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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

Asia Pacific

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I. Introduction

This submission reviews legal developments in 2015 for the Asia Pacific Region.

II. Philippines

A. CYBERCRIME PREVENTION ACT OF 2012 FINALIZED

On June 11, 2015, the Philippine Department of Justice endorsed the Implementing Rules and Regulations (IRR) of the Cybercrime Prevention Act of 2012, a measure against internet crime.¹ The law was finalized on August 12, 2015, through the signatures of representatives of the implementing agencies, the Department of Interior and Local Government, and the Department of Science and Technology.² These final approvals came almost three years after President Benigno Aquino III signed the Act into law, in September 2012, and more than a year after the Supreme Court's February 2014 decision upheld the constitutionality of certain of its provisions, including online libel, and struck down others.³

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1. See An Act Defining Cybercrime, Rep. Act No. 10175, 2796 O.G. 5808 (Sept. 12, 2012) (Phil.) <http://www.gov.ph/2012/09/12/republic-act-no-10175/>.

2. See Mark Merueñas, *DOJ, DOST Sign Implementing Rules of Cybercrime Prevention Act*, GMA NEWS ONLINE (Aug. 12, 2015) <http://www.gmanetwork.com/news/story/532618/news/nation/doj-dost-sign-implementing-rules-of-cybercrime-prevention-act>; Edu Punay, *Cyber Cops Eyed vs Online Crimes as Law's IRR Signed*, THE PHILIPPINE STAR (Aug. 13, 2015) <http://www.philstar.com/headlines/2015/08/13/1487476/cyber-cops-eyed-vs-online-crimes-laws-irr-signed>.

3. Rep. Act No. 10175, *supra* note 1; *Disini v. Sec'y of Justice*, G.R. No. 203335 (S.C., Feb. 11, 2014) (Phil.) http://www.lawphil.net/judjuris/juri2014/feb2014/gr_203335_2014.html; see Merueñas, *supra* note 2; Punay, *supra* note 2.

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III. Malaysia

A. SEDITION ACT AMENDED

In April 2015, Malaysia's parliament passed amendments to the Sedition Act of 1948, a colonial-era law that criminalizes speech deemed as seditious.⁴ Among other things, the amendments remove provisions outlawing criticism of the government and the judiciary, impose mandatory minimum sentences, and increase penalties, including for first-time offenders.⁵ The amendments also provide for blocking online anonymous seditious publications.⁶

B. GOVERNMENT BLOCKS DISSIDENT WEBSITES AND ISSUES ARREST WARRANT FOR WEBSITE'S FOUNDER

In July 2015, Malaysian authorities blocked the website of the Sarawak Report, a London-based news outlet critical of the Malaysian government.⁷ The Sarawak Report had reported allegations of government corruption surrounding 1MDB, a state development fund, implicating Prime Minister Najib Razak.⁸ Starting on July 19, 2015, the Malaysian Communications and Multimedia Commission (MCMC) blocked access to the Sarawak Report inside the country, claiming that the website had violated the Communications and Multimedia Act of 1998 by publishing allegedly unverified information that could "threaten the country's stability."⁹ At year's end, The Sarawak Report remained blocked in Malaysia.¹⁰

4. See *Malaysian Parliament Passes Tough Sedition Act Amendments Criticized by UN*, AUSTL. BROAD. CORP. (Apr. 10, 2015) <http://www.abc.net.au/news/2015-04-10/malaysian-parliament-passes-tough-sedition-act-amendments/6384164>; *Parliament Not a Rubber Stamp, says Najib*, THE MALAYSIAN INSIDER (May 9, 2015) <https://sg.news.yahoo.com/parliament-not-rubber-stamp-says-045728981.html>.

5. See *Malaysian Parliament Passes Tough Sedition Act Amendments Criticized by UN*, *supra* note 5; Press Statement, Marie Harf, Acting Dep't Spokesperson, U.S. Dep't of State, Malaysia's Sedition Act Amendments (Apr. 14, 2015) <http://go.usa.gov/3EGq3>.

