

HB3841 and SB2842 #PH-IPC

Michael Vernon Guerrero Mendiola

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Senate Bill 2842, ¹ and its counterpart House Bill 3841, ² were passed by Congress. It would appear that the consolidated bill ³ was transmitted to the President on 29 January 2013. ⁴ The consolidated bill has not been signed into law yet, as of writing, ^{5 6} but sentiments against the legislation were made public on 14 February 2013, ⁷ and responded to by the Philippine Intellectual Property Office. ⁸

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I. Development

SB 2842 was in substitution of prior Senate Bill Nos. 301, ⁹ 707, ¹⁰ 962, ¹¹ 1818, ¹² 2431, ¹³ 2487, ¹⁴ 2553, ¹⁵ and 2628, ¹⁶ of Senators Antonio F. Trillanes IV, Jinggoy Ejercito Estrada, Manuel M. Lapid, Miriam Defensor Santiago, Edgardo J. Angara, Manny Villar, Loren B. Legarda; taking into consideration P.S. Resolution Nos. 244 ¹⁷ and 365 ¹⁸ of Senator Villar. On the other hand, HB 3841 was in substitution of prior House Bill Nos. 47, ¹⁹ 267, ²⁰ and 2040. ²¹

II. Organizational matters: Sections 6, and 7; and proposed Section 9-A, RA 8792

Sections 6, ²² and 7; ²³ and the proposed Section 9-A ²⁴ deals with the introduction of the Bureau of Copyright and Other Related Rights, and its functions.

A. Warrantless Search

The problem lies with Section 7.1(d). It provides:

d) Conduct visits during reasonable hours to establishments and businesses engaging in activities violating intellectual property rights and provisions of this act based on report, information or complaint received by the office; and

“Visitorial powers refer to the ability of a regulator to inspect, examine, and supervise the affairs of an entity.”²⁵ It connotes that the visitorial power is exercised to look into the compliance of the entity with the law, on a general sense. Section 7.1(d) is so narrowed that it would appear that the function would be more of warrantless search in the guise of exercise of visitorial power.

Considering there are reports, information, or complaint on intellectual property rights and provisions of the Intellectual Property Code, the appropriate action should be for an application of a search warrant through the courts, and not through an administrative agency. In *People vs. Aruta*, GR 120915, 3 April 1998, Third Division, Romero [J],²⁶ it was held that:

In *People v. Ramos*, (222 SCRA 557 [1993]) this Court held that a search may be conducted by law enforcers only on the strength of a search warrant validly issued by a judge as provided in Article III, Section 2 of the Constitution which provides:

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

This constitutional guarantee is not a blanket prohibition against all searches and seizures as it operates only against “unreasonable” searches and seizures. The plain import of the language of the Constitution, which in one sentence prohibits unreasonable searches and seizures and at the same time prescribes the requisites for a valid warrant, is that searches and seizures are normally unreasonable unless authorized by a validly issued search warrant or warrant of arrest. Thus, the fundamental protection accorded by the search and seizure clause is that between person and police must stand the protective authority of a magistrate clothed with power to issue or refuse to issue search warrants or warrants of arrest. (*Bernas, The Constitution of the Republic of the Philippines, A Commentary, 1987, First ed., pp. 85-86*)

Further, articles which are the product of unreasonable searches and seizures are inadmissible as evidence pursuant to the doctrine pronounced in *Stonehill v. Diokno* (20 SCRA 383 [1967]). This exclusionary rule was later enshrined in Article III, Section 3(2) of the Constitution, thus:

Sec. 3(2). Any evidence obtained in violation of this or the preceding section shall be inadmissible in evidence for any purpose in any proceeding.

From the foregoing, it can be said that the State cannot simply intrude indiscriminately into the houses, papers, effects, and most importantly, on the person of an individual. The constitutional provision guaranteed an impenetrable shield against unreasonable searches and seizures. As such, it protects the privacy and sanctity of the person himself against unlawful arrests and other forms of restraint. (*Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines: A Commentary 1996 ed., pp. 147-148*)

Therewithal, the right of a person to be secured against any unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. A statute, rule or situation which allows exceptions to the requirement of a warrant of arrest or search warrant must perforce be strictly construed and their application limited only to cases specifically provided or allowed by law. To do otherwise is an infringement upon personal liberty and would set back a right so basic and deserving of full protection and vindication yet often violated. (*People v. Argawanon, 215 SCRA 652 [1992]*)

It would have been different if violations of the law would have been discovered during routine visits to supervise the affairs of an entity, or if visitation powers include other determination of compliance of law besides visits based on reported violations. As to the current wordings of Section 7.1 (d), it would appear that it may infringe upon Constitutional rights.

III. Definitions: Sections 171.3, and 171.9; and proposed Sections 171.12 and 171.13, RA 8792

Section 171.3 defines “Communication to the public,”²⁷ while Section 171.9 defines “Reproduction.”²⁸ On the other hand, the proposed Sections 171.12 and 171.13 defines “Technology Measure” and “Rights Management Information” respectively.²⁹

A. Communication to the public

The amendment to Section 171.3 appears to recognize convergent technologies and updates the law in light thereof. This strengthens the rights of broadcasting organizations, especially when its pay-per-view feeds become available to the public, through the act of an infringer, via streaming.

B. Reproduction

The amendment to Section 171.9 does not provide for significant changes in its legal substance, but provides for some problems in its effect. Due to the rephrasing of Section 185, where allowances are provided, in Section 12 of the consolidated bill, a person or entity, for example, undertaking computer repair (and temporarily backing up data of a client) could be find itself liable under the law. The prior US case *MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511 (9th Cir. 1993),³⁰ and the prior amendment made by the United States in its law to reverse the holding therein, should have given Philippine legislators awareness of such possible implication.

On technical matters, it would be still be reproduction if an infringing material would enter a browser’s cache upon mere access on a page which include such infringing work, as there is no longer distinction whether the reproduction is permanent or temporary. On the other hand, the limitations on the copyright of computer programs pertain merely to (1) decompilation, either on the original provision or the proposal to amend Section 185; and (2) the reproduction of a computer program for archival purposes under Section 189, RA 8293;³¹ the execution of a computer program, where parts of it shall be temporary reproduced in the computer’s Random Access Memory (RAM), would be reproduction in which no allowance is provided under law.

C. Technology Measures, and Rights Management Information

Lastly, the proposed additions of Sections 171.12 and 171.13 is in keeping with Articles 11 and 12, respectively, of the 1996 WIPO Copyright Treaty,³² to wit:

Article 11

Obligations concerning Technological Measures

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.

Article 12

Obligations concerning Rights Management Information

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(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:

(i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, “rights management information” means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.³³

Technological measures and Rights management information are subsequently mentioned as aggravating circumstances under the proposed amendments of Sections 216 and 217, RA 8293, through Sections 22 and 23 of the consolidated bill.³⁴

Nothing in the law, however, provides for mechanisms against undue interference in the enjoyment of the allowances under Chapter VIII, Title IV of the Intellectual Property Code (Limitations on Copyright) by the deployment of such technological measures.

IV. Assignment, Licensing, and Transfer: Sections 180, 181, and 183, RA 8792

The amendments on Section 180³⁵ and 181³⁶ focuses on the inclusion of licensing — besides what has been provided under Section 180.3 — and its remedies, under the seventh chapter of the Copyright title of the Philippine Intellectual Property Code.³⁷ The amendment to Section 183³⁸ focuses on the accreditation of Collecting Societies for the enforcement of claims by its members.

A. Statement of Accounts under the proposed Section 180.5

As to Section 180, the confusion between the terms “assignment” or “assigning,” and “license” or “licensing” provides for issues in the proposed Section 180.5. In legal terms, assignment is a transfer of property right or title to some other person or entity under an agreement.³⁹ On the other hand, license is the permission granted by competent authority (public or private) to exercise a certain privilege that, without such authorization, would constitute an illegal act.⁴⁰

The proposed Section 180.5 provides:

180.5. The copyright owner has the right to regular statements of accounts from the assignee or the licensee with regard to assigned or licensed work.

As to assignment, if the transfer of right by the assignor, the copyright owner, is unequivocally unrestricted under the agreement, there is hardly an application of Section 180.5 as the assignee would become the copyright owner thereon. The proposed provision would provide an unnecessary confusion as to who the “copyright owner” would be in such a scenario. The assignor herein, who is no longer the copyright owner, may insist on a right which is no longer availing.

On the other hand, as to license, if the permission granted, in the exercise of the rights under Section 177 (Economic rights),⁴¹ did not require the payment of royalties, the right under the proposed Section 180.5 merely provides for an unnecessary burden to the licensee, as such is without any practical

benefit for either party. Further, such scenario is complicated if the license includes the allowance, without royalty (or gratis), of the right under Section 177.2, to wit:

177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

The adaptation of multiple and compatibly licensed works into a new derivative work, where no royalty is required, would provide additional burden to the licensee to those already provided above, as elements of the licensed work would cascade to permitted derivative works from the said derivative work, in which the original licensee may be called to account for too, to an original licensor who would suddenly seek to avail of the right under the proposed Section 180.5 — since the law provides for it, and that the law is impliedly written in the agreement. The licensee may be left to spend his time on the mundane task of accounting, instead of harnessing his intellect or his creativity in creating works, such as derivative works in this case. This would be contrary to articulated intents to promote the Filipino creatives as reason for the legislation of this particular measure.

The addition of the clause “If the payment of royalties are agreed upon in favor of the assignor or licensor,” would somehow solve the expected problem in the proposed Section 180.5. The intent of legislators to enhance the rights of authors in relation to the publishing industry would not be diminished by the inclusion of such clause. The clause instead would dissuade any apprehensions to those who depend upon freely licensed works — such as free and open source software licensed under GNU General Public License (GNU-GPL); documents under Free Document License (FDL); images, literature, audio-visuals, and audios under Creative Commons Attribution (CC BY) and Attribution-ShareAlike (CC BY-SA) — and similarly licensed works — such as those under Creative Commons Attribution-NoDerivative (CC BY-ND).

I support the interests of authors in relation to the publishing industry, no doubt about that, especially considering that they should not be left in the dark as to the royalties which may already be due them. Nevertheless, the interest of stakeholders should have been considered in the crafting of the proposed provision, as such applies generally and not merely for a particular legitimate interest.

B. Collecting Society accreditation

Under the consolidated bill, collecting societies now also include other related-rights holders besides artists, writers, and composers. This now opens collecting societies for performers, producers of sound recordings, and broadcasting organizations. Nothing here is controversial.

On the other hand, under the consolidated bill, “[f]or the said societies to enforce the rights of their members, they shall first secure the necessary accreditation from the intellectual property office.” There is no issue of prior restraint here, inasmuch the issue refers not to expression but to collection of royalties, and the agency that is constituted by such arrangement. It would benefit the public to peruse the credentials of a collecting agent stored with a government agency if they are accredited agents indeed prior payment of claims; and it would benefit collecting society members against any unscrupulous individual who would extort unauthorized collection claims on otherwise unsuspecting members of the public. The artists, writers, composers, and related rights holders, through such collecting societies, should benefit from collections made under such avenue.

