

ASIAN PATENT ATTORNEYS ASSOCIATION
Philippine Copyright Committee Report
[Place/City of Convention]

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I. Preliminary Statement

There are no significant changes in the legislative and procedural landscape of copyright protection and enforcement in the Philippines. Copyright remains a nascent field in intellectual property rights protection in the country, evidenced by the small number of registrations issued from 2011 to present (although works are protected from moment of creation, and registration is not essential), and the even fewer number of cases relating to copyright enforcement filed for the last two years.¹ However, from 2015 to 2016, the Supreme Court of the Philippines promulgated certain notable decisions involving copyright enforcement cases, thereby enriching the field of copyright law.

II. Recent Developments

Recent jurisprudence on copyright

In *Rappler, Inc. v. Bautista*,² the Supreme Court ruled that the online streaming of the “Presidential Debates” organized and produced by private media networks does not constitute copyright infringement, and is allowed under Section 184 of Republic Act No. 8293 (“Philippine IP Code”). *Rappler* involved a petition for *certiorari* and prohibition filed by the online media company Rappler, Inc. against the Chairman of the Commission on Elections (“COMELEC”), seeking to nullify a contractual provision in the Memorandum of Agreement (“MOA”) signed by COMELEC and nine (9) media networks, including the petitioner, for the conduct of televised debates among the presidential and vice-presidential candidates during the recently concluded 2016 Philippine national elections. A provision in the MOA limited the online streaming of said debates only on the respective web sites and social media sites of the “Lead

¹ No data is available as to the total number of criminal cases involving copyright infringement filed and pending before regular courts.

² G.R. No. 222702, 5 April 2016

networks”, i.e., the media companies which produced the debates, thereby preventing Rappler from streaming it on its website. The Supreme Court partially granted the petition, and held that as long as the copyright limitations imposed under Section 184.1 (c) of the Philippine IP Code are complied with, the information – in this case the live audio of the debates – will form part of the public domain, and the press may freely disseminate or reproduce said live audio. Under Section 184.1 (c) of the Philippine IP Code, the reproduction or communication to the public thru online streaming of a copyrighted content is allowed, as long as (1) such communication is for information purposes only; (2) the copyrighted material was not expressly reserved by the copyright holder (in this case, the Lead Networks); and (3) the source is clearly indicated.

In *Olaño v. Lim Eng Co*,³ the Supreme Court reiterated the rule that copyright protection covers only the expression of an idea, but not the idea itself, or the art disclosed. Moreover, a “useful article” (defined as an article “having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information”) is, as a rule, *excluded* from copyright eligibility. The only instance when a useful article may be the subject of copyright protection is when “it incorporates a design element that is physically or conceptually separable from the underlying product.” This means that the utilitarian article “should be able to function without the design element. In such an instance, the design element is eligible for copyright protection.” Thus, the Supreme Court ruled that the hatch doors subject of this case, being an object of utility with no design elements that are physically and conceptually separable, independent and distinguishable from the hatch door itself, is not the proper subject of copyright. Hence no copyright infringement is committed by the petitioners in manufacturing similar hatch doors.

In *Microsoft Corp. v. Manansala*,⁴ the Supreme Court struck down a Court of Appeals decision which held that the legislative intent behind Presidential Decree No. 49⁵ was to require that the computer programs be first “photographed, photo-engraved, or pictorially illustrated” as a condition for the commission of copyright infringement. The Supreme Court clarified that the mere sale of the illicit copies of the software programs was enough by itself to commit copyright infringement, and to establish probable cause for purposes of criminal prosecution for copyright infringement.

In *ABSCBN Corp. v. Gozon*,⁶ a petition for *certiorari* from a decision of the Court of Appeals sustaining the withdrawal of criminal charges for copyright infringement

³ G.R. No. 195835, 14 March 2016

⁴ G.R. No. 166391, 21 October 2015

⁵ The old Copyright Law in force prior to the effectivity of the Philippine IP Code.

⁶ G.R. No. 195956, 11 March 2015

against the respondents, the Supreme Court clarified important concepts on copyrightable material in relation to live rebroadcast of news stories, as well as whether criminal prosecution for infringement of copyrightable material can be negated by the defense of good faith. In this case, the Supreme Court ruled that *news footage* is copyrightable material. While it is true that under Section 175 of the Philippine IP Code, “news of the day and other miscellaneous facts having the character of mere items of press information” are considered unprotected subject matter, the *expression* of such news of the day, particularly when it underwent a creative process, is entitled to protection. Thus, news, or the event itself is not copyrightable. But an event that is captured and presented in a specific medium, e.g., a television news footage, is an *expression* of the news which involves “creative process and originality” (thru use of framing shots, images, graphics, and sound effects), and hence copyrightable. Since the petitioner is the owner of the news footage—a copyrightable material—and since it was not disputed that the respondents used such news footage without the former’s consent, there exists probable cause to indict them for copyright infringement.

