

INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES
[Republic Act No. 8293]

AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE
AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE,
PROVIDING FOR ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES

PART IV
THE LAW ON COPYRIGHT

Chapter I
PRELIMINARY PROVISIONS

Sec. 171. *Definitions.* - For the purpose of this Act, the following terms have the following meaning:

171.1. "*Author*" is the natural person who has created the work;

171.2. A "*collective work*" is a work which has been created by two (2) or more natural persons at the initiative and under the direction of another with the understanding that it will be disclosed by the latter under his own name and that contributing natural persons will not be identified;

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;

171.4. A "*computer*" is an electronic or similar device having information-processing capabilities, and a "computer program" is a set of instructions expressed in words, codes, schemes or in any other form, which is capable when incorporated in a medium that the computer can read, or causing the computer to perform or achieve a particular task or result;

171.5. "*Public lending*" is the transfer of possession of the original or a copy of a work or sound recording for a limited period, for non-profit purposes, by an institution the services of which are available to the public, such as public library or archive;

171.6. "*Public performance,*" in the case of a work other than an audiovisual work, is the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process; in the case of an audiovisual work, the showing of its images in sequence and the making of the sounds accompanying it audible; and, in the case of a sound recording, making the recorded sounds audible at a place or at places where persons outside the normal circle of a family and that family's closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and/or at different times, and where the performance can be

perceived without the need for communication within the meaning of Subsection 171.3;

171.7. "*Published works*" means works, which, with the consent of the authors, are made 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: *Provided*, That availability of such copies has been such, as to satisfy the reasonable requirements of the public, having regard to the nature of the work;

171.8. "*Rental*" is the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time, for profit-making purposes;

171.9. "*Reproduction*" is the making of one (1) or more copies of a work or a sound recording in any manner or form (Sec. 41 [E], P.D. No. 49a);

171.10. A "*work of applied art*" is an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

171.11. A "*work of the Government of the Philippines*" is a work created by an officer or employee of the Philippine Government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations as part of his regularly prescribed official duties.

CHAPTER II ORIGINAL WORKS

Sec. 172. *Literary and Artistic Works.* -

172.1 Literary and artistic works, hereinafter referred to as "*works*", are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

- (a) Books, pamphlets, articles and other writings;
- (b) Periodicals and newspapers;
- (c) Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
- (d) Letters;
- (e) Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
- (f) Musical compositions, with or without words;
- (g) Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
- (h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
- (i) Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- (j) Drawings or plastic works of a scientific or technical character;
- (k) Photographic works including works produced by a process analogous to photography; lantern slides;

- (l) Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
- (m) Pictorial illustrations and advertisements;
- (n) Computer programs; and
- (o) Other literary, scholarly, scientific and artistic works.

172.2. Works are protected by the sole fact of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose. (Sec. 2, P. D. No. 49a)

Chapter III DERIVATIVE WORKS

Sec. 173. *Derivative Works.* -

173.1. The following derivative works shall also be protected by copyright:

- (a) Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and
- (b) Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents. (Sec. 2, [P] and [Q], P. D. No. 49)

173.2. The works referred to in paragraphs (a) and (b) of Subsection 173.1 shall be protected as a new works: Provided however, That such new work shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply any right to such use of the original works, or to secure or extend copyright in such original works. (Sec. 8, P. D. 49; Art. 10, TRIPS)

Sec. 174. *Published Edition of Work.* - In addition to the right to publish granted by the author, his heirs or assigns, the publisher shall have a copy right consisting merely of the right of reproduction of the typographical arrangement of the published edition of the work.
(n)

Chapter IV WORKS NOT PROTECTED

Sec. 175. *Unprotected Subject Matter.* - Notwithstanding the provisions of Sections 172 and 173, no protection shall extend, under this law, to any idea, procedure, system method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof. (n)

Sec. 176. *Works of the Government.* -

176.1. No copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is

created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties. No prior approval or conditions shall be required for the use of any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character. (Sec. 9, First Par., P. D. No. 49)

176.2. The Author of speeches, lectures, sermons, addresses, and dissertations mentioned in the preceding paragraphs shall have the exclusive right of making a collection of his works. (n)

176.3. Notwithstanding the foregoing provisions, the Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest or otherwise; nor shall publication or republication by the government in a public document of any work in which copy right is subsisting be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such work without the consent of the copyright owners. (Sec. 9, Third Par., P. D. No. 49)

CHAPTER V COPYRIGHT OR ECONOMIC RIGHTS

Sec. 177. *Copy 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; (n)

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 (Sec. 5, P. D. No. 49a)

CHAPTER VI OWNERSHIP OF COPYRIGHT

Sec. 178. *Rules on Copyright Ownership.* - Copyright ownership shall be governed by the following rules:

178.1. Subject to the provisions of this section, in the case of original literary and artistic works, copyright shall belong to the author of the work;

178.2. In the case of works of joint authorship, the co-authors shall be the original owners of the copyright and in the absence of agreement, their rights shall be governed by the rules on co-ownership. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the copyright in the part that he has created;

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.

