Ressa: editor of Rappler news website arrested on 'cyber-libel' charges*, The Guardian, dated 13 February 2019, <https://www.theguardian.com/world/2019/feb/13/philippines-journalists-decry-intimidation-as-website-editor-arrested>; Fédération internationale des journalistes, *Rappler indicted on libel charges in the Philippines*, IFJ, dated 7 February 2019, at <https://www.ifj.org/fr/salle-de-presse/nouvelles/detail/category/press-releases/article/rappler-indicted-on-libel-charges-in-the-philippines.html>.

⁶⁸ Decision of the Supreme Court of the Philippines, dated 31 January 1968, *Morfe v. Mutuc*; Decision of the Supreme Court of the Philippines, dated 23 July 1998, *Blas F. Ople v. Ruben D. Torres et al.*

⁶⁹ See *below* at paras. 44-52.

⁷⁰ Constitution, Art. III Section 2 (“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.”).

⁷¹ Constitution, Art. III Section 3 (“(1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law. (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.”). Art. III Section 3 protects letters, messages, phone calls and similar communications. See L. Teodoro and R. Kabatay, *Mass media laws and regulations in the Philippines*, 1997, at p. 120.

⁷² Decision of the Supreme Court of the Philippines, dated 23 July 1998, *Blas F. Ople v. Ruben D. Torres et al.*

⁷³ Constitution, Art. III Section 7. Compare A. Navarrete, *Unsolicited Notoriety: Establishing a Framework in the Application of the Public Figure Doctrine to Private Individuals Whose Lives Intersect with Public Interest*, Ateneo L J 2017, 534, 548 *et seq.*, at <http://ateneolawjournal.com/Media/uploads/7f6ae3f5ff2ee5396c8a97e39259ba8c.pdf>.

⁷⁴ Decision of the Supreme Court of the Philippines, dated 13 February 1989, *Ricardo Valmonte et al. v. Feliciano Belmonte, Jr.* (G.R. No. 74930).

⁷⁵ Parliament has also passed laws to circumscribe the right to privacy. For example, the Human Security Act of 2007, which was enacted to “secure the state and protect [the] people from terrorism,” permits the interception and recording of communications between members of terrorist organizations and, under certain circumstances, any person suspected of the crime of terrorism (Human Security Act of 2007, Section 7). The Act is not further discussed as it is not particularly relevant to fact-checkers.

⁷⁶ L. Teodoro and R. Kabatay, *Mass media laws and regulations in the Philippines*, 1997, at p. 123.

⁷⁷ Civil Code, Art. 26.

⁷⁸ O. Tan, *Articulating the Complete Philippine Right to Privacy in Constitutional and Civil Law*, Philippine Law Journal 2008, 78, at p. 150.

⁷⁹ See, e.g., L. Teodoro and R. Kabatay, *Mass media laws and regulations in the Philippines*, 1997, at p. 123.

⁸⁰ Civil Code, Art. 723.

⁸¹ L. Teodoro and R. Kabatay, *Mass media laws and regulations in the Philippines*, 1997, at p. 123.

⁸² Civil Code, Art. 1146.

⁸³ See generally L. Teodoro and R. Kabatay, *Mass media laws and regulations in the Philippines*, 1997, at p. 124.

⁸⁴ RPC, Art. 290 (“Discovering secrets through seizure of correspondence. – The penalty of prision correccional in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon any private individual who in order to discover the secrets of another, shall seize his papers or letters and reveal the contents thereof. If the offender shall not reveal such secrets, the penalty shall be arresto mayor and a fine not exceeding 500 pesos. The provision shall not be applicable to parents, guardians, or persons entrusted with the custody of minors with respect to the papers or letters of the children or minors placed under their care or study, nor to spouses with respect to the papers or letters of either of them.”); RPC, Art. 291 (“Revealing secrets with abuse of office. – The penalty of arresto mayor and a fine not exceeding 500 pesos shall be imposed upon any manager, employee, or servant who, in such capacity, shall learn the secrets of his principal or master and shall reveal such secrets.”).

⁸⁵ Compare RCP, Arts. 290 and 291.

⁸⁶ RPC, Art. Art. 229 (“Revelation of secrets by an officer. – Any public officer who shall reveal any secret known to him by reason of his official capacity, or shall wrongfully deliver papers or copies of papers of which he may have charge and which should not be published, shall suffer the penalties of prision correccional in its medium and maximum periods, perpetual special disqualification and a fine not exceeding 2,000 pesos if the revelation of such secrets or the delivery of such papers shall have caused serious damage to the public interest; otherwise, the penalties of prision correccional in its minimum period, temporary special disqualification and a fine not exceeding 50 pesos shall be imposed.”); RPC, Art. 230 (“Public officer revealing secrets of private individual. – Any public officer to whom the secrets of any private individual shall become known by reason of his office who shall reveal such secrets, shall suffer the penalties of arresto mayor and a fine not exceeding 1,000 pesos.”).

