

UNESCO
WORLD ANTI PIRACY OBSERVATORY

REPUBLIC OF THE PHILIPPINES

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I. Legislation

1. Copyright Laws

The main copyright legislation in the Philippines is:

- [Republic Act 8293, the Intellectual Property Code](#) (IPC), effective as of January, 1998.

2. Other Laws

The following laws also pertain to copyright enforcement in the Philippines:

- Republic Act 9239, the Optical Media Law, effective as of March, 2004;
- Republic Act 8792, the Electronic Commerce Act, effective as of June, 2000;
- Rules on Search and Seizure in Civil Actions for Infringement of Intellectual Property Rights, A.M. No. 02-1-06-SC, effective as of February, 2002;
- Rules of Civil Procedure, effective as of July, 1997; and
- Revised Rules of Criminal Procedure, effective as of December, 2000.

3. Latest Developments and Perspectives

The Philippines is currently seeking to amend the IPC via House Bill 3741. House Bill 3741 directly responds to the criminal onslaught of internet piracy. The proposed bill provides rights to performers, phonogram producers and broadcasters similar to those accorded to authors of literary and artistic works. Further, the bill allows rights holders to effectively use technologies to protect and license their works online, including certain safeguards to prevent the deletion or alteration of security or authorship information that accompanies the protected work, such as the terms and conditions of use.

4. Summary of Legislation

- *Exclusive rights of the authors and of the owners of neighbouring rights*

Exclusive Rights of Authors of Literary and Artistic Works

Under Sections 177 to 177.7 of the IPC, authors of literary and artistic works have the following **economic rights**: (a) to reproduce a work; (b) to dramatize, translate, adapt, abridge, arrange or transform a work in other ways; (c) to publish the original and copies of the work to the public by sale or other forms of transfer or ownership; (d) to rent the original or copies of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form; (e) public display of the original work or copies; (f) public performance of the work; and (g) other public communication of the work.

Under Sections 193 to 193.4 of the IPC, authors of literary and artistic works have the following **moral rights** independent of their economic rights mentioned, above: (a) to require attribution by prominently indicating the author's name on copies of the work and in connection with public use; (b) to make any alterations to the work or withhold the work from publication; (c) to object to any distortion, mutilation or other modification that would prejudice the author's honor or

reputation; and (d) to preclude attribution to any work not of the author, including distorted versions of the work.

Under Section 200 of the IPC, authors of literary and artistic works have the right to proceed in **subsequent transfers** pertaining to the work. More specifically, the author or her heirs have an inalienable right to participate in the gross proceeds of the sale or lease to the extent of five percent (5%) subsequent to the initial sale or lease of the original work. This right exists for 50 years after the author's death.

Exclusive right of the owners of Neighbouring Rights

- **Rights of Performers**

Under Sections 203 to 203.5 of the IPC, performers have the following **exclusive rights**: (a) to authorize public broadcasting or communication of a performance and the fixation of an unfixed performance; (b) to authorize the direct or indirect reproduction of a performance in sound recordings; (c) to authorize the first public distribution of the original and copies of a performance that is fixed in a sound recording through the sale, rental or other forms of transfer of ownership; (d) to authorize the commercial rental to the public of the original and copies of the performance fixed in sound recordings; and (e) to authorize the public availability of a performance fixed in a sound recording by wire or wireless means to the extent that the public has individual access relating to the time and place of access.

Under Sections 204 to 204.2 of the IPC, performers have the following **moral rights**: (a) to be identified as the performer of her performance(s); and (b) to object to any distortion, mutilation or other modification of her performances that would be prejudicial to her reputation.

Under Section 206 of the IPC, performers have a right to **additional remuneration** for subsequent communications or broadcasts. More specifically, in every communication to the public or broadcast of a performance subsequent to the first communication or broadcast, the performer is entitled to an additional remuneration of at least five percent (5%) of the original compensation for the first communication or broadcast.

The rights granted to a performer are protected for 50 years after her death.

