

IGF 2016 Workshop Report

Session Title	<i>Strategic Litigation In Defense of Freedom of Expression Online In South and Southeast Asia</i>
Date	8 December 2016
Time	1630-1800
Session Organizer	American Bar Association Rule of Law Initiative; Media Legal Defense Initiative
Chair/Moderator	Mark Wallem
Rapporteur/Notetaker	Oliver Reyes
List of Speakers and their institutional affiliations	Padraig Hughes, Media Legal Defense Initiative Asep Komarudin, Cecilia Soria (Philippines) L. Khun Ring Pan (Myanmar Media Lawyer’s Network) Preap Kol (Transparency Internaional Cambodia)
Key Issues raised (1 sentence per issue):	<p>Freedom of expression online, including that expressed by journalists, is increasingly under attack worldwide.</p> <p>Asian governments have been copying each others’ practices in stifling freedom of expression online.</p> <p>Regulation of freedom of expression is often justified in the name of national security or the maintenance of peace and order.</p> <p>Organizations such as ABA ROLI and Media Legal Defense Initiative defend freedom of expression online by supporting efforts in strategic litigation around the world.</p>
If there were presentations during the session, please provide a 1-paragraph summary for each Presentation	<p>Padraig Hughes, Legal Director of MLDI, discussed the concept of strategic litigation and how it is being employed around the world in defense of freedom of expression. He discussed particular cases in Africa where MLDI supports strategic litigation efforts to resist attempts by governments in the region to stifle freedom of expression, especially by media practitioners.</p> <p>Asep Komarudin provided for a regional view in ASEAN countries on freedom of expression online. Very few ASEAN countries provided sufficient human rights frameworks. There is no effective rights-protection mechanism in Southeast Asia, such as the absence of a regional court. Governments in the region are</p>

also implementing similar measures that restrict freedom of expression, justified through explanations such as national security. Particular examples cited included the use of lese majeste laws in Thailand, the enactment of the Cybercrime Act in the Philippines that criminalizes online defamation. Activists and journalists are trying to use cyberspace as a tool for democracy; hence the interest of governments to regulate and control online behavior. Laws adopted in the region often tend towards the absurd, posing difficulties for lawyers in litigating these cases. Very few Southeast Asian countries also have data protection laws that protect the privacy of users in the country.

Cecille Soria discussed the online freedom of expression environment in the Philippines. She discussed two particular cases of strategic litigation in the Philippines. The first was the prosecution of local activist Carlos Celdran for the crime of offending religious feelings after demonstrating inside a Catholic Church at the height of the debates on the reproductive health bill. Litigators have used the case to attempt to declare that criminal provision as unconstitutional – the case is still pending. The second example was the Anti-Cybercrime Law, which was challenged before the Supreme Court in 2014. Certain dangerous provisions such as the authorization of take-down of websites by the government without a warrant, were annulled as a result. However, the provisions on online defamation and increasing the penalties for online were upheld by the Supreme Court.

Preap Kol of Transparency International Cambodia discussed the needs and the role of civil society. He discussed at length the situation in Cambodia, where many people have been imprisoned for expressing opinions online and offline. These include two lawmakers who were put in jail for posting content on Facebook, notwithstanding the constitutional immunity enjoyed by these lawmakers. The controversial proposed Cybercrime Law however was thwarted after civil society, lawyers and the public united to oppose the law, although there are steps right now to revive the same. Social media in Cambodia has influenced politics in a big way, hence the interest of the ruling party to regulate online behavior in the name of maintaining peace, stability and social order. The main role of civil society is advocacy, and their role is strengthened by support from the public and institutions such as the United Nations.

L. Khun Ring Pan discussed the situation of Myanmar, which has

	<p>recently transitioned from military rule into democratic rule. Despite the transition, several laws from the military era have remained in place, and the current existence of these laws continue to pose a threat. The recent Telecom Act of 2014 criminalized online defamation with imprisonment. This law was used in particular to prosecute political activists just shortly before the 2015 elections, thereby creating a chilling effect just in time for the elections. Even after the new democratic government took over, new cases for online defamation have been filed. Some of the cases have been filed for the defamation of government figures or political parties. In most of these cases, those who have been charged have not been granted bail and are likely to remain in custody during their trial. The judiciary is not perceived as wholly independent. There is thus a need to formulate an effective strategy litigation to combat these developments.</p>
<p>Please describe the Discussions that took place during the workshop session: (3 paragraphs)</p>	<p>Chiranuch Premchaiporn of Prachatai in Thailand raised the particular situation in Thailand, expressing the need for greater regional cooperation and alliances among defenders of human rights. In severe situations such as Thailand, litigation would not be sufficient by itself and greater regional shows of support in those cases were of greater help.</p> <p>Jane Worthington of the International Federation of Journalists agreed with the need for regional solidarity and in raising the profile of these cases. Such collaborative efforts among journalists groups have proven effective, and she suggested cross collaboration between journalists groups and lawyers' organizations. She cited efforts in Thailand and East Timor that have helped shine the light on abusive behavior of governments.</p> <p>A commenter expressed some skepticism about the practice of picking representative cases for strategic litigation, especially in light of the slow pace of litigation. She cited her experience in litigating anti-discrimination cases and suggested that greater success comes with flooding the courts with cases.</p>
<p>Please describe any Participant suggestions regarding the way forward/ potential next steps /key takeaways: (3</p>	<p>The participants were by and large satisfied with the format and the presentation. The IGF website however carried the wrong link for the online streaming of the panel (misidentifying the room number where the forum took place), and thus possibly limiting the number of online participants.</p>

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