V. Limitations of copyright: Sections 184, 185, 188, and 190, RA 8792

A. Limitation for the benefit of the blind, visually or reading-impaired persons (Section 184)

The amendment in Sections 184⁴² provides for an additional limitation for the benefit of the blind, visually or reading-impaired persons. The allowance provides for niche beneficiaries, and since the format is exclusively for those who are blind, visually or reading-impaired persons; any format which

would be contrary to such would negate any claim for such allowance. Nevertheless, it may be contended that such allowance would kill the publishing business of those catering to such niche market, inasmuch as the allowance, although not competing in the commercial sense, would unduly impact the market thereof to the prejudice of such publishers. Still, it should be noted that the allowance provided in the proposed Section 184.1(l) should be read in accordance with Section 184.2, to wit:

184.2. The provisions of this section shall be interpreted in such a way as to allow the work to be used in a manner which does not conflict with the normal exploitation of the work and does not unreasonably prejudice the right holder's legitimate interests.

On this end, rules which would be implemented in relation therewith should clarify the rights involve between those who would avail of this allowance, and those who are in the business of catering to such niche market. For example, (1) if publication has been pursued by a commercial publisher on a work in a format for the blind, etc., can someone availing of the allowance still do so even for non-commercial purpose? (2) If someone has availed of the allowance for a certain work, and a commercial publisher of a work in a format for the blind, etc., commenced the publication thereof subsequently, would the subsequent publication in such format by the commercial publisher now preclude the one who availed of the allowance from further reproduction and distribution of the work in such format?

B. Fair Use (Section 185)

Section 185, RA 8293 provides:

Section 185. Fair Use of a Copyrighted Work. – 185.1. The fair use of a copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs may also constitute fair use. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:

- (a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (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.

185.2. The fact that a work is unpublished shall not by itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Section 12 of the consolidated bill provides:

Sec. 12. Section 185.1 of R.A. No. 8293 is hereby amended to read as follows:

Section 185. Fair Use of a Copyrighted Work. – 185.1. The fair use of a copyrighted work for criticism, comment, news reporting, teaching including limited copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs may also constitute fair use under the criteria established by this section, to the extent that such decompilation is done for the purpose of obtaining

the information necessary to achieve such inter-operability.

xxx

The wordings of Section 12 provide, apparently, for an ambiguity, inasmuch as the amendment to Section 185.1 was not declared fully under Section 12 of the consolidated bill. It can be argued, on one hand, that the part *“In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include: (a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; (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”* stands-in for the “xxx” provided in Section 12 of the consolidated bill. On the other hand, it could be argued that if the intention was thus, Section 12 should have provided *“Sec. 12. The first two sentences of Section 185.1 of R.A. No. 8293 is hereby amended to read as follows:”* Considering thus the generality of the declaration, the content of the proposed amendment could be argued to be the entirety of Section 185.1. Although I would personally lean towards the first interpretation, on the argument that the “criteria established by this section” indicates the retention of the such part, I am not a member of the bench.

Be as it may, the proposed amendment to the first sentence of Section 185.1 substitutes “multiple” with “limited.” How limited is limited is not clear. Perhaps guidelines would be necessary to determine the scope of fair use on this subject matter.

On the other hand, the proposed amendment relevant to decompilation, limits (else clarifies) the acts to which are consistent with the definition already provided by the law. It should be noted that “Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs may also constitute fair use” is part-declaration (*“Decompilation ... may also constitute fair use”*) and part-definition (*“Decompilation [is] ... the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs.”*). Adding “to the extent that such decompilation is done for the purpose of obtaining the information necessary to achieve such inter-operability” reconnects the purpose to the definition of decompilation. Nevertheless, technical considerations require deeper analysis whether such statement unduly limits fair use decompilation. It should be noted similarly that interoperability is defined differently,⁴³ and the Philippine Government has not provided for a working definition as a point of reference to disperse confusion as to its proper scope.

C. Reprographic reproduction of copies for libraries (Section 188)

The proposed amendment to Section 188, RA 8293,⁴⁴ involves the substitution of “a single copy” to “limited number of copies.” The limitation does not overly expand the allowance, notwithstanding the substitution, inasmuch as the reproduction remains within the scope of conditions in the enumerations under Section 188.

D. Removal of the allowance of limited importation under Section 190.1, RA 8293

The proposed amendment to Section 190, RA 8293,⁴⁵ besides those relevant to anti-circumvention measures, has solicited much of the reactions against the legislation. Section 14 of the consolidated bill provides:

Sec. 14. Sections 190.1 and 190.2 of R.A. 8293 are deleted in their entirety.

The proposed legislation deletes Sections 190.1 and 190.2, to wit:

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Section 190. Importation for Personal Purposes. – 190.1. Notwithstanding the provision of Subsection 177.6, but subject to the limitation under the Subsection 185.2, the importation of a copy of a work by an individual for his personal purposes shall be permitted without the authorization of the author of, or other owner of copyright in, the work under the following circumstances:

(a) When copies of the work are not available in the Philippines and:

(i) Not more than one (1) copy at one time is imported for strictly individual use only; or

(ii) The importation is by authority of and for the use of the Philippine Government; or

(iii) The importation, consisting of not more than three (3) such copies or likenesses in any one invoice, is not for sale but for the use only of any religious, charitable, or educational society or institution duly incorporated or registered, or is for the encouragement of the fine arts, or for any state school, college, university, or free public library in the Philippines.

(b) When such copies form parts of libraries and personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: Provided, That such copies do not exceed three (3).

190.2. Copies imported as allowed by this Section may not lawfully be used in any way to violate the rights of owner the copyright or annul or limit the protection secured by this Act, and such unlawful use shall be deemed an infringement and shall be punishable as such without prejudice to the proprietor's right of action.

The deletion of Section 190.1 indicates the intention of the legislature to remove or withdraw the allowance as provided therein. Upon the effectivity of the law when it is signed, anyone who shall import the same, albeit legitimate copy or copies of a work in the jurisdiction of origin, would now violate the rights of those foreign copyright owners as their permission has not been sought for the importation of the same to the Philippines.

The position that the Bureau of Customs would allow importation of the same, notwithstanding the removal of said provisions, is not encouraging. Considering the directive of the Bureau would not have any statutory anchor, such directive would be in violation of property rights, of foreigners who are entitled protection of Philippine laws pursuant to treaty obligations, and could be rendered invalid for being issued without proper authority. An administrative issuance cannot provide privileges not provided by law to the detriment of property rights of those entitled to it and those who rely upon the fact that such rights are not limited, or no longer limited, under law. Further, a lax implementation of the amended law by government entities would render the Philippines accountable anew on enforcement of intellectual property rights, and see itself on prominent rank of violators in IP watchlists.

It should be noted that the equivalent provisions in the US Code remain intact.⁴⁶

E. Rules relevant to importation and exportation (Section 190.3)

Section 15 of the consolidated bill provides:

Sec. 15. Section 190.3 of R.A. No. 8293 is hereby renumbered and amended as the sole provision under Section 190 to read as follows:

Sec. 190. Importation and Exportation of Infringing Materials. — Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulations for preventing the importation or exportation of infringing articles prohibited under Part IV of this Act and under relevant treaties and conventions to which the Philippines may be a party and for seizing and

condemning and disposing the same in case they are discovered after they have been imported or before they are exported.

The promulgation of rules and regulations for preventing the importation or exportation of infringing materials by the Bureau of Customs is necessary. Nevertheless, due to the nature of the assurances being made in relation to the deletion of Sections 190.1 and 190.2, I do not feel comfortable with the potential implication of the seemingly innocent provision above. I could not help but wonder if this seemingly innocent provision would subsequently allow the replication of the US policy of laptop searches, without suspicion, on Philippine borders or ports,⁴⁷ and for the Philippine Government, or an agent thereof, to subsequently claim a similar application of the doctrine in *Papa vs. Mago*, GR L-27360, 28 February 1968, En Banc, Zaldivar [J],⁴⁸ notwithstanding its impact to the Constitutional right to privacy.

VI. Deposit: Section 191, RA 8792

The proposed amendment of Section 191, RA 8293⁴⁹ is beneficial to authors, inasmuch as it removes the compulsory mandate to deposit copies of the work in the National Library and/or the Supreme Court Library within 3 weeks of after the first public dissemination of works enumerated therein. Under the amendment, the deposit requirement is voluntary, and removes the payment of fines and surcharges relevant to the prior mandate.

VII. Term of Moral Rights: Section 198, RA 8792

The proposed amendment of Section 198, RA 8293⁵⁰ is substantial. Under the current law, moral rights are uniformly protected during the lifetime of the author and for fifty (50) years after his death. Under the proposed amendment, the moral right under Section 193.1, i.e. “To require that the authorship of the works be attributed to him, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work;” is lengthened to lifetime of the author and in perpetuity after his death.

On the other hand, the moral rights under Section 193.2, i.e. “To make any alterations of his work prior to, or to withhold it from publication;”; Section 193.3, i.e. “To object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation;”; and Section 193.4, i.e. “To restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work.” is coterminous with the term of economic rights provided under Section 213, RA 8293.⁵¹

For original and derivative works, in general, the prior protection and proposed protection remain to be the same, i.e. during the lifetime of the author and for fifty (50) years after his death. For joint authorship, it would be extended from the prior protection to the period benefiting the last surviving co-author, i.e. during the life of the last surviving author and for fifty (50) years after his death.

The issue lies with photographic works and audio-visual works, which economic rights are protected for fifty (50) years from date of publication and, if unpublished, from the date of making; and with works of applied art, which economic rights are protected for twenty-five (25) years from the date of making; since the statutory protection of moral rights would be reduced from their original period of “lifetime of the author and for fifty (50) years after his death.” It might be deemed to be a diminution of vested rights. There is nothing in the proposed legislation that “the application of this Act shall not result in the diminution of such protection” unlike in previous Philippine copyright laws.

VIII. Neighboring Rights: Sections 203, 204, 208, and 212, RA 8792

A. Performers’ Rights (Sections 203 and 204)

The proposed amendment to Sections 203⁵² and 204,⁵³ RA 8293 extends the performer's rights, as regards to their performance, over audiovisual works or fixation thereof, besides those already provided to sound recordings.

B. Rights of Producers of Sound Recordings (Section 208)

The proposed amendment to Sections 208, RA 8293⁵⁴ provides an additional right to producers of sound recordings relevant to communication to the public.

C. Limitations on other rights (Section 212)

The proposed amendment to Section 212, RA 8293⁵⁵ apparently expands the scope of limitations to rights of performers, producers of sound recordings, and broadcasting organizations. Instead of the four enumerations in the current Section 212, the proposed amendment provides for a mutatis mutandis application of the limitations provided in Chapter VIII of Title IV, RA 8293 (Limitations of Copyright, Sections 184 to 190).