- **Rights of Producers of Sound Recordings**

Under Sections 208 to 208.3 of the IPC, producers of sound recordings have the following **exclusive rights**: (a) to authorize the direct or indirect reproduction of the sound recording and placement of such reproduction in the market, including rental and lending rights; (b) to authorize the first public distribution and copies of the sound recording by sale, rental or other means of transfer; and (c) to authorize commercial rental to the public of the original and copies.

Under Section 209 of the IPC, producers of sound recordings have to the right to **equitable remuneration**. More specifically, if a sound recording for commercial purposes is used directly for broadcasting or for other communications to the public, or it is publicly performed for profit, the user must pay a single equitable remuneration to the performer(s) and producer(s) of the sound recording.

- **Rights of Broadcasting Organizations**

Under Sections 211 to 211.3 of the IPC, broadcasting organizations have the following **exclusive rights**: (a) to rebroadcast their broadcasts; (b) to record, including the making of films or the use of video tape, their broadcasts for the purposes of television broadcasting; and (c) to use such records for fresh transmission or for fresh recording.

- *Exceptions and Limitations to Copyright*

Section 185 of the IPC provides limitations to copyright based on the fair use of works. Section 185 permits the fair use of copyrighted works for criticism, news reporting, teaching, scholarship, research and other similar purposes. Decompilation, or the translation of computer program code, may also constitute fair use. To determine whether a use is fair, the following factors are considered: (a) the purpose and character of the use; (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.

Section 184 of the IPC lists specific limitations on copyright, as follows: (a) the recitation or performance of a work for private, not-for-profit use or if made for a charitable or religious institution or society; (b) the making of quotations, provided that the usage qualifies as fair use and identifies the source and author of the work; (c) the reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topics, lectures or addresses, provided that such use is not expressly reserved and that the source is clearly indicated; (d) the reproduction and communication to the public of literary, scientific or artistic works as part of report or current events by means of photography, cinematography or broadcasting to the extent necessary for the purpose; (e) the inclusion of a work in a publication, broadcast or other communication to the public, provided that such inclusion is made by way of illustration for teaching purposes, is compatible with fair use and the source and author are mentioned; (f) specific recordings made in schools, universities or other education settings, provided that such recordings are deleted in a reasonable time after being broadcast; (g) the making of ephemeral recordings by a broadcasting organization by and for its own use; (h) the use made by or under the direction or control of the Government, the National Library or other education institutions; (i) the public performance in a place where admission is free or by a club or institution for charitable or educational purposes; (j) the public display of the original work or its copies not made by means of a film, slide, television image or otherwise on screen, provided that the work has been published or that the original or its copies displayed have been sold or otherwise transferred by the author; and (k) use for judicial proceedings or for professional advice by a legal practitioner.

- *Protection of foreign works*

Section 3 of the IPC extends reciprocal rights to any person who is a Philippine national or domiciled in the Philippines or has a real and effective industrial establishment in a country which is a party to any convention or agreement relating to intellectual property rights, to which the Philippines is also a party.

- *Period of copyright protection*

Term of Protection of Rights in Literary and Artistic Works

Under Section 213 of the IPC, literary and artistic works are protected during the life of the author and for 50 years after her death. This rule also applies to posthumous works.

term pursuant to Section 214 of the IPC.

Term of Protection for Rights of Performers, Producers and Broadcasting Organizations

Under Section 215.1 of the IPC, the rights granted to performers and producers of sound recordings expire 50 years from the end of the year in which the performance occurred. Further, rights for sound, or image and sound, recordings and for performances incorporated therein, expire 50 years from the end of the year in which the recording occurred.

Under Section 215.2 of the IPC, rights granted to broadcasts expire 20 years from the date the broadcast occurred.

- *Registration*

Registration is not a precondition for protection in the Philippines pursuant to Section 172.2 of the IPC. However, there are specific requirements for certain works in completing the records of the National Library and Supreme Court Library pursuant to Section 191 of the IPC.