The Supreme Court likewise clarified that “infringement under the Intellectual Property Code is *malum prohibitum*”, and criminal intent is completely immaterial for purposes of prosecution. Said the Supreme Court, “[u]nlike other jurisdictions that require intent for a criminal prosecution of copyright infringement, the Philippines does not statutorily support good faith as a defense.” Thus, one does not need to know that he or she is copying a copyrighted work without consent of the owner in order to violate copyright law.

Seminars, workshops, fora and other educational activities to promote copyright protection and enforcement

The Intellectual Property Office of the Philippines (“IPOPHL”), in partnership with other actors in intellectual property protection, remains active in its efforts to improve public understanding of intellectual property rights in the Philippines. From 2015 to 2016, the IPOPHL held various seminars, workshops, and other educational activities to promote understanding of copyright protection and enforcement in the country, to wit:

SEMINARS, WORKSHOPS, FORA, etc.	DATE	PLACE
2015		

<p>World Intellectual Property Day 2016</p> <p>This event involved the following seminars:</p> <ol style="list-style-type: none"> 1. Seminar Workshop on the Interface of Intellectual Property and Competition (in cooperation with W.I.P.O); 2. Workshop for Mediators on the IPOPHL-W.I.P.O Joint Dispute Resolution Process; 3. Facilitating the Transfer and Diffusion of Clean Technology: Opportunities from a pilot project on wastewater treatment in Southeast Asia; and 4. Seminar on Collective Management Organizations (organized by the Licensing Executives Society of the Philippines and the IPR Committee of the American Chamber of Commerce) 5. Seminar on Counterfeit Medicines for Medical Students (in partnership with the U.S. Embassy Manila) 	<p>April 2015</p> <p>13-14 April 2015</p> <p>15 April 2015</p> <p>23-24 April 2015</p> <p>27 April 2015</p> <p>20 April 2015</p>	<p>SEDA Hotel, Taguig City</p> <p>IPOPHL Multipurpose Hall</p> <p>Asian Development Bank, Ortigas Center, Pasig City</p> <p>IPOPHL Multipurpose Hall</p> <p>University of the Philippines Manila, Padre Faura St., Ermita, Manila</p>
<p>Free Artists' Intellectual Property Rights Orientation</p>	<p>4 May 2015</p>	<p>IPOPHL Multipurpose Hall</p>
<p>First High-Level Forum on IP Financing</p>	<p>15 May 2015</p>	<p>Holiday Inn, Makati City</p>
<p>Seminar-Workshop on Intellectual Property Market and Valuation</p>	<p>15-18 June 2015</p>	

Seminar-Workshop on Patent Search and Documentation for Innovation and Technology Support Services (I.T.S.O) Network	August 2015	
2015 Korea-Philippines Copyright Forum	25 June 2015	Manila
Intellectual Property Rights Week Celebration For this event, the following summits/discussions were held:		
1. 5th Philippine Anti-counterfeiting and Piracy Summit;	26 October 2015	Pasay City
2. Roundtable Discussion on “Issues and Concerns Relating to Intellectual Property Rights Enforcement”; and	27-28 October 2015	New World Makati
3. ASEAN Regional Meeting on Intellectual Property Enforcement	29-30 October 2015	
High-level Forum on Intellectual Property Monetization	6 November 2015	D.T.I Makati City
2016		
Basic Orientation Seminar (B.O.S) on Intellectual Property Rights		D.T.I. Pampanga Province
Bureau of Customs and Intellectual Property Office of the Philippines Consultation with Brand Owners	11 April 2016	Manila Hotel
World Intellectual Property Day 2016 which included a “Seminar for Public Prosecutors in the National Capital Region on the investigation and prosecution of	23-27 April 2016 26 April 2016	Ayala Triangle Gardens, Makati City and IPOPHL, Taguig City

Intellectual Property Cases”		
Women in Intellectual Property (W in I.P.)	21-22 June 2016	IPOPHL Multipurpose Hall
Philippine-Korea Copyright Forum 2016	3 August 2016	Manila Hotel
L.E.A.P. IP! 2016 (LEARN...be Empowered...Adopt...and Profit from IP)	22 June 2016, 24 August 2016 and 26 October 2016	
1. An Introduction to Copyright	13 July 2016, 14 September 2016 and 9 November 2016	
2. The World of Patents		
3. An Introduction to Utility Models and Industrial Designs	17 July 2016, 28 September 2016 and 23 November 2016	
4. Distinguishing your business through trademarks	17 August 2016, 12 October 2016 and 14 December 2016	
1st IPOPHL Mandatory Continuing Legal Education (M.C.L.E) Program	24, 26, 31 August 2016 and 1, 2 September 2016	IPOPHL Multipurpose Hall