IX. Infringement and Institution of Actions: Sections 216, 217, 218, and 226; and the proposed Section 220A, RA 8792

The proposed amendment to Section 218,⁵⁶ RA 8293 is based on style to clarify true copies of the evidence from the requirement of the affidavit itself. The proposed amendment to Section 226, RA 8293 merely added the phrase "the lapse of".⁵⁷

The concerns on anti-circumvention measures, as defined in the proposed Sections 171.12 and 171.13, are necessarily connected to the infringement provisions under the proposed amendments to Sections 216,⁵⁸ and 217.⁵⁹

A. Technology Circumvention as Aggravating circumstance (Sections 216 and 217)

The provision pertaining to the circumvention measures indeed refer to aggravating circumstances, consistent with the assurance with the Intellectual Property Office. Nevertheless, due to the dynamics and the gray areas pertaining to copyright holders' rights in relation to allowances due to limitations of Copyright and fair use, circumvention measures can be argued not merely as a tool for the subsequent commission of copyright infringement but that circumvention measures provide for the cause of the copyright infringement itself (on the argument that such is an intimate component of the work). These situations are not difficult to appreciate. The unintended consequences of the US equivalent, the Digital Millennium Copyright Act (DMCA),⁶⁰ should already have been taken into consideration as anti-circumvention provisions are being introduced in the Philippines through this consolidated bill. The EFF report was already available on the Internet a year before this present legislation was reintroduced, after substituting its predecessor bills, in the Philippine Congress.⁶¹ Issues relevant to anti-circumvention and safe harbors are somehow contentious,^{62 63} and discussion thereon continues.⁶⁴

B. Safe harbor (Sections 216 and 217, RA 8293; in relation to Sections 30 and 33, RA 8792)

Persons liable for infringement under RA 8792 would be, under Section 217.1, "[a]ny person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement"; and under Section 217.3, "[a]ny person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of: (a) Selling, letting for hire, or by way of trade offering or exposing for

sale, or hire, the article; (b) Distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or (c) Trade exhibit of the article in public.”

Persons liable for infringement under RA 8792 would be, under Section 33(b), persons who commit “*Piracy or the unauthorized copying, reproduction, dissemination, or distribution, importation, use, removal, alteration, substitution, modification, storage, uploading, downloading, communication, making available to the public, or broadcasting of protected material, electronic signature or copyrighted works including legally protected sound recordings or phonograms or information material on protected works, through the use of telecommunication networks, such as, but not limited to, the internet, in a manner that infringes intellectual property rights*”

Nevertheless, service providers, as referred to in Section 5(j), RA 8792, ⁶⁵ would not be liable for infringement if they do not commit the acts prohibited under the last paragraph of Section 5(j), RA 8792, or if the conditions under Section 30(b), RA 8792 ⁶⁶ would have been satisfied.

Considering, however, that Section 216 (b), as proposed to be amended, provides that:

Section 216. Infringement. – A person infringes a right protected under this Act when one:

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(b) Benefits from the infringing activity of another person who commits an infringement if the person benefiting has been given notice of the infringing activity and has the right and ability to control the activities of the other person;

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the safe harbors provided under Section 30(b), RA 8792 would be negated by mere notice of the infringing activity, without any reasonable parameters on the period to respond before such service provider would become liable. Without such parameters, the liability becomes immediate upon notice, and infringement would have committed between the intervening period between the notice and the resultant takedown of the alleged infringing work. Further, there is no remedy for a copyright holder whose work was wrongfully taken down, as there are no counter-notices provided in the proposed legislation; providing a quandary, else potential liabilities, to the service provider.

C. Disclosure of Information (Section 220A)

The proposed Section 220A does appear beneficial to copyright holders, as they are informed of infringements of their work when such are discovered by government agents. Nevertheless, there are issues in the proposed provision. Section 25 of the consolidated bill provides:

A new Section 220A shall be inserted after Section 220.2 of R.A. No. 8293 to read as follows:

Sec. 220A. Disclosure of Information. – Where any article or its packaging or an implement for making it is seized or detained under a valid search and seizure under this Act is, or is reasonably suspected to be, by an authorized enforcement officer, in violation of this Act, the said officer shall, wherever reasonably practicable, notify the owner of the copyright in question or his authorized agent of the seizure or detention, as the case may be.”

1. Valid search and seizure; reasonable suspicion

The mandate is for an authorized enforcement officer to notify the owner of the copyright in question or his authorized agent of the seizure or detention. Such mandate is predicated on two

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situations: (1) Where any article or its packaging or an implement for making it is seized or detained under a valid search and seizure under this Act is ... in violation of this Act; and (2) Where any article or its packaging or an implement for making it ... is reasonably suspected to be, by an authorized enforcement officer, in violation of this Act.

Under the first situation, i.e. under valid search and seizure, the general rule provides that it should be based on a valid search warrant, ⁶⁷ as already previously discussed. It can only be issued upon finding of probable cause. ⁶⁸ As held in *People vs. Aruta*, GR 120915, 3 April 1998, Third Division, Romero [J]: ⁶⁹

Although probable cause eludes exact and concrete definition, it generally signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged. It likewise refers to the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the item(s), article(s) or object(s) sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched. (*People v. Encinada, G.R. No. 116720, October 2, 1997*)

On the other hand, a valid search and seizure can also be had through warrantless search. In *People vs. Aruta*, GR 120915, 3 April 1998, Third Division, Romero [J], ⁷⁰ it was held that:

The following cases are specifically provided or allowed by law:

1. Warrantless search incidental to a lawful arrest recognized under Section 13, Rule 126 of the Rules of Court and by prevailing jurisprudence;
2. Seizure of evidence in "plain view," the elements of which are:
 - (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
 - (b) the evidence was inadvertently discovered by the police who had the right to be where they are;
 - (c) the evidence must be immediately apparent, and
 - (d) "plain view" justified mere seizure of evidence without further search;
3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. Consented warrantless search;
5. Customs search; (*Padilla v. CA and People, G.R. No. 121917, March 12, 1997*)
6. Stop and Frisk; (*People v. Solayao, 262 SCRA 255 [1996]*) and
7. Exigent and Emergency Circumstances. (*People v. De Gracia, 233 SCRA 716 [1994]*)

The above exceptions, however, should not become unbridled licenses for law enforcement officers to trample upon the constitutionally guaranteed and more fundamental right of persons against unreasonable search and seizures. The essential requisite of probable cause must still be satisfied before a warrantless search and seizure can be lawfully conducted.

In both means, with warrant or warrantless, the essential requisite of probable cause must be

satisfied. Under circumstances in which the copyright owner is not involved in the procurement of the search warrant, or in valid warrantless searches, the proposed provision is reasonable to be pursued.

Under the second situation, there can be no valid search and seizure. The mandate to notify the copyright owner would be a nullity, inasmuch as the seized items will be inadmissible in evidence for any proceedings subsequent thereto.

The probable cause requirement is not equivalent to the legal standard called “reasonable suspicion,” in matters relevant to search and seizure. There is a gulf of difference between what is “highly reasonable suspicion amounting to probable cause” and “reasonable suspicion.” Reasonable suspicion is a standard less than probable cause but more than a mere hunch.⁷¹ Reasonable suspicion has been previously applied in *Terry vs. Ohio*, 392 US 1, directed towards a person — not an article, its packaging nor its implements — so as to conduct stop and frisk or the “Terry search.”⁷²

“Reasonable suspicion” is information which is sufficient to cause a reasonable law enforcement officer, taking into account his or her training and experience, to reasonably believe that the person to be detained is, was, or is about to be, involved in criminal activity. The officer must be able to articulate more than an “inchoate and unparticularized suspicion or ‘hunch’ of criminal activity.” (*Terry v. Ohio (1968) 392 U.S. L. 27 [20 L.Ed.2nd 889, 909].*)⁷³

The mandate attached to the second situation is futile, and the allocation of state resources to pursue the mandate as a result of the second scenario would wastage of taxpayers’ money or public funds.

2. Public funds for public purpose

Aligning the proposed function in Section 7.1(d) — i.e. the warrantless search in the guise of visitatorial powers — and the import of the proposed Section 220A, it is not remote that there would be unintended consequences thereto, such as that the State becomes the agent of corporate interests — perhaps increasingly foreign ones — for the latter’s discovery of, and enforcement, against infringing incidents. There is a line between pursuing public interest in general, and pursuing private interests in particular, especially when such involves disbursement of public funds in pursuance thereof.

X. IP Policies for academic institutions: Proposed new Section 230

Section 27 of the consolidated bill provides:

Chapter XX of R.A. No. 8293 is hereby amended by adding a new Section at the end thereof to be denominated as Section 230, to read as follows:

Sec. 230. Adoption of Intellectual Property (IP) Policies. – Schools and universities shall adopt intellectual property policies that would govern the use and creation of intellectual property with the purpose of safeguarding the intellectual creations of the learning institution and its employees, and adopting locally-established industry practice fair use guidelines. These policies may be developed in relation to licensing agreements entered into by the learning institution with a collective licensing organization.

The Philippine IPO has been previously pursuing workshops relevant to this, but more particularly relevant to patent rights:

An ITSO university or college gets training support from the Philippine IP Office, with the latter helping them set up its own IP office. They also teach appointed academics in the office how to get started with the school’s

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own IP policy, how to draft and file patent applications, and how to use or commercialise the patents. This frees the schools from hiring expensive patent lawyers and business consultants. For this programme, WIPO's role is to hold the workshops and provide the experts.

“Hopefully, this will help address the brain drain in universities,” Blancaflor said. Here, it is common for home-grown academic talent, researchers and scientists, particularly those coming from state-funded institutions, to either join the private sector or leave the country to seek better opportunities. He noted that universities and their faculty, scientists and researchers could eventually profit from the patent system through royalties once successful commercialisation of university patents takes off.⁷⁴

From a voluntary mechanism, the proposed legislation now becomes a positive duty for schools and universities adopt IP policies. The purpose of the mandate is narrowly directed towards the mere monetization of works of the institution and its employees, with or without the participation of a collective licensing organization.

It would have been more encouraging if the purpose of the mandate of such IP policies are directed more to resolve apparent conflicts in the exploitation of works created by other members of the academic community, such as those who are not employees of such institutions, and especially students where works would have been submitted as part of academic requirements. There is no dispute regarding the IP ownership of works created by employees in academic institutions, since according to Section 178.3, RA 8293:

178.3. In the case of work created by an author during and in the course of his employment, the copyright shall belong to:

- (a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.
- (b) The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.

XI. Conclusion

Although the proposed legislation has beneficial provisions, reservations in a substantial number of proposed provisions, as discussed above, negate a personal and unequivocal support for the measure. I hope that the Philippine President does not sign such law.