5. International Conventions and Treaties

The Republic of the Philippines is a member of the following International Conventions and Treaties on Copyright and Related Rights:

- [Berne Convention for the Protection of Literary and Artistic Works](#), member since August, 1951;
- [Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations](#), member since September, 1984;
- [WTO TRIPS Agreement on Trade Related Aspects of Intellectual Property Rights](#), Member since 1995;
- [WIPO Copyright Treaty](#), member since October, 2002; and
- [WIPO Performances and Phonograms Treaty](#), member since October, 2002.

II. Measures and Remedies

1. Copyright Infringement

Copyright infringement occurs when any person, without the consent of the copyright holder, performs an act that solely the right holder has the right to authorise. While there is no statutory definition of copyright infringement, Section 177 of the IPC enumerates the exclusive rights of the copyright holder, mentioned above.

2. Remedies to Protect Copyright Holders

Under Section 217 of the IPC, any infringer or one who aids and abets such infringement is guilty of a crime punishable by:

- Imprisonment of one to three years, plus a fine ranging from 50,000 pesos to 150,000 pesos, for the first offense;
- Imprisonment of three years and one day to 6 years, plus a fine ranging from 150,000 pesos to 500,000 pesos, for the second offense; and
- Imprisonment of six years and one day to nine years, plus a fine ranging from 500,000 pesos to 1,000,000 pesos, for the third and subsequent offenses.

In all cases, subsidiary imprisonment occurs in cases of insolvency.

3. Provisional Measures

Under Section 216.1(a) of the IPC and Philippine law, infringers can face injunctions and court orders to desist from continued infringement. Courts can prevent the entry of infringing goods into the channels of commerce immediately after clearance by Customs.

Further, any aggrieved party may apply for a preliminary injunction. Such injunctions may be granted upon showing that the infringement is material, the applicant clearly is the owner of given rights, and there is an urgent necessity for the injunction to prevent serious damage to the applicant (Section 3, Rule 58, Rules on Civil Procedure). Temporary restraining orders or writs of search and seizure also may be issued *ex parte* where a delay could cause irreparable harm (Section 3, Rule 58, Rules on Civil Procedure and Section 2, Rule on Search and Seizure in Civil Actions for Infringement of Intellectual Property Rights, A.M. No. 02-1-06-SC).

In an infringement action, courts have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings pursuant to Section 216.2 of the IPC. Judges may also issue search warrants upon showing of probable cause (Rule 126, Revised Rules of Criminal Procedure).

Additionally, the Bureau of Customs may issue alert and hold orders against shipments suspected to contain infringing goods. Rights holders must request in writing to the Commissioner of Customs for the issuance of such orders. This process requires the submission of an affidavit by the right holder outlining the holder's rights (Bureau of Customs Administrative Circular No. 6-2002).

4. Penalties for Copyright Infringement

For civil cases, please see the discussion of Section 216 of the IPC, above.

For criminal cases, please see the discussion of Section 217 of the IPC, above.

Under Section 216(d) of the IPC, courts may order the destruction of all infringing copies or devices, or other means for making such infringing works, without compensation to the infringer.

Under Section 216.1(b) of the IPC, courts may order the defendant to pay the copyright holder actual damages, including legal costs and other expenses, as well as profits the infringer may have made. Under 216.1(e) of the IPC, courts may also order the payment of moral and exemplary damages.

5. Requirements for Foreign Persons

In addition to the discussion of Section 3 of the IPC, above, Section 213 of the IPC mandates that any condition, restriction, limitation, diminution, requirement, penalty or other similar burden imposed by the law of a foreign country on a Philippine national seeking protections of intellectual property rights in that country, shall reciprocally be enforceable upon nationals of said country within the Philippines.

