

New Cybercrime Prevention Act of 2012 penalizes cyber-squatting

Cyber-squatting, or the acquisition of a domain name over the internet in bad faith to profit, mislead, destroy reputation, and deprive others from registering the same domain name is now prohibited in this jurisdiction. The Philippine Congress issued and President Benigno Aquino III signed into law the Cybercrime Prevention Act (CPA) last 12 September 2012, which also penalizes cyber-sex, computer-related identity theft, and unsolicited commercial communications or junk mail, among other internet offenses.

Elements of Cyber-squatting

To be liable for cyber-squatting, the offender's domain name must be:

1. Similar, identical, or confusingly similar to an existing trademark registered with the appropriate government agency at the time of the domain name registration;
2. Identical or in any way similar with the name of a person other than the registrant, in case of a personal name; and
3. Acquired without right or with intellectual property interests in it.

Jurisdictional requirements

The challenge of acquiring jurisdiction over the offense, given that it is a crime committed over the internet, has apparently been addressed by the CPA. The Regional Trial Courts have jurisdiction in any of the following instances:

1. If the offender is a Filipino national, regardless of the place of commission;
2. If any of the elements of the offense is committed within the Philippines;
3. If any of the elements of the offense is committed using computer systems wholly or partly found in the Philippines; or
4. When the damage caused to a natural or juridical person occurred when said person was situated in the Philippines.

Specially trained judges in cybercrimes prevention will hold court over the cases covered by the CPA.

Penalties

Any offender found guilty of committing cyber-squatting risks imprisonment from six to twelve years or a fine of at least PhP200,000.00. The court also has the discretion to fix the fine commensurate to the damage caused by the offender and may impose both imprisonment and a fine.

If the offense is committed on behalf or for the benefit of a juridical entity, the court may impose a fine double the amount that a natural person is required to pay, up to a maximum of PhP10,000,000.00. Where lack of supervision of the juridical entity caused the commission of the offense, the maximum limit will be PhP5,000,000.00. The natural person who committed the offense can still be prosecuted separately from the juridical entity.

Cybersex, junk mail, phishing and child pornography

The following acts are also punished under the CPA:

1. Cybersex, which has been defined by the CPA as the willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration;
2. Unsolicited commercial communications (or junk mail), if there are no opt-out system in the message, among other safety systems;
3. Identity theft (or phishing), which is the intentional acquisition, use, misuse, transfer, possession, alteration, or deletion of identifying information belonging to another; and
4. Child pornography committed using a computer system.

Several government agencies have been directed to come up with the implementing rules and regulations within 90 days from the effectivity of the CPA. 

Punctuality is common sense standard; tardiness sufficient cause for axing probee

The Labor Code requires an employer to tell a probationary employee the reasonable standards of employment which the latter must satisfy in order to be considered for regularization. If the employer fails to set forth these standards at the time of the probationary employee's engagement, the employer may not use the undisclosed standards as basis for terminating said employee.

In *Mylene Carvajal vs. Luzon Development Bank* (G.R. No. 186169, 1 August 2012), however, the Supreme Court held that punctuality is a reasonable standard imposed on every employee and it is common sense to abide by the work hours set by the employer. An employer need not expressly apprise the probationary employee regarding the need to comply with this standard. Tardiness is a sufficient ground not to keep the employee on a regular status.

Punctuality as reasonable standard

The engagement letter given to the probationary employee in the *Carvajal* case was silent on the requirement of being punctual but the High Tribunal found the following transgressions sufficient to affirm the dismissal of the employee:

1. During her first month on the job, she already incurred eight counts of tardiness;
2. The employer warned the employee through a memorandum that her tardiness might affect her job status; and
3. The employee failed to give a satisfactory explanation for the cause of her tardiness.

The Supreme Court again discussed that the concept of probationary employment is intended

to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationary employee to ascertain whether he is qualified for permanent employment, the latter, on the other hand, seeks to prove to the satisfaction of the employer that he has the qualifications to meet the reasonable standards for permanent employment.

Procedural due process requirements for probationary employees

Also in *Carvajal*, the High Court explained the difference in due process requirements in terminating probationary employees based on (1) just or authorized cause, from (2) failure to comply with reasonable standards.