6. See *Malaysian Parliament Passes Tough Sedition Act Amendments Criticized by UN*, *supra* note 5.

7. See Cahal Milmo, *Sarawak Report Whistleblowing Website Blocked by Malaysia After PM Corruption Allegations*, THE INDEPENDENT, (July 20, 2015) <http://www.independent.co.uk/news/uk/home-news/sarawak-report-whistleblowing-website-blocked-by-malaysia-after-pm-corruption-allegations-10402770.html>.

8. See, e.g., *Half A Billion USD Was Transferred From Good Star To Jho Low's BSI Singapore Account! MAJOR EXCLUSIVE*, SARAWAK REPORT (Apr. 23, 2015) <http://www.sarawakreport.org/2015/04/half-a-billion-usd-was-transferred-from-good-star-to-jho-lows-bsi-singapore-account-major-exclusive/>; see Milmo, *supra* note 7. The Wall Street Journal and The Economist also reported on the allegations against Prime Minister Najib. See, e.g., Tom Wright & Simon Clark, *Investigators Believe Money Flowed to Malaysian Leader Najib's Accounts Amid 1MDB Probe*, THE WALL STREET JOURNAL (July 2, 2015) <http://www.wsj.com/articles/SB10130211234592774869404581083700187014570>; *No More Mr Nice Guy*, THE ECONOMIST (Aug. 29, 2015) <http://www.economist.com/news/asia/21662495-beset-scandal-malaysias-prime-minister-cracks-down-dissent-no-more-mr-nice-guy>.

9. See *Malaysia: End Website Blocking, Politicized Investigations*, HUMAN RIGHTS WATCH (July 22, 2015) <https://www.hrw.org/news/2015/07/22/malaysia-end-website-blocking-politicized-investigations>; *Malaysia blocks UK-based portal for breaching internet law*, INT'L BUS. TIMES (July 21, 2015) <http://www.ibtimes.co.uk/malaysia-blocks-uk-based-portal-breaching-internet-law-1511768>.

10. See Shane Croucher, *Malaysia: Malaysia: How Clare Rewcastle Brown's Sarawak Report is exposing Najib Razak's 'dictatorship'*, INT'L BUS. TIMES (Feb. 18, 2016) <http://www.ibtimes.co.uk/malaysia-how-clare-rewcastle-browns-sarawak-report-exposing-najib-razaks-dictatorship-1544686>. Notably, in February 2016,

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On August 4, 2015, the government issued an arrest warrant for Clare Rewcastle-Brown, the founder and editor-in-chief of Sarawak Report.¹¹ The warrant was issued based on alleged offenses under Section 124B of the Penal Code, concerning activities detrimental to parliamentary democracy, and Section 1241, concerning dissemination of false reports.¹²

In late August, the MCMC blocked websites promoting Bersih 4.0, an anti-government rally held in several Malaysian cities on August 29 and 30.¹³ On August 27, the MCMC called the rallies illegal and announced that it would block the websites in the interest of “national stability.”¹⁴

C. HIGH COURT RULES SEDITION ACT CONSTITUTIONAL

On October 6, 2015, Malaysia’s highest court ruled that the Sedition Act is constitutional and as such, an activist could be brought to trial under it.¹⁵ Dr. Azmi Sharom, a Malaysian law professor, was charged on September 2, 2014, with violating the law based on statements he made in an article published in an English-language online news portal.¹⁶ Dr. Sharom argued that the Sedition Act was unconstitutional because it was not enacted by Parliament, but was instead enacted by the Legislative Council under British rule in 1948, and that the law became void with the enactment of the Federal Constitution in 1957.¹⁷ In a unanimous decision, the high court rejected this constitutional challenge.

regulators blocked in-country online access to *The Malaysian Insider*, an independent news source cited herein, *see supra* note 4, *infra* note 14, following its reporting on alleged financial improprieties by Prime Minister Najib. Jahabar Sadiq, *The Muzzling of the Malaysian Mind*, THE NEW YORK TIMES (April 14, 2016) http://www.nytimes.com/2016/04/14/opinion/the-muzzling-of-the-malaysian-mind.html?_r=2. The block order, justified by regulators’ claim that the reporting would confuse the public, resulted in the closure of *The Malaysian Insider*.

11. See Rachel Middleton, *Malaysia: Arrest warrant issued for Sarawak Report*, INT’L BUS. TIMES (Aug. 5, 2015) <http://www.ibtimes.co.uk/malaysia-arrest-warrant-issued-sarawak-report-editor-clare-rewcastle-brown-1514107>; *No More Mr Nice Guy*, *supra* note 8.

