

REPUBLIC OF THE PHILIPPINES
Congress of the Philippines
Metro Manila

Fifteenth Congress

Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-third day of July, two thousand twelve.

REPUBLIC ACT NO. 10372

AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8293, OTHERWISE KNOWN AS THE "INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES", AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 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.* – x x x

"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:

"x x x

"(f) the Administrative, Financial and Personnel Services Bureau; and

"(g) the Bureau of Copyright and Other Related Rights."

Section 2. Section 7 of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 7. *The Director General and Deputies Director General.* –

"x x x

"(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 the 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 the Documentation, Information and Technology Transfer Bureau shall be appealable to the Secretary of Trade and Industry;

"(c) Undertake enforcement functions supported by concerned agencies such as the Philippine National Police, the National Bureau of Investigation, the Bureau of Customs, the Optical Media Board, and the 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."

Section 3. A new Section 9A is hereby inserted after Section 9 of Republic Act 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."

Section 4. Section 171.3. of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 171. *Definitions.* – x x x

"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;"

Section 5. Section 171.9. of Republic Act 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 (Sec. 41[E], P.D. No. 49a);"

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

"171.12. 'Technological 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 number or code 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."

Section 7. the Chapter Title of Chapter VII, Part IV, the Law on Copyright, is hereby amended to read as follows:

"CHAPTER VII

TRANSFER, ASSIGNMENT AND LICENSING OF COPYRIGHT"

Section 8. Section 180 of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 180. *Rights of Assignee or Licensee.* – 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.

"x x x

"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."

Section 9. Section 181 of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 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. (Sec. 16, P.D. No. 49)"

Section 10. Section 183 of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 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 rights 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. (Sec. 32, P.D. No. 49a)"

Section 11. Section 184.1. of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 184. *Limitations on Copyright.* – x x x

"(1) 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 nonprofit basis and shall indicate the copyright owner and the date of the original publication."

Section 12. Section 185.1. of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 185. *Fair Use of a Copyrighted Work.* – 185.1. the fair use of a copyrighted work for criticism, comment, news reporting, teaching including limited number of 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 a computer program to achieve the interoperability 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 interoperability.

"x x x."

Section 13. Section 188.1. of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 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 or 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:

"x x x

"(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."

Section 14. Sections 190.1. and 190.2. of Republic Act No. 8293 are deleted in their entirety.

Section 15. Section 190.3. of Republic Act 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 of the same in case they are

discovered after they have been imported or before they are exported. (Sec. 30, P.D. No. 49)"

Section 16. Section 191 of Republic Act No. 8293 is hereby amended to read as follows:

"SEC 191. *Deposit and Notice of Deposit with the 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 with them, by personal delivery or by registered mail, two (2) complete copies or reproductions of the work in such form as the Directors of the 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."

Section 17. Section 198 of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 198. *Term of Moral Rights.* – 198.1. the right 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 which shall 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."

Section 18. Section 203 of Republic Act No. 8293 is hereby amended to read as follows;

"x x x

"203.2. the right of authorizing the direct or indirect reproduction of their performances fixed in sound recordings or audiovisual works or fixations 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 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. (Sec. 42, P.D. No. 49A)."

Section 19. Section 204.1. of Republic Act No. 8293 is hereby amended to read as follows;

"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."

Section 20. Section 208 of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 208. *Scope of Right.* – x x x

"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."

Section 21. Section 212 of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 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."

Section 22. Section 216 of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 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:

"x x x

"(b) To 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.

"x x x

"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 not 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.

"x x x

"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. (Sec. 28, P.D. No. 49a)

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

Section 23. Section 217.2. of Republic Act No. 8293 hereby amended to read 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:

"(a) the circumvention of effective technological measures;

"(b) 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

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

Section 24. Section 218.1. of Republic Act No. 8293 is hereby amended to read as follows:

"SEC. 218. *Affidavit Evidence.* – x x x

"(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 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."

Section 25. A new Section 220A shall be inserted after Section 220.2. of Republic Act 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."

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

"SEC. 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. (Sec. 58, P.D. No. 49)."

Section 27. Chapter XX of Republic Act 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."

Section 28. Section 230 of Republic Act No. 8293 is hereby renumbered as Section 231, and all succeeding sections of the same Act are hereby renumbered accordingly.

Section 29. *Implementing Rules and Regulations.* – Within one hundred eighty (180) days from the effectivity of this Act, the Intellectual Property Office, in consultation with the National Book Development Board, the National Library, the Supreme Court Library and other relevant agencies, shall promulgate the rules and regulations necessary to effectively implement the provisions of this Act.

Section 30. *Repealing Clause.* – All laws, decrees, executive orders, issuances or regulations inconsistent with the provisions of this Act are hereby revised or amended accordingly.

Section 31. *Separability Clause.* – If any part of this Act is declared unconstitutional or invalid, such parts or provisions thereof not so declared shall remain valid and subsisting.

Section 32. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,

(Sgd.) **JUAN PONCE ENRILE**
President of the Senate

(Sgd.) **FELICIANO BELMONTE JR.**
Speaker of the House of Representatives

This Act which is a consolidation of Senate Bill No. 2842 and House Bill No. 3841 was finally passed by the Senate and the House of Representatives on December 11, 2012 and November 26, 2012, respectively.

(Sgd.) **EMMA LIRIO-REYES**
Secretary of Senate

(Sgd.) **MARILYN B. BARUA-YAP**
Secretary General
House of Representatives

Approved: FEB 28 2013

(Sgd.) **BENIGNO S. AQUINO III**
President of the Philippines