Endnotes

- 1 AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8293, OTHERWISE KNOWN AS ‘THE INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES’, AND FOR OTHER PURPOSES. http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-2842;
<http://www.senate.gov.ph/lisdata/113379641!.pdf>
- 2 http://www.congress.gov.ph/download/basic_15/HB03841.pdf; http://www.congress.gov.ph/download/billtext_15/hbt3841.pdf
- 3 <http://democracy.net.ph/wp-content/uploads/2013/02/Intellectual-Property-amendments-bill-bicam1.pdf>
- 4 Robles, Raissa. “The legislative history of amendments to the Intellectual Property Code (RA 8293).” <http://raissarobles.com/2013/02/14/the-legislative-history-of-amendments-to-the-intellectual-property-code-ra-8293/>
- 5 https://twitter.com/Abi_Valte/status/301911171370475520
- 6 <http://www.gov.ph/?cat=27>
- 7 Robles, Raissa. “Congress erased every Filipino’s right to bring home music, movies and books from abroad.” <http://raissarobles.com/2013/02/14/congress-erased-every-filipinos-right-to-bring-home-music-movies-and-books-from-abroad/>; “Statement on Proposed Amendments to RA 8293 (Intellectual Property Code)” [Demokrasya.net.ph. http://democracy.net.ph/statement-on-proposed-amendments-to-ra-8293-intellectual-property-code/](http://democracy.net.ph/statement-on-proposed-amendments-to-ra-8293-intellectual-property-code/)
- 8 “IP CODE AMENDMENT GIVES FILIPINOS BETTER ACCESS TO COPYRIGHTED WORKS FROM ABROAD.” IPO Philippines. <http://www.ipophil.gov.ph/index.php/20-what-s-new/134-ip-code-amendment-gives-filipinos-better-access-to-copyrighted-works-from-abroad>
- 9 Senator Trillanes IV. “AN ACT GRANTING EXEMPTIONS FROM SECURING PERMISSION FROM THE PUBLISHER OR COPYRIGHT OWNER OF PRINTED MATERIALS TO REPRODUCE THE SAME IN A SPECIALIZED FORMAT FOR THE EXCLUSIVE USE OF BLIND OR VISUALLY-HANDICAPPED INDIVIDUALS, AMENDING FOR THIS PURPOSE SECTION 185 OF REPUBLIC ACT NO. 8293, OTHERWISE KNOWN AS THE ‘INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES’, AND FOR OTHER PURPOSES” http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-301
- 10 Senator Estrada. “AN ACT DECLARING AS UNLAWFUL THE REPRODUCTION OF COPYRIGHTED BOOKS AND PRINTED MATERIALS THROUGH PHOTOCOPYING, DUPLICATING, PRINTING MACHINES OR SIMILAR MEANS WITHOUT THE WRITTEN CONSENT OF THE COPYRIGHT OWNER, WHETHER THE PUBLISHER OR THE AUTHOR OR BOTH” http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-707
- 11 Senator Lapid. “AN ACT STRENGTHENING THE ENFORCEMENT OF THE COPYRIGHT PROTECTION OF INTELLECTUAL PROPERTY RIGHT OWNERS OF COMPUTER PROGRAMS CREATING FOR THIS PURPOSE THE BUSINESS SOFTWARE COPYRIGHT PIRACY ENFORCEMENT ITS POWERS AND FUNCTIONS, UNIT, DEFINING APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES” http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-962
- 12 Senator Santiago. “AN ACT CREATING THE INTELLECTUAL PROPERTY ASSET MANAGEMENT COUNCIL” http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-1818
- 13 Senator Angara. “AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8293, OTHERWISE KNOWN AS THE “THE INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES”, AND FOR OTHER PURPOSES” http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-2431
- 14 Senator Villar. “AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8293 ENTITLED “AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS POWERS AND FUNCTIONS AND FOR OTHER PURPOSES”” http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-2487
- 15 Senator Villar. “AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8293 ENTITLED “AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS POWERS AND FUNCTIONS AND FOR OTHER PURPOSES”” http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-2553
- 16 Senator Legarda. “AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8293, OTHERWISE KNOWN AS THE ‘INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES’ AND FOR OTHER PURPOSES” http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-2628
- 17 Senator Villar. “RESOLUTION DIRECTING THE SENATE COMMITTEE ON TRADE AND COMMERCE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE SYSTEM OF PATENT PROCESSING IN THE PHILIPPINES FOR THE PURPOSE OF ENCOURAGING MORE PATENT AND PROTECTING GENUINE FILIPINO APPLICATIONS INNOVATIONS”
- 18 Senator Villar. “RESOLUTION URGING THE SENATE COMMITTEE ON TRADE AND COMMERCE AND OTHER APPROPRIATE COMMITTEE/S TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE IMPLEMENTATION OF THE INTELLECTUAL PROPERTY RIGHTS CODE VIS-A-VIS THE ALLEGED HELPLESSNESS OF CONCERNED GOVERNMENT AGENCIES TO CURB SOFTWARE PIRACY”
- 19 Representative Rufus B. Rodriguez “AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8293 ENTITLED, “AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS POWERS AND FUNCTIONS AND FOR OTHER PURPOSES”” http://www.congress.gov.ph/download/basic_15/HB00047.pdf
- 20 Representative Juan Edgardo M. Angara. “AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8293, OTHERWISE KNOWN AS THE “INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES”, AND FOR OTHER PURPOSES” http://www.congress.gov.ph/download/basic_15/HB00267.pdf
- 21 Representative Irwin C. Tieng. “AN ACT GRANTING EXEMPTIONS FROM SECURING PERMISSION FROM THE PUBLISHER OR COPYRIGHT OWNER OF PRINTED MATERIALS TO REPRODUCE THE SAME IN A SPECIALIZED FORMAT FOR THE EXCLUSIVE USE OF BLIND OR VISUALLY-IMPAIRED INDIVIDUALS, AMENDING FOR THIS PURPOSE SECTION 185 OF REPUBLIC ACT NO. 8293, OTHERWISE KNOWN AS THE “INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES”, AND FOR OTHER PURPOSES” http://www.congress.gov.ph/download/basic_15/HB02040.pdf
- 22 As to Section 6, RA 8293.

Section 6, RA 8293 provides:

Section 6. The Organizational Structure of the IPO. – 6.1. The Office shall be headed by a Director General who shall be assisted by two (2) Deputies Director General.

6.2. The Office shall be divided into six (6) Bureaus, each of which shall be headed by a Director and assisted by an Assistant Director. These Bureaus are:

- a) The Bureau of Patents;
- b) The Bureau of Trademarks;
- c) The Bureau of Legal Affairs;
- d) The Documentation, Information and Technology Transfer Bureau;
- e) The Management Information System and EDP Bureau; and
- f) The Administrative, Financial and Personnel Services Bureau.

6.3. The Director General, Deputies Director General, Directors and Assistant Directors shall be appointed by the President, and the other officers and employees of the Office by the Secretary of Trade and Industry, conformably with and under the Civil Service Law.

Section 1 of the consolidated bill provides:

Sec. 1. Section 6 of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, is hereby amended to read as follows:

“Sec. 6. The Organizational Structure of the IPO. xxx

6.2 The Office shall be divided into seven (7) Bureaus, each of which shall be headed by a Director and assisted by an Assistant Director. These Bureaus are:

xxx

- (f) The Administrative, Finance and Personnel Services Bureau; and,
- (g) The Bureau of Copyright and Other Related Rights.”

If amended, Section 6.2 will become:

Section 6. xxx

6.2. The Office shall be divided into seven (7) Bureaus, each of which shall be headed by a Director and assisted by an Assistant Director. These Bureaus are:

- a) The Bureau of Patents;
- b) The Bureau of Trademarks;
- c) The Bureau of Legal Affairs;
- d) The Documentation, Information and Technology Transfer Bureau;
- e) The Management Information System and EDP Bureau; and
- f) The Administrative, Financial and Personnel Services Bureau; and
- g) The Bureau of Copyright and Other Related Rights.

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23 As to Section 7, RA 8293:

Section 7, RA 8293 provides:

Section 7. The Director General and Deputies Director General. – 7.1. Functions. – The Director General shall exercise the following powers and functions:

- a) Manage and direct all functions and activities of the Office, including the promulgation of rules and regulations to implement the objectives, policies, plans, programs and projects of the Office: Provided, That in the exercise of the authority to propose policies and standards in relation to the following: (1) the effective, efficient, and economical operations of the Office requiring statutory enactment; (2) coordination with other agencies of government in relation to the enforcement of intellectual property rights; (3) the recognition of attorneys, agents, or other persons representing applicants or other parties before the Office; and (4) the establishment of fees for the filing and processing of an application for a patent, utility model or industrial design or mark or a collective mark, geographic indication and other marks of ownership, and for all other services performed and materials furnished by the Office, the Director General shall be subject to the supervision of the Secretary of Trade and Industry;
- b) Exercise exclusive appellate jurisdiction over all decisions rendered by the Director of Legal Affairs, the Director of Patents, the Director of Trademarks, and the Director of the Documentation, Information and Technology Transfer Bureau. The decisions of the Director General in the exercise of his appellate jurisdiction in respect of the decisions of the Director of Patents, and the Director of Trademarks shall be appealable to the Court of Appeals in accordance with the Rules of Court; and those in respect of the decisions of the Director of Documentation, Information and Technology Transfer Bureau shall be appealable to the Secretary of Trade and Industry; and
- c) Exercise original jurisdiction to resolve disputes relating to the terms of a license involving the author’s right to public performance or

other communication of his work. The decisions of the Director General in these cases shall be appealable to the Secretary of Trade and Industry.

7.2. Qualifications. – The Director General and the Deputies Director General must be natural born citizens of the Philippines, at least thirty-five (35) years of age on the day of their appointment, holders of a college degree, and of proven competence, integrity, probity and independence: Provided, That the Director General and at least one (1) Deputy Director General shall be members of the Philippine Bar who have engaged in the practice of law for at least ten (10) years: Provided further, That in the selection of the Director General and the Deputies Director General, consideration shall be given to such qualifications as would result, as far as practicable, in the balanced representation in the Directorate General of the various fields of intellectual property.

7.3. Term of Office. – The Director General and the Deputies Director General shall be appointed by the President for a term of five (5) years and shall be eligible for reappointment only once: Provided, That the first Director General shall have a first term of seven (7) years. Appointment to any vacancy shall be only for the unexpired term of the predecessor.

7.4. The Office of the Director General. – The Office of the Director General shall consist of the Director General and the Deputies Director General, their immediate staff and such Offices and Services that the Director General will set up to support directly the Office of the Director General.

Sec. 2. Section 7 of RA No. 8293 is hereby amended to read as follows:

“Sec 7. The Director General and Deputies Director General.

xxx

b) Exercise exclusive appellate jurisdiction over all decisions rendered by the Director of Legal Affairs, the Director of Patents, the Director of Trademarks, the Director of Copyright and Other Related Rights, and the Director of the Documentation, Information and Technology Transfer Bureau. The decisions of the Director General in the exercise of his appellate jurisdiction in respect of the decisions of the Director of Patents, the Director of Trademarks, and Director of Copyright and Other Related Rights shall be appealable to the Court of Appeals in accordance with the Rules of Court; and those in respect of the decisions of the Director of Documentation, Information and Technology Transfer Bureau shall be appealable to the Secretary of Trade and Industry; and

c) Undertake enforcement functions supported by concerned agencies such as the Philippine National Police, National Bureau of Investigation, Bureau of Customs, Optical Media Board, Local Government Units, among others;

d) Conduct visits during reasonable hours to establishments and businesses engaging in activities violating intellectual property rights and provisions of this act based on report, information or complaint received by the office; and

e) Such other functions in furtherance of protecting IP rights and objectives of this Act.”