⁸⁷ Article 280 of the RPC also implicates privacy concerns, but has limited relevance for purposes of this Guide. Article 280 punishes trespass to a person’s dwelling with a maximum sentence of six years of imprisonment. RPC, Art. 280 (“Qualified trespass to dwelling. – Any private person who shall enter the dwelling of another against the latter’s will shall be punished by arresto mayor and a fine not exceeding 1,000 pesos. If the offense be committed by means of violence or intimidation, the penalty shall be prision correccional in its medium and maximum periods and a fine not exceeding 1,000 pesos. The provisions of this article shall not be applicable to any person who shall enter another’s dwelling for the purpose of preventing some serious harm to himself, the occupants of the dwelling or a third person, nor shall it be applicable to any person who shall enter a dwelling for the purpose of rendering some service to humanity or justice, nor to anyone who shall enter cafes, taverns, inn and other public houses, while the same are open.”).

⁸⁸ See RPC, Art. 90.

⁸⁹ RPC, Art. 90.

⁹⁰ Constitution, Art. VIII Section 5(5).

⁹¹ Rule on the Writ of Habeas Data, Section 1.

⁹² Decision of the Supreme Court of the Philippines, dated 29 September 2014, *Rhonda Ave S. Vivares et al. v. St. Theresa’s College et al.* (G.R. No. 202666).

⁹³ Rule on the Writ of Habeas Data, Section 6.

⁹⁴ Rule on the Writ of Habeas Data, Section 6(e).

⁹⁵ Rule on the Writ of Habeas Data, Section 20.

⁹⁶ Rule on the Writ of Habeas Data, Section 21.

⁹⁷ See Data Privacy Act, Chapter I. It was supplemented in 2016 by rules and regulations that enforce the different provisions in the Data Privacy Act. Implementing Rules and Regulations of the Data Privacy Act of 2012, Rule 1.

⁹⁸ Data Privacy Act 2012, Chapter VIII.

⁹⁹ Data Privacy Act 2012, Section 4(4)(d) (“Personal information processed for journalistic, artistic, literary or research purposes.”).

¹⁰⁰ Republic Act No. 53 is “an Act to Exempt the Publisher, Editor or Reporter of any Publication from Revealing the Source of Published News or Information Obtained in Confidence.” See *also* at Section V.