12. See Middleton, *supra* note 11 (citing Khairah N. Karim, *Police Have Arrest Warrant for Sarawak Report editor*, NEW STRAITS TIMES ONLINE (Aug. 4, 2015) <http://www.nst.com.my/news/2015/09/police-have-arrest-warrant-sarawak-report-editor>).

13. See *Malaysia blocks Anti-Government Rally Organiser Website*, BBC NEWS (Aug. 28, 2015) <http://www.bbc.com/news/world-asia-34070655>; *No More Mr Nice Guy*, *supra* note 8.

14. Bibi van der Zee, *NGO Alert: Malaysia Government Blocks Internet and Threatens to Send Army Against Bersih Rally*, THE GUARDIAN (Aug. 27, 2015) <http://www.theguardian.com/global-development-professionals-network/2015/aug/27/ngo-alert-malaysia-government-blocks-internet-and-threatens-to-send-army-against-rally>; Asrul Hadi Abdullah Sani, *Malaysia Blocks Bersih Rally Websites*, THE STRAITS TIMES (Aug. 28, 2015) <http://www.straitstimes.com/asia/se-asia/malaysia-blocks-bersih-rally-websites>.

15. Oliver Holmes, *Malaysia Court Dismisses Challenge to ‘Unconstitutional’ Sedition Law*, THE GUARDIAN (Oct. 6, 2015) <http://www.theguardian.com/world/2015/oct/06/malaysia-court-dismisses-challenge-to-unconstitutional-sedition-law>.

16. Ida Lim, *Federal Court rules Sedition Act Constitutional, UM’s Azmi Sharom to stand trial*, MALAY MAIL ONLINE (Oct. 6, 2015) <http://www.themalaymailonline.com/malaysia/article/federal-court-rules-sedition-act-constitutional-ums-azmi-sharom-to-stand-tr>; V. Anbalagan, *Court Rules Sedition Act Legal, Azmi Sharom to Stand Trial*, THE MALAYSIAN INSIDER (Oct. 5, 2015) <https://sg.news.yahoo.com/court-rules-sedition-act-legal-022747495.html>.

17. See Lim, *supra* note 16; Anbalagan, *supra* note 16.

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IV. Indonesia

A. DRAFT INFORMATION PRIVACY LAW AND AMENDMENTS TO INFORMATION TECHNOLOGY AND ELECTRONICS TRANSACTIONS (ITE) LAW PROPOSED

On July 14, 2015, pursuant to Article 7(2) of Government Regulation No. 82 of 2012, the government of Indonesia published the Draft Regulation of the Minister of Communication and Information (RPM) of the Protection of Personal Data in Electronic Systems.¹⁸ This draft regulation focuses on protecting personal data collected by the Directorate General of Immigration, the Financial Services Authority, the Bank Indonesia, the Indonesian Consumers Foundation, and the Ministry of Health.¹⁹

The Minister of Law and Human Rights and the Minister of Communication and Information Technology are preparing a draft of the Information Technology and Electronics Transactions (ITE) Law.²⁰ The draft would include revisions of Article 27 of the ITE law, which deals with decency, gambling, and defamation.²¹

B. TWO WOMEN FOUND GUILTY UNDER THE ITE LAW

On March 31, 2015, two women were found guilty under the ITE Law. In the first case, forty-seven-year-old Wisni Yetty was found guilty of “distributing immoral content” after her husband hacked into her Facebook account and learned that, in 2011, she had complained about him to a friend.²² She was sentenced to five years in jail and fined IDR100 million (\$7,650) in lieu of facing another six months in jail.²³ Her husband was not prosecuted for hacking into her account.²⁴ In the second case, postgraduate student Florence Sihombing was found guilty, sentenced to six months’ probation and fined IDR10 million (\$765), for posting the following on the social media app Path: “Jogja is poor, stupid and uncultured. Friends from Jakarta and Bandung, don’t stay in Jogja.”²⁵ If she violates her probation, she will face two months of imprisonment.²⁶

18. Cynthia O’Donoghue & Chantelle Taylor, *Indonesia Publishes Data Protection Rule Aimed at Government Agencies*, TECH. LAW DISPATCH (Oct. 2, 2015) http://www.technologylawdispatch.com/2015/10/privacy-data-protection/indonesia-publishes-data-protection-rule-aimed-at-government-agencies/?utm_source=mondaq&utm_medium=syndication&utm_campaign=view-Original.