If amended, Section 7.1 will become:

Section 7. The Director General and Deputies Director General. – 7.1. Functions. – The Director General shall exercise the following powers and functions:

a) Manage and direct all functions and activities of the Office, including the promulgation of rules and regulations to implement the objectives, policies, plans, programs and projects of the Office: Provided, That in the exercise of the authority to propose policies and standards in relation to the following: (1) the effective, efficient, and economical operations of the Office requiring statutory enactment; (2) coordination with other agencies of government in relation to the enforcement of intellectual property rights; (3) the recognition of attorneys, agents, or other persons representing applicants or other parties before the Office; and (4) the establishment of fees for the filing and processing of an application for a patent, utility model or industrial design or mark or a collective mark, geographic indication and other marks of ownership, and for all other services performed and materials furnished by the Office, the Director General shall be subject to the supervision of the Secretary of Trade and Industry;

b) Exercise exclusive appellate jurisdiction over all decisions rendered by the Director of Legal Affairs, the Director of Patents, the Director of Trademarks, the Director of Copyright and Other Related Rights, and the Director of the Documentation, Information and Technology Transfer Bureau. The decisions of the Director General in the exercise of his appellate jurisdiction in respect of the decisions of the Director of Patents, the Director of Trademarks, and Director of Copyright and Other Related Rights shall be appealable to the Court of Appeals in accordance with the Rules of Court; and those in respect of the decisions of the Director of Documentation, Information and Technology Transfer Bureau shall be appealable to the Secretary of Trade and Industry; and

c) Undertake enforcement functions supported by concerned agencies such as the Philippine National Police, National Bureau of Investigation, Bureau of Customs, Optical Media Board, Local Government Units, among others;

d) Conduct visits during reasonable hours to establishments and businesses engaging in activities violating intellectual property rights and provisions of this act based on report, information or complaint received by the office; and

e) Such other functions in furtherance of protecting IP rights and objectives of this Act.

xxx

24 Section 3 of the consolidated bill provides:

Sec. 3. A new Section 9A is hereby inserted after Section 9 of R.A. No. 8293, to read as follows:

“Sec. 9A. The Bureau of Copyright and Other Related Rights. The Bureau of Copyright and Other Related Rights shall have the following functions:

9A.1. Exercise original jurisdiction to resolve disputes relating to the terms of a license involving the author’s right to public performance or other communication of his work.

9A.2. Accept, review and decide on applications for the accreditation of collective management organizations or similar entities;

9A.3. Conduct studies and researches in the field of copyright and related rights; and;

9A.4. Provide other copyright and related rights service and charge reasonable fees therefor.”

25 <http://www.occ.gov/static/news-issuances/news-releases/2004/2004-3eVisitorialruleQNAs.pdf>

26 http://www.lawphil.net/judjuris/juri1998/apr1998/gr_120915_1998.html

27 As to Section 171.3, RA 8293:

Section 171.3, RA 8293 provides:

171.3. “Communication to the public” or “communicate to the public” means the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them;

Section 4 of the consolidated bill reads:

Sec. 4. Section 171.3 of R.A. No. 8293 is hereby amended to read as follows:

“Sec. 171. Definitions. – xxx

171.3. “Communication to the public” or “communicate to the public” means any communication to the public, including broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite, and includes the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them;

28 Section 171.9, RA 8293 provides:

171.9. “Reproduction” is the making of one (1) or more copies of a work or a sound recording in any manner or form;

Section 5 of the consolidated bill reads:

Sec. 5. Section 171.9 of R.A. No. 8293 is hereby amended to read as follows:

171.9. “Reproduction” is the making of one (1) or more copies, temporary or permanent, in whole or in part, of a work or a sound recording in any manner or form, without prejudice to the provisions of Section 185 of this Act;

29 Section 6 of the consolidated bill provides:

Sec. 6. There shall be two new subsections to be added at the end of Sec. 171.11, to be known as 171.12 and 171.13, both to read as follows:

“171.12 “Technology Measure” means any technology, device or component that, in the normal course of its operation, restricts acts in respect of a work, performance or sound recording, which are not authorized by the authors, performers or producers of sound recordings concerned or permitted by law.

171.13 “Rights Management Information” means information which identifies the work, sound recording or performance; the author of the work, producer of the sound recording or performer of the performance; the owner of any right in the work, sound recording or performance; or information about the terms and conditions of the use of the work, sound recording or performance; and any numbers of codes that represent such information, when any of these items is attached to a copy of the work, sound recording or fixation of performance or appears in conjunction with the communication to the public of a work, sound recording or performance.”

30 http://www.law.cornell.edu/copyright/cases/991_F2d_511.htm

31 Section 189, RA 8293 provides:

Section 189. Reproduction of Computer Program. – 189.1. Notwithstanding the provisions of Section 177, the reproduction in one (1) back-up copy or adaptation of a computer program shall be permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful owner of that computer program: Provided, That the copy or adaptation is necessary for:

(a) The use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has

been obtained; and

(b) Archival purposes, and, for the replacement of the lawfully owned copy of the computer program in the event that the lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

189.2. No copy or adaptation mentioned in this Section shall be used for any purpose other than the ones determined in this Section, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

32 http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html

33 Footnote 11 of the WIPO Treaty document provides:

Agreed statements concerning Article 12: It is understood that the reference to “infringement of any right covered by this Treaty or the Berne Convention” includes both exclusive rights and rights of remuneration.

It is further understood that Contracting Parties will not rely on this Article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty.

34 Dizon, David. “Jailbreaking not necessarily a crime: IPO chief” ABS-CBN News. <http://www.abs-cbnnews.com/focus/02/14/13/jailbreaking-not-necessarily-crime-ipo-chief>

35 As to Section 180, RA 8293:

Section 180, RA 8293 provides:

Section 180. Rights of Assignee. – 180.1. The copyright may be assigned in whole or in part. Within the scope of the assignment, the assignee is entitled to all the rights and remedies which the assignor had with respect to the copyright.

180.2. The copyright is not deemed assigned inter vivos in whole or in part unless there is a written indication of such intention.

180.3. The submission of a literary, photographic or artistic work to a newspaper, magazine or periodical for publication shall constitute only a license to make a single publication unless a greater right is expressly granted. If two (2) or more persons jointly own a copyright or any part thereof, neither of the owners shall be entitled to grant licenses without the prior written consent of the other owner or owners.

Section 8 of the consolidated bill provides:

Section 180 of R.A. No. 8293 is hereby amended to read as follows:

Section 180. Rights of Assignee. – 180.1. The copyright may be assigned or licensed in whole or in part. Within the scope of the assignment or license, the assignee or licensee is entitled to all the rights and remedies which the assignor or licensor had with respect to the copyright.

180.2. The copyright is not deemed assigned or licensed inter vivos, in whole or in part, unless there is a written indication of such intention.

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180.4. Any exclusivity in the economic rights in a work may be exclusively licensed. Within the scope of the exclusive license, the licensee is entitled to all the rights and remedies which the licensor had with respect to the copyright.

180.5. The copyright owner has the right to regular statements of accounts from the assignee or the licensee with regard to assigned or licensed work.”

36 As to Section 181, RA 8293:

Section 181, RA 8293 provides:

Section 181. Copyright and Material Object. – The copyright is distinct from the property in the material object subject to it. Consequently, the transfer or assignment of the copyright shall not itself constitute a transfer of the material object. Nor shall a transfer or assignment of the sole copy or of one or several copies of the work imply transfer or assignment of the copyright.

To replace the above, Section 9 of the consolidated bill provides:

Section 181 of R.A. No. 8293 is hereby amended to read as follows:

Section 181. Copyright and Material Object. – The copyright is distinct from the property in the material object subject to it. Consequently, the transfer, assignment or licensing of the copyright shall not itself constitute a transfer of the material object. Nor shall a transfer or assignment of the sole copy or of one or several copies of the work imply transfer, assignment or licensing of the copyright.

37 As to Chapter VII, Copyright title, RA 8293:

Chapter VII, Title on Copyright, RA 8293 provides:

CHAPTER VII
TRANSFER OR ASSIGNMENT OF COPYRIGHT

To replace the above, Section 7 of the consolidated bill provides:

The Chapter Title of Chapter VII, Part IV, the Law on Copyright, is hereby amended as follows:

CHAPTER VII
TRANSFER, ASSIGNMENT AND LICENSING OF COPYRIGHT

38 As to Section 183, RA 8293:

Section 183, RA 8293 provides:

Section 183. Designation of Society. – The copyright owners or their heirs may designate a society of artists, writers or composers to enforce their economic rights and moral rights on their behalf.

To replace the above, Section 10 of the consolidated bill provides:

Section 183 of R.A. No. 8293 is hereby amended to read as follows:

Section 183. Designation of Society. – The owners of copyright and related rights or their heirs may designate a society of artists, writers, composers and other right-holders to collectively manage their economic or moral right on their behalf. For the said societies to enforce the rights of their members, they shall first secure the necessary accreditation from the intellectual property office.

39 <http://definitions.uslegal.com/a/assignments/>

40 <http://legal-dictionary.thefreedictionary.com/license>

41 Section 177, RA 8293 provides:

Section 177. Copyright or Economic Rights. – Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4. Rental of the original or a copy 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, irrespective of the ownership of the original or the copy which is the subject of the rental;

177.5. Public display of the original or a copy of the work;

177.6. Public performance of the work; and

177.7. Other communication to the public of the work.

42 Section 184, RA 8293 provides:

Section 184. Limitations on Copyright. – 184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

(a) The recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society;

(b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: Provided, That the source and the name of the author, if appearing on the work, are mentioned;

(c) The reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topic, lectures, addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved: Provided, That the source is clearly indicated;

(d) The reproduction and communication to the public of literary, scientific or artistic works as part of reports of 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, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: Provided, That the source and of the name of the author, if

appearing in the work, are mentioned;

(f) The recording made in schools, universities, or educational institutions of a work included in a broadcast for the use of such schools, universities or educational institutions: Provided, That such recording must be deleted within a reasonable period after they were first broadcast: Provided, further, That such recording may not be made from audiovisual works which are part of the general cinema repertoire of feature films except for brief excerpts of the work;

(g) The making of ephemeral recordings by a broadcasting organization by means of its own facilities and for use in its own broadcast;

(h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use;

(i) The public performance or the communication to the public of a work, in a place where no admission fee is charged in respect of such public performance or communication, by a club or institution for charitable or educational purpose only, whose aim is not profit making, subject to such other limitations as may be provided in the Regulations;

(j) Public display of the original or a copy of the work not made by means of a film, slide, television image or otherwise on screen or by means of any other device or process: Provided, That either the work has been published, or, that the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title; and

(k) Any use made of a work for the purpose of any judicial proceedings or for the giving of professional advice by a legal practitioner.