III. Enforcement

1. Enforcement Authorities

a) Authorities Responsible for Enforcing the Copyright Law

The authorities responsible for enforcing the copyright law are:

- The Intellectual Property Office
- Regional Trial Courts
- The Optical Media Board
- The Bureau of Customs

b) Enforcement Bodies Entitled to Act Ex-Officio in Copyright Infringement Cases

Enforcement bodies may only act in infringement cases once a complaint has been initiated by the right holder. However, the Bureau of Customs may act on its own initiative if it has gathered reliable information pursuant to Section II.C.1 of Customs Administrative Orders No. 6-2002.

c) Courts Dealing with Copyright Cases

Regional trial courts have jurisdiction over copyright infringement cases pursuant to Supreme Court Administrative Order No. 104-96.

Additionally, the Intellectual Property Office, through its Bureau of Legal Affairs, has concurrent jurisdiction over administrative cases involving violations of intellectual property rights, so long as the claimed damages are less than 200,000 pesos (Section 10.2(a) of the IPC).

2. Enforcement at the Border

Under Section 190.3 of the IPC, the Commissioner of Customs has the power to make rules and regulations for preventing the importation of infringing articles, which includes the power to seize and dispose of such articles.

Under the Customs Administrative Order No. 6-2002, articles placed under Hold and Alert Orders must be examined by the customs examiner in the presence of the right holder within 24 hours from receipt of such orders. In case there is a prima facie basis to subject the goods to seizure proceedings, the matter must be referred to the Collector of Customs for the issuance of a Warrant of Seizure and Detention against the shipment within 24 hours.

Further, the Bureau of Customs may issue alert or hold orders on its own initiative for imports suspected to contain infringing goods pursuant to Section II.C.1 of Customs Administrative Order No. 6-2002.

Lastly, under Section 190.1 of the IPC, the importation of a copy of a work by an individual for personal use is permitted in certain cases without the permission of the author.

IV. Public Awareness

1. Awareness Campaigns and Actions

Information not available

2. Promotion of Legal Exploitation

Information not available

3. Associations and Organizations with Awareness-Raising Purposes

- [Intellectual Property Office of the Philippines \(IP Philippines\)](#)

4. Best Practices

Information not available

V. Capacity-building

1. Training

Information not available

2. Establishment of Specialized Units and Intersectoral Groups

The Philippine President ordered the creation of the National Committee on Intellectual Property Rights, which coordinates the aforementioned enforcement bodies to fight piracy and infringement of intellectual property rights.

The Optical Media Board has partnered with one of the biggest commercial establishments in the Philippines in an effort to work together in the fight against piracy. In so doing, the commercial establishment requires all commercial units in its premises and whose business are related to optical media to first secure a clearance from the Optical Media Board before having their lease agreements approved. www.omg.gov.ph

The Philippines Anti-Piracy Team, a partnership with the Business Software Alliance, is composed of the National Bureau of Investigation, the Philippine National Police, and the Optical Media Board in coordination with local government units. The team coordinates enforcement and lobbying of local ordinances for the protection of intellectual property rights of business software producers.

3. Best Practices

On June 21st, 2008, the President signed Executive Order No. 736: "Institutionalizing Permanent Units to Promote, Protect and Enforce Intellectual Property Rights (IPR) in Different Law Enforcement and Other Agencies Under the Coordination of the NCIPR." The NCIPR, which is chaired by the Department of Trade and Industry (DTI), coordinates, with other government agencies and the private sector, efforts to ensure significant contributions to national

development. As part of its efforts, the NCIPR intensifies the promotion, protection and enforcement of intellectual property rights in the country through the following: providing public information and education campaigns, providing the Executive and Legislative branches of the Government with policy and legislative proposals, maintaining a database and monitoring system, and ensuring that the courts are adequately skilled in intellectual property cases.

The Philippines reports that the combined operations of the NCIPR and its partners resulted in a substantial amount of confiscations of infringing articles and devices between 2005 and 2008, with increases in enforcement each year.

VI. Other

1. TPM/DRM

The Philippines has acceded to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), which contain provisions on technological protection measures.

2. Licensing Schemes

Information not available

3. Optical Discs

Information not available

4. Hotlines

Information not available

5. Contact Details

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