19. *Indonesia Publishes Proposed Data Protection Rule*, HUNTON WILLIAMS PRIVACY & INFO. SEC. L. BLOG (July 17, 2015) <https://www.huntonprivacyblog.com/2015/07/17/indonesia-publishes-proposed-data-protection-rule/>.

20. *Article 27 of Draft Law on Electronic Information and Transaction is still Problematic, ICJR Urge the Government of Indonesia to Reevaluate*, INST. FOR CRIM. JUSTICE REFORM (Mar. 9, 2015) <http://icjr.or.id/article-27-of-draft-law-on-electronic-information-and-transaction-is-still-problematic-icjr-urge-the-government-of-indonesia-to-reevaluate/>.

21. *Id.*

22. *Two Indonesian Women Jailed, Fined for Social Media Posts*, RAPPLER (Mar. 31, 2015) <http://www.rappler.com/world/regions/asia-pacific/indonesia/88544-indonesia-ite-law-online-defamation-guilty-verdict-facebook-path>.

23. *Id.*

24. Yuli Krisna, *Two Women Sentenced to Months in Prison After Violating Draconian ITE Law*, JAKARTA GLOBE (Mar. 31, 2015) <http://jakartaglobe.beritasatu.com/news/two-women-sentenced-months-prison-violating-draconian-ite-law/>.

25. *Two Indonesian Women Jailed, Fined for Social Media Posts*, *supra* note 22.

26. *Id.*

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C. STUDENT ARRESTED UNDER ITE LAW

In October 2015, a university student, Adlun Fiqri Sigoro from Ternate in the North Moluccas Islands of eastern Indonesia²⁷, was arrested for violating the ITE Law by uploading a video to YouTube that showed police openly accepting bribes from traffic violators.²⁸ He was released shortly after his arrest following social media outrage.²⁹

V. Myanmar

A. THE LAUNCH OF THE MYANMAR MEDIA LAWYERS' NETWORK AND PROTESTS
OVER APPOINTMENT OF FORMER MILITARY OFFICERS TO THE JUDICIARY

On April 1, 2015, the Myanmar Media Lawyers' Network (MMLN) launched in Rangoon, Myanmar.³⁰ The MMLN consists of 80 lawyers working throughout Myanmar.³¹ On September 11, 2015, Myanmar attorneys launched a yellow ribbon campaign to protest the appointment of twenty former military officers as vice director generals to the Naypyitaw Union Supreme Court.³² The participating lawyers started the campaign at the MMLN offices.³³

B. WOMAN TRIED FOR POSTING A SATIRICAL PHOTO ON FACEBOOK

On October 12, 2015, a twenty-five -year-old woman, Chaw Sandi Tun, was brought to trial in the Irrawaddy Division for sharing a satirical photo on Facebook that was considered to be insulting to Myanmar's military.³⁴ She will return to trial on October 27, 2015.³⁵ Lt. Col. Kyaw Htin, a Myanmar Army general staff officer of the Southwest Command in Patheingyi, filed the suit against Chaw Sandi Tun pursuant to article 34(d) of Myanmar's Electronic Transactions Law.³⁶ This law carries penalties of up to five years in prison and outlaws altering digital information in such a way that would defame "any organization or any person."³⁷

27. Carolina Rumat, *Indonesian Student Detained Under Cyber Law for Police Extortion Video*, GLOBAL VOICES ADVOCACY (Oct. 2, 2015) <https://advoc.globalvoices.org/2015/10/02/indonesian-student-detained-under-cyber-law-for-police-extortion-video/>.

28. Leighton Cosseboom, *Police in Indonesia arrest student for filming bribery*, TECH IN ASIA (Oct. 9, 2015) <https://www.techinasia.com/indonesia-ite-law-free-speech-police-bribery-2015/>.