184.2. The provisions of this section shall be interpreted in such a way as to allow the work to be used in a manner which does not conflict with the normal exploitation of the work and does not unreasonably prejudice the right holder's legitimate interests.

Section 11 of the consolidated bill provides:

Sec. 11. Section 184.1 of R.A. No. 8293 is hereby amended to read as follows:

Sec. 184. Limitations on Copyright. – xxx

(l) The reproduction or distribution of published articles or materials in a specialized format exclusively for the use of the blind, visually- and reading-impaired persons: Provided, That such copies and distribution shall be made on a non-profit basis and shall indicate the copyright owner and the date of the original publication.”

43 “Tech Topic 1: Interoperability.” Public Safety and Homeland Safety Bureau, Federal Communications Commission.
<http://transition.fcc.gov/pshs/techttopics/tech-interop.html>

44 Section 188, RA 8293 provides:

Section 188. Reprographic Reproduction by Libraries. – 188.1. Notwithstanding the provisions of Subsection 177.1, any library or archive whose activities are not for profit may, without the authorization of the author of copyright owner, make a single copy of the work by reprographic reproduction:

(a) Where the work by reason of its fragile character or rarity cannot be lent to user in its original form;

(b) Where the works are isolated articles contained in composite works or brief portions of other published works and the reproduction is necessary to supply them, when this is considered expedient, to persons requesting their loan for purposes of research or study instead of lending the volumes or booklets which contain them; and

(c) Where the making of such a copy is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable and copies are not available with the publisher.

188.2. Notwithstanding the above provisions, it shall not be permissible to produce a volume of a work published in several volumes or to produce missing tomes or pages of magazines or similar works, unless the volume, tome or part is out of stock: Provided, That every library which, by law, is entitled to receive copies of a printed work, shall be entitled, when special reasons so require, to reproduce a copy of a published work which is considered necessary for the collection of the library but which is out of stock.

Section 13 of the consolidated bill provides:

Section 188. Reprographic Reproduction by Libraries. – 188.1. Notwithstanding the provisions of Subsection 177.1, any library or archive whose activities are not for profit may, without the authorization of the author of copyright owner, make a limited number of copies of the work, as may be necessary for such institutions to fulfill their mandate, by reprographic reproduction:

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(c) Where the making of such limited copies is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost,

destroyed or rendered unusable and copies are not available with the publisher.

45 Section 190, RA 8293 provides:

Section 190. Importation for Personal Purposes. – 190.1. Notwithstanding the provision of Subsection 177.6, but subject to the limitation under the Subsection 185.2, the importation of a copy of a work by an individual for his personal purposes shall be permitted without the authorization of the author of, or other owner of copyright in, the work under the following circumstances:

(a) When copies of the work are not available in the Philippines and:

(i) Not more than one (1) copy at one time is imported for strictly individual use only; or

(ii) The importation is by authority of and for the use of the Philippine Government; or

(iii) The importation, consisting of not more than three (3) such copies or likenesses in any one invoice, is not for sale but for the use only of any religious, charitable, or educational society or institution duly incorporated or registered, or is for the encouragement of the fine arts, or for any state school, college, university, or free public library in the Philippines.

(b) When such copies form parts of libraries and personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: Provided, That such copies do not exceed three (3).

190.2. Copies imported as allowed by this Section may not lawfully be used in any way to violate the rights of owner the copyright or annul or limit the protection secured by this Act, and such unlawful use shall be deemed an infringement and shall be punishable as such without prejudice to the proprietor's right of action.

190.3. Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulations for preventing the importation of articles the importation of which is prohibited under this Section and under treaties and conventions to which the Philippines may be a party and for seizing and condemning and disposing of the same in case they are discovered after they have been imported.

46 Sections 602 and 603 of Title 17 of the US Code

§ 602 . Infringing importation or exportation of copies or phonorecords

(a) Infringing Importation or Exportation.—

(1) Importation.—Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501.

(2) Importation or exportation of infringing items.—Importation into the United States or exportation from the United States, without the authority of the owner of copyright under this title, of copies or phonorecords, the making of which either constituted an infringement of copyright, or which would have constituted an infringement of copyright if this title had been applicable, is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under sections 501 and 506.

(3) Exceptions.—This subsection does not apply to—

(A) importation or exportation of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;

(B) importation or exportation, for the private use of the importer or exporter and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States or departing from the United States with respect to copies or phonorecords forming part of such person's personal baggage; or

(C) importation by or for an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no more than one copy of an audiovisual work solely for its archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes, unless the importation of such copies or phonorecords is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2).

(b) Import Prohibition.—In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited. In a case where the copies or phonorecords were lawfully made, the United States Customs and Border Protection Service has no authority to prevent their importation. In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to notification by the United States Customs and Border Protection Service of the importation of articles that appear to be copies or phonorecords of the work.

§ 603 . Importation prohibitions: Enforcement and disposition of excluded articles

(a) The Secretary of the Treasury and the United States Postal Service shall separately or jointly make regulations for the enforcement of the provisions of this title prohibiting importation.

(b) These regulations may require, as a condition for the exclusion of articles under section 602 —

(1) that the person seeking exclusion obtain a court order enjoining importation of the articles; or

(2) that the person seeking exclusion furnish proof, of a specified nature and in accordance with prescribed procedures, that the copyright in which such person claims an interest is valid and that the importation would violate the prohibition in section 602; the person seeking exclusion may also be required to post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

(c) Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be.

<http://www.copyright.gov/title17/92chap6.html>

47 Vijayan, Jaikumar. "Privacy Office approves laptop searches without suspicion at U.S. borders." ComputerWorld.

http://www.computerworld.com/s/article/9137315/Privacy_Office_approves_laptop_searches_without_suspicion_at_U.S._borders_

48 http://www.lawphil.net/judjuris/juri1968/feb1968/gr_1-27360_1968.html

49 Section 191, RA 8293 provides:

Section 191. Registration and Deposit with National Library and the Supreme Court Library. – After the first public dissemination of performance by authority of the copyright owner of a work falling under Subsections 172.1, 172.2 and 172.3 of this Act, there shall, for the purpose of completing the records of the National Library and the Supreme Court Library, within three (3) weeks, be registered and deposited with it, by personal delivery or by registered mail two (2) complete copies or reproductions of the work in such form as the directors of said libraries may prescribe. A certificate of deposit shall be issued for which the prescribed fee shall be collected and the copyright owner shall be exempt from making additional deposit of the works with the National Library and the Supreme Court Library under other laws. If, within three (3) weeks after receipt by the copyright owner of a written demand from the directors for such deposit, the required copies or reproductions are not delivered and the fee is not paid, the copyright owner shall be liable to pay a fine equivalent to the required fee per month of delay and to pay to the National Library and the Supreme Court Library the amount of the retail price of the best edition of the work. Only the above mentioned classes of work shall be accepted for deposit by the National Library and the Supreme Court Library.

Sec. 16. Section 191 of R.A. No. 8293 is hereby amended to read as follows:

Section 191. Registration and Deposit with National Library and the Supreme Court Library. – At any time during the subsistence of the copyright, the owner of the copyright or of any exclusive right in the work may, for the purpose of completing the records of the National Library and the Supreme Court Library, register and deposit them, by personal delivery or by registered mail, two (2) complete copies or reproductions of the work in such form as the Directors of said libraries may prescribe in accordance with regulations; Provided, That only works in the field of law shall be deposited with the Supreme Court Library. Such registration and deposit is not a condition of copyright protection.

50 Section 198, RA 8293 provided:

Section 198. Term of Moral Rights. – 198.1. The rights of an author under this chapter shall last during the lifetime of the author and for fifty (50) years after his death and shall not be assignable or subject to license. The person or persons to be charged with the posthumous enforcement of these rights shall be named in writing to be filed with the National Library. In default of such person or persons, such enforcement shall devolve upon either the author's heirs, and in default of the heirs, the Director of the National Library.

198.2. For purposes of this Section, "Person" shall mean any individual, partnership, corporation, association, or society. The Director of the National Library may prescribe reasonable fees to be charged for his services in the application of provisions of this Section.

Sec. 17. Section 198 of R.A. No. 8293 is hereby amended to read as follows:

Section 198. Term of Moral Rights. – 198.1. The rights of an author under Section 193.1 shall last during the lifetime of the author and in perpetuity after his death while the rights under Sections 193.2, 193.3 and 193.4 shall be coterminous with the economic rights, the moral rights shall not be assignable or subject to license. The person or persons to be charged with the posthumous enforcement of these rights shall be named in a written instrument to be filed with the National Library. In default of such person or persons, such enforcement shall devolve upon either the author's heirs, and in default of the heirs, the Director of the National Library.

51 Section 213, RA 8293 provided:

Section 213. Term of Protection. – 213.1. Subject to the provisions of Subsections 213.2 to 213.5, the copyright in works under Sections 172 and 173 shall be protected during the life of the author and for fifty (50) years after his death. This rule also applies to posthumous works.

213.2. In case of works of joint authorship, the economic rights shall be protected during the life of the last surviving author and for fifty (50) years after his death.

213.3. In case of anonymous or pseudonymous works, the copyright shall be protected for fifty (50) years from the date on which the work was first lawfully published: Provided, That where, before the expiration of the said period, the author's identity is revealed or is no longer in doubt,

the provisions of Subsections 213.1. and 213.2 shall apply, as the case may be: Provided, further, That such works if not published before shall be protected for fifty (50) years counted from the making of the work.

213.4. In case of works of applied art the protection shall be for a period of twenty-five (25) years from the date of making.

213.5. In case of photographic works, the protection shall be for fifty (50) years from publication of the work and, if unpublished, fifty (50) years from the making.

213.6. In case of audio-visual works including those produced by process analogous to photography or any process for making audio-visual recordings, the term shall be fifty (50) years from date of publication and, if unpublished, from the date of making.

52 Section 203, RA 8293 provided:

Section 203. Scope of Performers' Rights. – Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

203.1. As regards their performances, the right of authorizing:

(a) The broadcasting and other communication to the public of their performance; and

(b) The fixation of their unfixed performance.

203.2. The right of authorizing the direct or indirect reproduction of their performances fixed in sound recordings, in any manner or form;

203.3. Subject to the provisions of Section 206, the right of authorizing the first public distribution of the original and copies of their performance fixed in the sound recording through sale or rental or other forms of transfer of ownership;

203.4. The right of authorizing the commercial rental to the public of the original and copies of their performances fixed in sound recordings, even after distribution of them by, or pursuant to the authorization by the performer; and

203.5. The right of authorizing the making available to the public of their performances fixed in sound recordings, by wire or wireless means, in such a way that members of the public may access them from a place and time individually chosen by them.