Copyright filings

Under Section 191 of the Philippine IP Code, a copyright owner may, at any time during the subsistence of the copyright, register and deposit his or her work with the National Library (and the Supreme Court Library, in case of works in the field of law), for the purposes of registration only.⁷ In a Memorandum of Agreement dated 25 January 2011, the IPOPHL was deputized by the National Library as the receiving office for such registration and deposit of copyrighted works.

⁷ Such registration and deposit is not a condition of copyright protection.

Since then up to present, IPOPHL records show that there were only 1,623 filings for copyright registration received by said office. The table below shows the total number of said filings, broken down as to class or category of works:

Class ID	Types of Works	No. of filings
A	Books, e-books, audio books, pamphlets, comics, novels, articles,	410
B	Periodicals, journals, diaries, newspapers, magazines, e-zines,	34
C	Lectures, sermons, addresses, speeches, dissertations prepared for oral delivery	3
D	Letters, circulars, encyclicals, e-mail and other electronic messages	1
E	Plays, operas, choreographies, pantomimes, magic routines and other novelty acts	3
F	Musical compositions with or without lyrics	106
G	Drawings, paintings, architectural works, sculpture, engraving, prints, lithography or other works of art, models or designs for works of art	147
H	Ornamental designs or models for articles of manufacture and industrial objects, and other works of applied art	23
I	Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture, or science	3
J	Drawings or plastic works of a scientific or technical character	3
K	Photographic works including works produced by a process analogous to photography, lantern slides	5
L	Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings	26
M	Pictorial illustrations and advertisements	79
N	Computer programs, software, games	225
O	Other literary, scholarly, scientific and artistic works, including reports, studies, research, theses, and other academic papers, examinations, online courses, presentations	550
P	Sound recordings	5
Total		1623

For the years 2015 to 2016, the total numbers of copyright registrations granted by the IPOPHL are as follows:

Total Number of Registrations Granted	
2015	2016 ⁸
536	465

Copyright Enforcement Statistics

The Bureau of Legal Affairs of the IPOPHL has original jurisdiction over administrative complaints for violations of laws involving intellectual property rights, including copyright, where the total damages claimed is not less than Two Hundred Thousand Pesos (Php200,000.00). IPOPHL statistics show that, as of present, cases involving copyright enforcement are few and far in between. For 2015 to 2016, there were only five (5) copyright-related cases filed before the Bureau of Legal Affairs. All five cases remain pending to date, thus:

Cases filed, disposed and pending before the Bureau of Legal Affairs			
Year	No. of Cases Filed	No. of Cases Disposed	No. of Cases Pending as of July, 2016
2015	1	0	1
2016	4	0	4
Total	5	0	5
Cases filed, disposed and pending before the Office of the Director General			
Year	No. of Cases Filed	No. of Cases Disposed	No. of Cases Pending as of July, 2016
None			

III. Legislation

There is no recently enacted law involving copyright. There are also no changes in the existing rules and regulations governing copyright protection and enforcement.

⁸ This covers only the months of January-July 2016.

There was, however, a bill filed on 10 March 2015 in the House of Representatives, seeking to mandate the inclusion of certain provisions in any contract for transfer or assignment of copyright. The avowed purpose is to prevent fraud and imposition practiced by some entities and individuals on unsuspecting authors, who, because of lack of knowledge of their intellectual property rights, are enticed to enter into contracts which prove detrimental to them in the long run.⁹ However, this bill was filed during the 16th Congress, which permanently adjourned on 6 June 2016 upon the expiration of term of the members of the House of Representatives.

With the adjournment of the 16th Congress, this bill must be filed anew before it can go through the legislative process¹⁰ and become a law. As of present, the bill was not yet re-filed in the 17th Congress,¹¹ which opened its regular session on 25 July 2016.

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⁹ See Explanatory Note of House Bill No. 5557, entitled “An Act Mandating Contractual Pre-requisites for the Transfer or Assignment of Copyright, for the Benefit of the Original Authors” or the “Creator Protection Act”

¹⁰ In general, a bill must go through a First Reading, Second Reading, and Third Reading in both chambers of Congress (i.e., the Senate and the House of Representatives), and signed by the President of the Philippines, before it becomes a law.

¹¹ The 17th Congress is the current meeting of the national legislature of the Philippines.