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- ¹⁰¹ See A. Navarrete, *Unsolicited Notoriety: Establishing a Framework in the Application of the Public Figure Doctrine to Private Individuals Whose Lives Intersect with Public Interest*, *Ateneo L J* 2017, 534, 535, at <http://ateneolawjournal.com/Media/uploads/7f6ae3f5ff2ee5396c8a97e39259ba8c.pdf>.
- ¹⁰² Decision of the Supreme Court of the Philippines, dated 29 September 2014, *Rhonda Ave S. Vivares et al. v. St. Theresa's College et al.* (G.R. No. 202666).
- ¹⁰³ Decision of the Supreme Court of the Philippines, dated 1 December 2016, *Maria Victoria G. Belo-Henares v. Atty. Roberto "Argee" C. Guevarra* (A.C. No. 11394).
- ¹⁰⁴ Decision of the Supreme Court of the Philippines, dated 1 December 2016, *Maria Victoria G. Belo-Henares v. Atty. Roberto "Argee" C. Guevarra* (A.C. No. 11394). The Court held that it may be possible for users to "manifest the intention to keep certain posts private" by customizing their privacy settings in social networks but did not provide further guidance (*Id.*). The different privacy settings available in social networks were later explained in more detail in Decision of the Supreme Court of the Philippines, dated 29 September 2014, *Rhonda Ave S. Vivares et al. v. St. Theresa's College et al.* (G.R. No. 202666).
- ¹⁰⁵ The Court defined public figures to include any "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.'" See also above at Section II.
- ¹⁰⁶ Decision of the Supreme Court of the Philippines, dated 29 April 1988, *Ayer Productions Pty. Ltd. et al. v. Hon. Ignacio M. Capulong et al.* (G.R. No. 82380).
- ¹⁰⁷ Decision of the Supreme Court of the Philippines, dated 6 August 1979, *Manuel Lagunzad v. Maria Soto Vda. de Gonzales et al* (G.R. No. L-32066).
- ¹⁰⁸ Decision of the Supreme Court of the Philippines, dated 6 August 1979, *Manuel Lagunzad v. Maria Soto Vda. de Gonzales et al* (G.R. No. L-32066).
- ¹⁰⁹ Anti-Wire Tapping Act, Section 1.
- ¹¹⁰ Anti-Wire Tapping Act, Section 1.
- ¹¹¹ Anti-Wire Tapping Act, Section 2.
- ¹¹² Decision of the Metropolitan Trial Court, Pasay City, dated 12 August 2010, *People of the Philippines v. Cecilia Lazaro*.
- ¹¹³ See Freedom on the Net 2018 Website, at "Philippines," at <https://freedomhouse.org/report/freedom-net/2018/philippines> with further references.
- ¹¹⁴ See H. Ellis-Petersen, *Britain sold spying gear to Philippines despite Duterte's brutal drugs war*, *The Guardian*, dated 21 February 2018, <https://www.theguardian.com/world/2018/feb/21/britain-sold-spying-gear-to-philippines-despite-dutertes-brutal-drugs-war>.
- ¹¹⁵ See *Duterte admits wiretapping alleged narcopoliticians*, CNN Philippines, dated 23 September 2017, at <http://nine.cnnphilippines.com/news/2017/09/23/president-rodriigo-duterte-wiretap-narcopoliticians.html>; V. Lopez, *Duterte links Loida Lewis to ICC probe, she denies his info from 'foreign country'*, *GMA News Online*, dated 12 February 2018, at <https://www.gmanetwork.com/news/news/nation/643104/duterte-links-loida-lewis-to-icc-probe-she-denies-his-info-from-foreign-country/story/>.
- ¹¹⁶ See *Duterte admits wiretapping alleged narcopoliticians*, CNN Philippines, dated 23 September 2017, <http://nine.cnnphilippines.com/news/2017/09/23/president-rodriigo-duterte-wiretap-narcopoliticians.html>.
- ¹¹⁷ See *Duterte admits wiretapping alleged narcopoliticians*, CNN Philippines, dated 23 September 2017, <http://nine.cnnphilippines.com/news/2017/09/23/president-rodriigo-duterte-wiretap-narcopoliticians.html>.
- ¹¹⁸ See Disini & Disini Law Office, *The Right to Be Forgotten in the Philippine Context*, dated 21 March 2018, <https://privacy.com.ph/news-article/the-right-to-be-forgotten-in-the-philippine-context/>.
- ¹¹⁹ Data Privacy Act, Section 16(d).
- ¹²⁰ Data Privacy Act, Section 16(e).
- ¹²¹ A. Wall, *Summary: Philippines Data Privacy Act and implementing regulations*, dated 27 April 2017, at <https://iapp.org/news/a/summary-philippines-data-protection-act-and-implementing-regulations/>.
- ¹²² Constitution, Art. III, at Section 7.
- ¹²³ Decision of the Supreme Court of the Philippines, dated 29 May 1987, *Valentin L. Legaspi v. Civil Service Commission* (G.R. No. 72119).