Section 18 of the consolidated bill provides:

Sec. 18. Section 203 of R.A. No. 8293 is hereby amended to read, as follows:

203.2. The right of authorizing the direct or indirect reproduction of their performances fixed in sound recordings or audiovisual works or fixation in any manner or form;

203.3. Subject to the provisions of Section 206, the right of authorizing the first public distribution of the original and copies of their performance fixed in the sound recordings or audiovisual works or fixations through sale or rental of other forms of transfer of ownership;

203.4. The right of authorizing the commercial rental to the public of the original and copies of their performances fixed in sound recordings or audiovisual works or fixations, even after distribution of them by, or pursuant to the authorization by the performer; and

203.5. The right of authorizing the making available to the public of their performances fixed in sound recordings or audiovisual works or fixations, by wire or wireless means, in such a way that members of the public may access them from a place and time individually chosen by them.

53 On the other hand, Section 204 provided:

Section 204. Moral Rights of Performers. – 204.1. Independently of a performer's economic rights, the performer, shall, as regards his live aural performances or performances fixed in sound recordings, have the right to claim to be identified as the performer of his performances, except where the omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

204.2. The rights granted to a performer in accordance with Subsection 203.1 shall be maintained and exercised fifty (50) years after his death, by his heirs, and in default of heirs, the government, where protection is claimed.

Section 19 of the consolidated bill provides:

Sec. 19. Section 204.1 of R.A. No. 8293 is hereby amended to read, as follows:

Sec. 204.1. Independently of a performer's economic rights, the performer shall, as regards his live aural performances or performances fixed in sound recordings or in audiovisual works or fixations, have the right to claim to be identified as the performer of his performances, except where the omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

54 Section 208, RA 8293 provides:

Section 208. Scope of Right. – Subject to the provisions of Section 212, producers of sound recordings shall enjoy the following exclusive rights:

208.1. The right to authorize the direct or indirect reproduction of their sound recordings, in any manner or form; the placing of these reproductions in the market and the right of rental or lending;

208.2. The right to authorize the first public distribution of the original and copies of their sound recordings through sale or rental or other forms of transferring ownership; and

208.3. The right to authorize the commercial rental to the public of the original and copies of their sound recordings, even after distribution by them by or pursuant to authorization by the producer.

Section 20 of the consolidated bill provides:

Sec. 20. Section 208 of R.A. No. 8293 is hereby amended to read as follows:

Section 208. Scope of Right. xxx

208.4 The right to authorize the making available to the public of their sound recordings in such a way that members of the public may access the sound recording from a place and at a time individually chosen or selected by them, as well as other transmissions of a sound recording with like effect.

55 Section 212, RA 8293 provides:

Section 212. Limitations on Rights. – Sections 203, 208 and 209 shall not apply where the acts referred to in those Sections are related to:

212.1. The use by a natural person exclusively for his own personal purposes;

212.2. Using short excerpts for reporting current events;

212.3. Use solely for the purpose of teaching or for scientific research; and

212.4. Fair use of the broadcast subject to the conditions under Section 185.

Section 21 of the consolidated bill provides:

Sec. 21. Section 212 of R.A. No. 8293 is hereby amended to read as follows:

Section 212. Limitations on Rights. – The provisions of Chapter VIII shall apply mutatis mutandis to the rights of performers, producers of sound recordings and broadcasting organizations.

56 Section 218, RA 8293 provides:

Section 218. Affidavit Evidence. – 218.1. In an action under this Chapter, an affidavit made before a notary public by or on behalf of the owner of the copyright in any work or other subject matter and stating that:

(a) At the time specified therein, copyright subsisted in the work or other subject matter;

(b) He or the person named therein is the owner of the copyright; and

(c) The copy of the work or other subject matter annexed thereto is a true copy thereof, shall be admitted in evidence in any proceedings for an offense under this Chapter and shall be prima facie proof of the matters therein stated until the contrary is proved, and the court before which such affidavit is produced shall assume that the affidavit was made by or on behalf of the owner of the copyright.

218.2. In an action under this Chapter:

(a) Copyright shall be presumed to subsist in the work or other subject matter to which the action relates if the defendant does not put in issue the question whether copyright subsists in the work or other subject matter; and

(b) Where the subsistence of the copyright is established, the plaintiff shall be presumed to be the owner of the copyright if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership.

(c) Where the defendant, without good faith, puts in issue the questions of whether copyright subsists in a work or other subject matter to which the action relates, or the ownership of copyright in such work or subject matter, thereby occasioning unnecessary costs or delay in the proceedings, the court may direct that any costs to the defendant in respect of the action shall not be allowed by him and that any costs occasioned by the defendant to other parties shall be paid by him to such other parties.

Sec. 24. Section 217.2 of R.A. No. 8293 is hereby amended as follows:

Section 218. Affidavit Evidence. – xxx

(c) The copy of the work or other subject matter annexed thereto is a true copy thereof.

The affidavit shall be admitted in evidence in any proceedings for an offense under this Chapter and shall be prima facie proof of the matters therein stated until the contrary is proved, and the court before which such affidavit is produced shall assume that the affidavit was made by or on behalf of the owner of the copyright.

57 Section 226, RA 8293 provides:

Section 226. Damages. – No damages may be recovered under this Act after four (4) years from the time the cause of action arose.

Section 26 of the consolidated bill provides:

Sec. 26. Section 226 of Republic Act No. 8293 is hereby amended to read as follows:

Section 226. Damages. – No damages may be recovered under this Act after the lapse of four (4) years from the time the cause of action arose.

58 Section 216, RA 8293 provides:

Section 216. Remedies for Infringement. – 216.1. Any person infringing a right protected under this law shall be liable:

(a) To an injunction restraining such infringement. The court may also order the defendant to desist from an infringement, among others, to prevent the entry into the channels of commerce of imported goods that involve an infringement, immediately after customs clearance of such goods.

(b) Pay to the copyright proprietor or his assigns or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the infringement as well as the profits the infringer may have made due to such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty.

(c) Deliver under oath, for impounding during the pendency of the action, upon such terms and conditions as the court may prescribe, sales invoices and other documents evidencing sales, all articles and their packaging alleged to infringe a copyright and implements for making them.

(d) Deliver under oath for destruction without any compensation all infringing copies or devices, as well as all plates, molds, or other means for making such infringing copies as the court may order.

(e) Such other terms and conditions, including the payment of moral and exemplary damages, which the court may deem proper, wise and equitable and the destruction of infringing copies of the work even in the event of acquittal in a criminal case.

216.2. In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings.

Sec. 22. Section 216 of R.A. No. 8293 is hereby amended to read as follows:

Section 216. Infringement. – A person infringes a right protected under this Act when one:

(a) Directly commits an infringement;

(b) Benefits from the infringing activity of another person who commits an infringement if the person benefiting has been given notice of the infringing activity and has the right and ability to control the activities of the other person;

(c) With knowledge of infringing activity, induces, causes or materially contributes to the infringing conduct of another.

216.1 Remedies for infringement. – Any person infringing a right protected under this law shall be liable:

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(b) Pay to the copyright proprietor or his assigns or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the infringement as well as the profits the infringer may have made due to such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty: Provided, That the amount of damages to be awarded shall be doubled against any person who:

(i) Circumvents effective technological measures; or

(ii) Having reasonable grounds to know that it will induce, enable, facilitate or conceal the infringement, remove or alter any electronic rights management information from a copy of a work, sound recording, or fixation of a performance, or distribute, import for distribution, broadcast, or communicate to the public works or copies of works without authority, knowing that electronic rights management information has been removed or altered without authority.

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The copyright owner may elect, at any time before final judgment is rendered, to recover instead of actual damages and profits, an award of statutory damages for all infringements involved in an action in a sum equivalent to the filing fee of the infringement action but not less than Fifty Thousand Pesos (Php50,000.00). In awarding statutory damages: the court may consider the following factors:

- (1) The nature and purpose of the infringing act;
- (2) The flagrancy of the infringement;
- (3) Whether the defendant acted in bad faith;
- (4) The need for deterrence;
- (5) Any loss that the plaintiff has suffered or is likely to suffer by reason of the infringement; and ,
- (6) Any benefit shown to have accrued to the defendant by reason of the infringement.

In case the infringer was no aware and had no reason to believe that his acts constitute an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not more than Ten Thousand Pesos (PhP10,000.00); Provided, That the amount of damages to be awarded shall be doubled against any person who:

- (i) Circumvents effective technological measures; or
- (ii) Having reasonable grounds to know that it will induce, enable, facilitate or conceal the infringement, remove or alter any electronic rights management information from a copy of a work, sound recording, or fixation of a performance, or distribute, import for distribution, broadcast, or communicate to the public works or copies of works without authority, knowing that electronic rights management information has been removed or altered without authority.

xxx

216.2. In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings, in accordance with the rules on search and seizure involving violations of intellectual property rights issued by the Supreme Court.

The foregoing shall not preclude an independent suit for relief by the injured party by way of damages, injunction, accounts or otherwise.

59 Section 217, RA 8293 provides:

Section 217. Criminal Penalties. – 217.1. Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:

- (a) Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (P50,000) to One hundred fifty thousand pesos (P150,000) for the first offense.
- (b) Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (P150,000) to Five hundred thousand pesos (P500,000) for the second offense.
- (c) Imprisonment of six (6) years and one (1) day to nine (9) years plus a fine ranging from five hundred thousand pesos (P500,000) to One million five hundred thousand pesos (P1,500,000) for the third and subsequent offenses.
- (d) In all cases, subsidiary imprisonment in cases of insolvency.

217.2. In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of the infringement.

217.3. Any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of:

- (a) Selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article;
- (b) Distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or
- (c) Trade exhibit of the article in public, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned.

Sec. 23. Section 217.2 of R.A. No. 8293 is hereby amended as follows:

217.2. In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of the infringement; Provided, That the respective maximum penalty stated in Section 217.1 (a), (b) and (c) herein for the first, second, third and subsequent offense, shall be imposed when the infringement is committed by:

(i) The circumvention of effective technological measures; or

(ii) The removal or alteration of any electronic rights management information from a copy of a work, sound recording, or fixation of a performance, by a person, knowingly and without authority; or

(iii) The distribution, importation for distribution, broadcast, or communication to the public works or copies of works without authority, knowing that electronic rights management information has been removed or altered without authority.

60 http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_cong_public_laws&docid=f:publ304.105.pdf

61 “Unintended Consequences: Twelve Years under the DMCA.” Electronic Frontiers Foundation. <https://www.eff.org/wp/unintended-consequences-under-dmca>

62 Safe harbor. 17 USC § 512 (Limitations on liability relating to material online) provides:

(a) Transitory Digital Network Communications.— A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider’s transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if—

(1) the transmission of the material was initiated by or at the direction of a person other than the service provider;

(2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;

(3) the service provider does not select the recipients of the material except as an automatic response to the request of another person;

(4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

(5) the material is transmitted through the system or network without modification of its content.