29. *Id.*

30. Zarni Mann, *The Irrawaddy: Lawyers Network to Offer Advice, Representation for Journalists*, BURMANET NEWS (Apr. 7, 2015) <http://www.burmanet.org/news/2015/04/07/the-irrawaddy-lawyers-network-to-offer-advice-representation-for-journalists-zarni-mann>.

31. *Id.*

32. *Lawyers Launch Yellow Ribbon Campaign*, BURMA NEWS NETWORK (Sept. 14, 2015) <http://www.bnionline.net/news/mon-state/item/782-lawyers-launch-yellow-ribbon-campaign-in-mon-state.html>.

33. *Id.*; *Yangon Lawyers Protest Judicial Militarization*, ELEVEN (2015) <http://www.elevenmyanmar.com/local/yanon-lawyers-protest-judicial-militarisation>.

34. Thant Zin, Salai, *Woman Faces 5 Years Over Photo Likening Army Garb to Suu Kyi's Dress*, THE IRRAWADDY (Oct. 13, 2015) <http://www.irrawaddy.com/burma/woman-faces-5-years-over-photo-likening-army-garb-to-suu-kyis-dress.html>.

35. *Id.*

36. *Id.*

37. *Id.*

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VI. Thailand

A. THE END OF MARTIAL LAW IN THAILAND AND THE INVOCATION OF SECTION 44 OF THE INTERIM CONSTITUTION

On March 30, 2015, Prime Minister Gen Prayut Chan-o-cha announced that martial law would be lifted.³⁸ The Prime Minister simultaneously announced that the military junta would be invoking authority under Section 44 of the interim constitution.³⁹ Section 44 gives “sweeping power to the military to handle threats against state affairs, national security, and peace and order of the country.”⁴⁰ The order permits soldiers to detain individuals for up to seven days without charge.⁴¹ The order also permits prosecution of people for national security crimes or actions in violation of Thailand’s strict royal defamation laws.⁴² The order also empowers “Peace and order maintaining officers. . .to issue orders prohibiting the distribution of news, publications and other media deemed to cause fear, contain distorted facts, or likely cause public misunderstanding that affects national security or public order.”⁴³

B. THE PROPOSED INTERNET GATEWAY

On June 30, 2015, Prime Minister Gen Prayut Chan-o-cha’s cabinet ordered the Thailand Ministry of Information and Communication Technology and Ministry of Justice to “set up a single internet gateway in order to control inappropriate websites and to control the flow of information into the country from overseas via the Internet.”⁴⁴ On September 4, 2015, the cabinet gave a follow up order for the Ministry of Information and Communication Technology and the Ministry of Justice to report back with any laws that needed to be amended in order to facilitate the gateway.⁴⁵ On October 1, 2015 in response to the proposed gateway, Internet activists orchestrated a distributed-denial-of-service (DDoS) attack on Thai Government websites.⁴⁶

38. *Invoking Section 44 to replace martial law draws mixed reactions*, THAI PBS (Mar. 30, 2015) <http://englishnews.thaipbs.or.th/invoking-section-44-to-replace-martial-law-draws-mixed-reactions>.

39. *Id.*

40. *Martial Law Lifted but the Military Still Has Sweeping Power to Deal with National Security Threats*, THAI PBS (Apr. 2, 2015) <http://englishnews.thaipbs.or.th/martial-law-lifted-but-the-military-still-has-sweeping-power-to-deal-with-national-security-threats>; see Radthathamnoon [Constitution of the Kingdom of Thailand (interim)] (B.E. 2557) § 44-2014 (*unofficial translation* http://asean-law.senate.go.th/files/Thailand_2014_2.pdf).

41. *Martial Law Lifted but the Military Still Has Sweeping Power to Deal with National Security Threats*, *supra* note 40.

42. *Orders Issued Under Article 44*, THE NATION (Apr. 2, 2015) <http://www.nationmultimedia.com/politics/Orders-issued-under-Article-44-30257278.html>.

43. *Id.*

44. Don Sambandaraksa, *General Happiness orders Great Firewall of Thailand*, TELECOMASIA.NET (Sept. 23, 2015) www.telecomasia.net/blog/content/general-happiness-orders-great-firewall-thailand.

45. *Id.*

46. *Thai Government Websites Hit by Denial-of-Service Attack*, BBC NEWS (Oct. 1, 2015), <http://www.bbc.com/news/world-asia-34409343>.