1. On the ground of just or authorized cause, the employer needs to send two notices to the employee: one, to inform the employee about the basis of termination with a directive to explain why the employee should not be terminated, and two, to inform the employee of the decision of the employer to terminate the engagement.
2. On the other hand, for the ground of failure to comply with reasonable standards, the employer has complied with due process if it already gave the employee information about the standards of employment.

The employer need not wait for the end of the probationary period to tell the employee that the latter failed to satisfactorily meet the standards. LF

Offer of Compromise Prior to Filing of Criminal Case Inadmissible

When the offer of compromise does not expressly acknowledge liability and was made prior to the filing of a criminal case, the offer cannot be used as evidence against the accused to establish his liability or to serve as an implied admission of his guilt. This was the finding of the Supreme Court in *San Miguel Corporation v. Helen T. Kalaro* (G. R. No. 185522, 13 June 2012).

San Miguel Corporation sued the accused for bouncing her checks even after she wrote SMC an offer to settle her obligation. The trial court acquitted the accused but found her financially liable to SMC based on her offer of compromise.

The Court ruled in favor of the accused and held, citing its decision in *Pentagon Steel Corporation v. Court of Appeals* (G.R. No. 174141, 26 June 2009), that:

First, since the law favors the settlement of controversies out of court, a person is entitled to "buy his or her peace" without danger of being prejudiced in case his or her efforts fail; hence, any communication made toward that end will be regarded as privileged. Indeed, if every offer to buy peace could be used as evidence against a person who presents it, many settlements would be prevented and

unnecessary litigation would result, since no prudent person would dare offer or entertain a compromise if his or her compromise position could be exploited as a confession of weakness.

Second, offers for compromise are irrelevant because they are not intended as admissions by the parties making them. A true offer of compromise does not, in legal contemplation, involve an admission on the part of a defendant that he or she is legally liable, or on the part of a plaintiff, that his or her claim is groundless or even doubtful, since it is made with a view to avoid controversy and save the expense of litigation. It is the distinguishing mark of an offer of compromise that it is made tentatively, hypothetically, and in contemplation of mutual concessions.

The Court further said that since the offer of compromise was made prior to the filing of the criminal complaint, the letter of the accused was not made in the context of a criminal proceeding and, therefore, cannot be considered as an implied admission of guilt under the Rules on Evidence. (3 July 2012) LF



Registered Owner of Vehicle, Not Employer, Liable for Driver's Negligence

Better make sure that your vehicle registration is updated. The Supreme Court found the registered owner of a vehicle vicariously liable for the negligence of the driver, even though the driver was employed by another person.

In *Filcar Transport Services vs. Jose A. Espinas* (G.R. No. 174156, 20 June 2012), the victim of a hit-and-run sued the owner by using the license plate of the vehicle as reference. The company which owned the car disclaimed any liability and said that it assigned the vehicle to its corporate secretary, who in turn employed the driver responsible for the accident. Both the company and the corporate secretary distanced themselves from the negligence of the driver saying that they always exercised the due diligence required of a good father of a family in leasing or assigning their vehicles to third parties.

The Court held that the company which owned the vehicle is deemed the employer of the driver and is thus vicariously liable under the Civil Code. Under the law, an action predicated on an employee's act or omission may be instituted against the employer who is held liable for the negligent act or omission committed by his employee. In the *Filcar* case, however, even if the company's employee was not driving the vehicle that caused damage to the victim's car, in case of motor vehicle mishaps, the registered owner of the motor vehicle is considered as the employer of the driver, and is made liable for the tort committed by the latter.

The objective of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual. Instances are numerous where vehicles running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identifi-

cation of the owner or drivers, or with very scant means of identification.

For the purpose of holding the registered owner of the motor vehicle primarily and directly liable for damages, the existence of an employer-employee relationship, as it is understood in labor relations law, is therefore not required.

In this case, the company was not permitted to evade its liability for damages by conveniently passing on the blame to the person whom it assigned the car. The assignment of the motor vehicle does not bind the victim who was not a party to and has no knowledge of the agreement, and whose only basis for recourse was the motor vehicle registration.

The company can always go after the employer of the driver under the principle of unjust enrichment so that it can be indemnified in the same amount that it may be required to pay the victim. The set-up may be inconvenient for the registered owner but the inconvenience cannot outweigh the more important public policy in indemnifying the victims of reckless drivers and irresponsible motor vehicle owners. **LF**



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