(b) System Caching.—

(1) Limitation on liability.— A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which—

(A) the material is made available online by a person other than the service provider;

(B) the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person; and

(C) the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A), if the conditions set forth in paragraph (2) are met.

(2) Conditions.— The conditions referred to in paragraph (1) are that—

(A) the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which the material was transmitted from the person described in paragraph (1)(A);

(B) the service provider described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;

(C) the service provider does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology—

(i) does not significantly interfere with the performance of the provider’s system or network or with the intermediate storage of the material;

(ii) is consistent with generally accepted industry standard communications protocols; and

(iii) does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had gained access to the material directly from that person;

(D) if the person described in paragraph (1)(A) has in effect a condition that a person must meet prior to having access to the material, such as a condition based on payment of a fee or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have met those conditions and only in accordance with those conditions; and

(E) if the person described in paragraph (1)(A) makes that material available online without the authorization of the copyright owner of the material, the service provider responds expeditiously to remove, or disable access to, the material that is claimed to be infringing upon notification of claimed infringement as described in subsection (c)(3), except that this subparagraph applies only if—

(i) the material has previously been removed from the originating site or access to it has been disabled, or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled; and

(ii) the party giving the notification includes in the notification a statement confirming that the material has been removed from the originating site or access to it has been disabled or that a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled.

(c) Information Residing on Systems or Networks At Direction of Users.—

(1) In general.— A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

(A)

(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

(2) Designated agent.— The limitations on liability established in this subsection apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement described in paragraph (3), by making available through its service, including on its website in a location accessible to the public, and by providing to the Copyright Office, substantially the following information:

(A) the name, address, phone number, and electronic mail address of the agent.

(B) other contact information which the Register of Copyrights may deem appropriate.

The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the Internet, and may require payment of a fee by service providers to cover the costs of maintaining the directory.

(3) Elements of notification.—

(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(B)

(i) Subject to clause (ii), a notification from a copyright owner or from a person authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions of subparagraph (A) shall not be considered under paragraph (1)(A) in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.

(ii) In a case in which the notification that is provided to the service provider's designated agent fails to comply substantially with all the provisions of subparagraph (A) but substantially complies with clauses (ii), (iii), and (iv) of subparagraph (A), clause (i) of this subparagraph applies only if the service provider promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions of subparagraph (A).

(d) Information Location Tools.— A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider—

(1)

(A) does not have actual knowledge that the material or activity is infringing;

(B) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

(C) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(2) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(3) upon notification of claimed infringement as described in subsection (c)(3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, except that, for purposes of this paragraph, the information described in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

(e) Limitation on Liability of Nonprofit Educational Institutions.—

(1) When a public or other nonprofit institution of higher education is a service provider, and when a faculty member or graduate student who is an employee of such institution is performing a teaching or research function, for the purposes of subsections (a) and (b) such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) such faculty member's or graduate student's knowledge or awareness of his or her infringing activities shall not be attributed to the institution, if—

(A) such faculty member's or graduate student's infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding 3-year period, for a course taught at the institution by such faculty member or graduate student;

(B) the institution has not, within the preceding 3-year period, received more than two notifications described in subsection (c)(3) of claimed infringement by such faculty member or graduate student, and such notifications of claimed infringement were not actionable under subsection (f); and

(C) the institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

(2) For the purposes of this subsection, the limitations on injunctive relief contained in subsections (j)(2) and (j)(3), but not those in (j)(1), shall apply.

(f) Misrepresentations.— Any person who knowingly materially misrepresents under this section—

(1) that material or activity is infringing, or

(2) that material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages, including costs and

attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

(g) Replacement of Removed or Disabled Material and Limitation on Other Liability.—

(1) No liability for taking down generally.— Subject to paragraph (2), a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

(2) Exception.— Paragraph (1) shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider, pursuant to a notice provided under subsection (c)(1)(C), unless the service provider—

(A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

(B) upon receipt of a counter notification described in paragraph (3), promptly provides the person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and

(C) replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

(3) Contents of counter notification.— To be effective under this subsection, a counter notification must be a written communication provided to the service provider's designated agent that includes substantially the following:

(A) A physical or electronic signature of the subscriber.

(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.

(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

(4) Limitation on other liability.— A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

(h) Subpoena To Identify Infringer.—

(1) Request.— A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.

(2) Contents of request.— The request may be made by filing with the clerk—

(A) a copy of a notification described in subsection (c)(3)(A);

(B) a proposed subpoena; and

(C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

(3) Contents of subpoena.— The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

(4) Basis for granting subpoena.— If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the service provider.

(5) Actions of service provider receiving subpoena.— Upon receipt of the issued subpoena, either accompanying or subsequent to the receipt of a notification described in subsection (c)(3)(A), the service provider shall expeditiously disclose to the copyright owner or person authorized by the copyright owner the information required by the subpoena, notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.

(6) Rules applicable to subpoena.— Unless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum.

(i) Conditions for Eligibility.—

(1) Accommodation of technology.— The limitations on liability established by this section shall apply to a service provider only if the service provider—

(A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and

(B) accommodates and does not interfere with standard technical measures.

(2) Definition.— As used in this subsection, the term “standard technical measures” means technical measures that are used by copyright owners to identify or protect copyrighted works and—

(A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

(B) are available to any person on reasonable and nondiscriminatory terms; and

(C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(j) Injunctions.— The following rules shall apply in the case of any application for an injunction under section 502 against a service provider that is not subject to monetary remedies under this section:

(1) Scope of relief.—

(A) With respect to conduct other than that which qualifies for the limitation on remedies set forth in subsection (a), the court may grant injunctive relief with respect to a service provider only in one or more of the following forms:

(i) An order restraining the service provider from providing access to infringing material or activity residing at a particular online site on the provider's system or network.

(ii) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(iii) Such other injunctive relief as the court may consider necessary to prevent or restrain infringement of copyrighted material specified in the order of the court at a particular online location, if such relief is the least burdensome to the service provider among the forms of relief comparably effective for that purpose.

(B) If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:

(i) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is using the provider's service to engage in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(ii) An order restraining the service provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States.

(2) Considerations.— The court, in considering the relevant criteria for injunctive relief under applicable law, shall consider—

(A) whether such an injunction, either alone or in combination with other such injunctions issued against the same service provider under this subsection, would significantly burden either the provider or the operation of the provider's system or network;

(B) the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;

(C) whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and

(D) whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.

(3) Notice and ex parte orders.— Injunctive relief under this subsection shall be available only after notice to the service provider and an opportunity for the service provider to appear are provided, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the service provider’s communications network.

(k) Definitions.—

(1) Service provider.—

(A) As used in subsection (a), the term “service provider” means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user’s choosing, without modification to the content of the material as sent or received.

(B) As used in this section, other than subsection (a), the term “service provider” means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

(2) Monetary relief.— As used in this section, the term “monetary relief” means damages, costs, attorneys’ fees, and any other form of monetary payment.

(l) Other Defenses Not Affected.— The failure of a service provider’s conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the service provider that the service provider’s conduct is not infringing under this title or any other defense.

(m) Protection of Privacy.— Nothing in this section shall be construed to condition the applicability of subsections (a) through (d) on—

(1) a service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with a standard technical measure complying with the provisions of subsection (i); or

(2) a service provider gaining access to, removing, or disabling access to material in cases in which such conduct is prohibited by law.

(n) Construction.— Subsections (a), (b), (c), and (d) describe separate and distinct functions for purposes of applying this section. Whether a service provider qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection, and shall not affect a determination of whether that service provider qualifies for the limitations on liability under any other such subsection.

http://www.law.cornell.edu/uscode/text/17/512?quicktabs_8=1#quicktabs-8

63 “Frequently Asked Questions (and Answers) about DMCA Safe Harbor.” Chilling Effects Clearinghouse.
<http://www.chillingeffects.org/dmca512/faq.cgi>

64 “Digital Millennium Copyright Act.” Electronic Frontier Foundatino. <https://www.eff.org/issues/dmca>

65 Section 5(j), RA 8792 provides:

(j) “Service provider” refers to a provider of -

i. On-line services or network access or the operator of facilities therefor, including entities offering the transmission, routing, or providing of connections for online communications, digital or otherwise, between or among points specified by a user, of electronic documents of the user’s choosing; or

ii. The necessary technical means by which electronic documents of an originator may be stored and made accessible to designated or undesignated third party.

Such service providers shall have no authority to modify or alter the content of the electronic data message or electronic document received or to make any entry therein on behalf of the originator, addressee or any third party unless specifically authorized to do so, and who shall retain the electronic document in accordance with the specific request or as necessary for the purpose of performing the services it was engaged to perform.

66 Section 30, RA 8792 provides:

Section 30. Extent of Liability of a Service Provider. – Except as otherwise provided in this Section, no person or party shall be subject to any civil or criminal liability in respect of the electronic data message or electronic document for which the person or party acting as a service provider as defined in Section 5 merely provides access if such liability is founded on -

(a) The obligations and liabilities of the parties under the electronic data message or electronic document;

(b) The making, publication, dissemination or distribution of such material or any statement made in such material, including possible infringement of any right subsisting in or in relation to such material. Provided, That:

i. The service provider does not have actual knowledge, or is not aware of the facts or circumstances from which it is apparent, that the making, publication, dissemination or distribution of such material is unlawful or infringes any rights subsisting in or in relation to such material;

ii. The service provider does not knowingly receive a financial benefit directly attributable to the unlawful or infringing activity; and

iii. The service provider does not directly commit any infringement or other unlawful act and does not induce or cause another person or party to commit any infringement or other unlawful act and/or does not benefit financially from the infringing activity or unlawful act or another person or party; Provided, further, That nothing in this Section shall affect -

(a) Any obligation founded on contract;

(b) The obligation of a service provider as such under a licensing or other regulatory regime established under written law; or

(c) Any obligation imposed under any written law;

(d) The civil liability of any party to the extent that such liability forms the basis for injunctive relief issued by a court under any law requiring that the service provider take or refrain from actions necessary to remove, block or deny access to any material, or to preserve evidence of a violation of law.

67 Section 1, Rule 126 of the Rules of Criminal Procedure of the Rules of Court provides:

Section 1. Search warrant defined. – A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.

68 Section 4, Rule 126 of the Rules of Criminal Procedure of the Rules of Court provides:

Sec. 4. Requisites for issuing search warrant. – A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

69 People vs. Aruta, supra.

70 Ibid.

71 Phillips, Robert. "Reasonable Suspicion." Law Enforcement Legal Update. <http://www.legalupdateonline.com/4th/59>

72 <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=392&invol=1>

73 Phillips, supra.

74 "Intellectual Property Watch » A Closer Look Into A WIPO Regional Workshop: Making An Instant IP Whiz" IPO Philippines. <http://www.ipophil.gov.ph/index.php/component/content/article/20-what-s-new/110-intellectual-property-watch-a-closer-look-into-a-wipo-regional-workshop-making-an-instant-ip-whiz>