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- ¹²⁴ See Decision of the Supreme Court of the Philippines, dated 29 May 1987, *Valentin L. Legaspi v. Civil Service Commission* (G.R. No. 72119).
- ¹²⁵ Constitution, Art. III, at Section 7.
- ¹²⁶ Decision of the Supreme Court of the Philippines, dated 29 May 1987, *Valentin L. Legaspi v. Civil Service Commission* (G.R. No. 72119).
- ¹²⁷ Decision of the Supreme Court of the Philippines, dated 29 May 1987, *Valentin L. Legaspi v. Civil Service Commission* (G.R. No. 72119).
- ¹²⁸ Decision of the Supreme Court of the Philippines, dated 29 May 1987, *Valentin L. Legaspi v. Civil Service Commission* (G.R. No. 72119).
- ¹²⁹ Decision of the Supreme Court of the Philippines, dated 29 May 1987, *Valentin L. Legaspi v. Civil Service Commission* (G.R. No. 72119); cf. also Decision of the Supreme Court of the Philippines, dated 27 February 1948, *Abelardo Subido, Editor, The Manila Post v. Roman Ozaeta, Secretary of Justice et al* (G.R. No. L-1631).
- ¹³⁰ Decision of the Supreme Court of the Philippines, dated 29 May 1987, *Valentin L. Legaspi v. Civil Service Commission* (G.R. No. 72119).
- ¹³¹ See Decision of the Supreme Court of the Philippines, dated 29 May 1987, *Valentin L. Legaspi v. Civil Service Commission* (G.R. No. 72119).
- ¹³² See Executive Order (EO) No. 2, s. 2016.
- ¹³³ FOI Order, at Section 3.
- ¹³⁴ See FOI Order, at Section 2.
- ¹³⁵ FOI Order, at Section 6.
- ¹³⁶ See Freedom of Information (“FOI”), at <https://www.foi.gov.ph/>.
- ¹³⁷ See FOI Order, at Section 13.
- ¹³⁸ FOI Order, at Section 4.
- ¹³⁹ See *Draft FOI manual includes list of 166 exceptions*, Rappler, dated 28 August 2016, at <https://www.rappler.com/nation/144442-draft-freedom-of-information-foi-manual-exceptions-list>.
- ¹⁴⁰ See Rules of Court, Rule 135, at Section 2 (“the sitting of every court of justice shall be public”).
- ¹⁴¹ Rules of Court, Rule 135, at Section 2 (Any court may, in its discretion, exclude the public “when the evidence to be adduced is of such nature as to require their exclusion in the interest of morality or decency.”). See also Revised Rules of Criminal Procedure, Rule 119 Section 21 (A judge may, in his discretion, remove the public from the courtroom during criminal proceedings “if the evidence to be produced during the trial is offensive to decency or public morals”).
- ¹⁴² See Revised Rules of Criminal Procedure, Rule 119, at Section 21. A judge’s discretion to remove the public does not extend to court personnel and counsel, who cannot be removed from the courtroom: See Revised Rules of Criminal Procedure, Rule 119, at Section 21, last sentence.
- ¹⁴³ See Rules of Court, Rule 135, at Section 2 and Rule 136, at Section 11.
- ¹⁴⁴ Decision of the Supreme Court of the Philippines, dated 21 July 2006, *Alfredo Hilado et al v. Judge Amor A. Reyes et al* (G.R. No. 163155): This also includes “any paper, letter, map, book, other document, tape, photograph, film, audio or video recording, court reporter’s notes, transcript, data compilation, or other materials, whether in physical or electronic form, ... and includes all evidence it has received in a case.”
- ¹⁴⁵ Decision of the Supreme Court of the Philippines, dated 21 July 2006, *Alfredo Hilado et al v. Judge Amor A. Reyes et al* (G.R. No. 163155).
- ¹⁴⁶ See Decision of the Supreme Court of the Philippines, dated 21 July 2006, *Alfredo Hilado et al v. Judge Amor A. Reyes et al* (G.R. No. 163155).
- ¹⁴⁷ Guidelines for MCIOs, Art. 1(D).
- ¹⁴⁸ Guidelines for MCIOs, Preamble.
- ¹⁴⁹ See Guidelines for MCIOs, Art. 1(A).
- ¹⁵⁰ Guidelines for MCIOs, Art. 1(B). Moreover, according to Art. 5(A), MCIOs shall not disclose (1) court information outside employment not required or included in the performance of official duties; (2) any confidential information acquired while employed in the judiciary; (3) confidential information given by litigants, witnesses, or attorneys to justices, judges or any other person, unless they are expressly authorized; and (4)

confidential information to individuals not authorized to receive such information by law, court rule, or administrative policy.

¹⁵¹ See Guidelines for MCIOs, Art. 1(B).

¹⁵² See Rules of Civil Procedure, Rule 65, at Section 3 (“When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.”).

¹⁵³ As amended by Republic Act No. 1477.

¹⁵⁴ See House Bill No. 362, Explanatory Note, at http://www.congress.gov.ph/legisdocs/basic_16/HB00362.pdf.

¹⁵⁵ House Bill No. 362, Explanatory Note, at http://www.congress.gov.ph/legisdocs/basic_16/HB00362.pdf.

¹⁵⁶ Sotto Law, at Section 1.

¹⁵⁷ See House Bill No. 362, Explanatory Note, at http://www.congress.gov.ph/legisdocs/basic_16/HB00362.pdf.

¹⁵⁸ House Bill No. 362, at http://www.congress.gov.ph/legisdocs/basic_16/HB00362.pdf.

¹⁵⁹ See Republic Act No. 8293 (“Intellectual Property Code”).

¹⁶⁰ Intellectual Property Code, at Chapter II.

¹⁶¹ See Intellectual Property Code, at Section 173(1).

¹⁶² Intellectual Property Code, at Section 175.

¹⁶³ Intellectual Property Code, at Section 177.

¹⁶⁴ Intellectual Property Code, at Section 193.

¹⁶⁵ For a full list, see Intellectual Property Code, at Section 216.

¹⁶⁶ See Intellectual Property Code, at Section 178(1).

¹⁶⁷ See Intellectual Property Code, at Section 178(2).

¹⁶⁸ See Intellectual Property Code, at Section 178(3).

¹⁶⁹ See Intellectual Property Code, at Section 184(1)(b); see *below*, at paras. [--].

¹⁷⁰ Intellectual Property Code, at Section 185(1).

¹⁷¹ Intellectual Property Code, at Section 184(1)(c). For the full list, see Intellectual Property Code, at Section 184(1).

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