178.4. In the case of a work-commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;

178.5. In the case of audiovisual work, the copyright shall belong to the producer, the author of the scenario, the composer of the music, the film director, and the author of the work so adapted. However, subject to contrary or other stipulations among the creators, the producers shall exercise the copyright to an extent required for the exhibition of the work in any manner, except for the right to collect performing license fees for the performance of musical compositions, with or without words, which are incorporated into the work; and

178.6. In respect of letters, the copyright shall belong to the writer subject to the provisions of Article 723 of the Civil Code. (Sec. 6, P. D. No. 49a)

Sec. 179. *Anonymous and Pseudonymous Works.* - For purposes of this Act, the publishers shall be deemed to represent the authors of articles and other writings published without the names of the authors or under pseudonyms, unless the contrary appears, or the pseudonyms or adopted name leaves no doubts as to the author's identity, or if the author of the anonymous works discloses his identity. (Sec. 7, P. D. 49)

CHAPTER VII TRANSFER OR ASSIGNMENT OF COPYRIGHT

Sec. 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. (Sec. 15, P. D. No. 49a)

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

Sec. 182. *Filing of Assignment of License.* - An assignment or exclusive license may be filed in duplicate with the National Library upon payment of the prescribed fee for registration in books and records kept for the purpose. Upon recording, a copy of the instrument shall be returned to the sender with a notation of the fact of record. Notice of the record shall be published in the IPO Gazette. (Sec. 19, P. D. No. 49a)

Sec. 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. (Sec. 32, P. D. No. 49a)

CHAPTER VIII LIMITATIONS ON COPYRIGHT

Sec. 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; (Sec. 10(1), P. D. No. 49)

(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; (Sec. 11, Third Par., P. D. No. 49)

(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; (Sec. 11, P. D. No. 49)

(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; (Sec. 12, P. D. No. 49)

(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; (n)

(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 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 interest.

Sec. 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 education 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.

Sec. 186. *Work of Architecture.* - Copyright in a work of architecture shall include the right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original; Provided, That the copyright in any such work shall not include the right to control the reconstruction or rehabilitation in the same style as the original of a building to which the copyright relates. ⁽ⁿ⁾

Sec. 187. *Reproduction of Published Work.* -

187.1. Notwithstanding the provision of Section 177, and subject to the provisions of Subsection 187.2, the private reproduction of a published work in a single copy, where the reproduction is made by a natural person exclusively for research and private study, shall be permitted, without the authorization of the owner of copyright in the work.

187.2. The permission granted under Subsection 187.1 shall not extend to the reproduction of:

- (a) A work of architecture in form of building or other construction;
- (b) An entire book, or a substantial part thereof, or of a musical work in which graphics form by reprographic means;

- (c) A compilation of data and other materials;
- (d) A computer program except as provided in Section 189; and
- (e) Any work in cases where reproduction would unreasonably conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author. ⁽ⁿ⁾

Sec. 188. Reprographic Reproduction by Libraries. –

188.1. Notwithstanding the provisions of Subsection 177.6, 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 person 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. (Sec. 13, P. D. 49a)

Sec. 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.

189.3. This provision shall be without prejudice to the application of Section 185 whenever appropriate. ⁽ⁿ⁾

Sec. 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. (Sec. 30, P. D. No. 49)

CHAPTER IX DEPOSIT AND NOTICE

Sec. 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. 26, P. D. No. 49a)

Sec. 192. *Notice of Copyright.* - Each copy of a work published or offered for sale may contain a notice bearing the name of the copyright owner, and the year of its first publication, and, in copies produced after the creator's death, the year of such death. (Sec. 27, P. D. No. 49a)

Chapter X MORAL RIGHTS

Sec. 193. *Scope of Moral Rights.* - The author of a work shall, independently of the economic rights in Section 177 or the grant of an assignment or license with respect to such right, have the right:

193.1. 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;

193.2. To make any alterations of his work prior to, or to withhold it from publication;

193.3. 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

193.4. 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. (Sec. 34, P. D. No. 49)

Sec. 194. *Breach of Contract.* - An author cannot be compelled to perform his contract to create a work or for the publication of his work already in existence. However, he may be held liable for damages for breach of such contract. (Sec. 35, P. D. No. 49)

Sec. 195. *Waiver of Moral Rights.* - An author may waive his rights mentioned in Section 193 by a written instrument, but no such waiver shall be valid where its effects is to permit another:

195.1. To use the name of the author, or the title of his work, or otherwise to make use of his reputation with respect to any version or adaptation of his work which, because of alterations therein, would substantially tend to injure the literary or artistic reputation of another author; or

195.2. To use the name of the author with respect to a work he did not create. (Sec. 36, P. D. No. 49)

Sec. 196. *Contribution to Collective Work.* - When an author contributes to a collective work, his right to have his contribution attributed to him is deemed waived unless he expressly reserves it. (Sec. 37, P. D. No. 49)

Sec. 197. *Editing, Arranging and Adaptation of Work.* - In the absence of a contrary stipulation at the time an author licenses or permits another to use his work, the necessary editing, arranging or adaptation of such work, for publication, broadcast, use in a motion picture, dramatization, or mechanical or electrical reproduction in accordance with the reasonable and customary standards or requirements of the medium in which the work is to be used, shall not be deemed to contravene the author's rights secured by this chapter. Nor shall complete destruction of a work unconditionally transferred by the author be deemed to violate such rights. (Sec. 38, P. D. No. 49)

Sec. 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. 39, P. D. No. 49)

Sec. 199. *Enforcement Remedies.* - Violation of any of the rights conferred by this Chapter shall entitle those charged with their enforcement to the same rights and remedies available to a copyright owner. In addition, damages which may be availed of under the Civil Code may also be recovered. Any damage recovered after the creator's death shall be held in trust for and remitted to his heirs, and in default of the heirs, shall belong to the government. (Sec. 40, P. D. No. 49)

Chapter XI
RIGHTS TO PROCEEDS IN SUBSEQUENT TRANSFERS

Sec. 200. *Sale or Lease of Work.* - In every sale or lease of an original work of painting or sculpture or of the original manuscript of a writer or composer, subsequent to the first disposition thereof by the author, the author or his heirs shall have an inalienable right to participate in the gross proceeds of the sale or lease to the extent of five percent (5%). This right shall exist during the lifetime of the author and for fifty (50) years after his death. (Sec. 31, P. D. No. 49)

Sec. 201. *Works Not Covered.* - The provisions of this Chapter shall not apply to prints, etchings, engravings, works of applied art, or works of similar kind wherein the author primarily derives gain from the proceeds of reproductions. (Sec. 33, P. D. No. 49)

Chapter XII
RIGHTS OF PERFORMERS, PRODUCERS OF SOUNDS
RECORDINGS AND BROADCASTING ORGANIZATIONS

Sec. 202. *Definitions.* - For the purpose of this Act, the following terms shall have the following meanings:

202.1. "*Performers*" are actors, singers, musicians, dancers, and other persons who act, sing, declaim, play in, interpret, or otherwise perform literary and artistic work;

202.2. "*Sound recording*" means the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

202.3. An "*audiovisual work or fixation*" is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible and, where accompanied by sounds, susceptible of being made audible;

202.4. "*Fixation*" means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

202.5. "*Producer of a sound recording*" means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;

202.6. "*Publication of a fixed performance or a sound recording*" means the offering of copies of the fixed performance or the sound recording to the public, with the consent of the right holder: *Provided*, That copies are offered to the public in reasonable quality;

202.7. "*Broadcasting*" means the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission

by satellite is also *"broadcasting"* where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

202.8. *"Broadcasting organization"* shall include a natural person or a juridical entity duly authorized to engage in broadcasting; and

202.9. *"Communication to the public of a performance or a sound recording"* means the transmission to the public, by any medium, otherwise than by broadcasting, of sounds of a performance or the representations of sounds fixed in a sound recording. For purposes of Section 209, *"communication to the public"* includes making the sounds or representations of sounds fixed in a sound recording audible to the public.

Sec. 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. (Sec. 42, P. D. No. 49a)

Sec. 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. (Sec. 43, P. D. no. 49)

Sec. 205. *Limitation on Right.* -

205.1. Subject to the provisions of Section 206, once the performer has authorized the broadcasting or fixation of his performance, the provisions of Sections 203 shall have no further application.

205.2. The provisions of Section 184 and Section 185 shall apply mutatis mutandis to performers. (n)

Sec. 206. *Additional Remuneration for Subsequent Communications or Broadcasts.* - Unless otherwise provided in the contract, in every communication to the public or broadcast of a performance subsequent to the first communication or broadcast thereof by the broadcasting organization, the performer shall be entitled to an additional remuneration equivalent to at least five percent (5%) of the original compensation he or she received for the first communication or broadcast. (n)

Sec. 207. *Contract Terms.* - Nothing in this Chapter shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favorable for them in respect of any use of their performance. (n)

Chapter XIII PRODUCERS OF SOUND RECORDINGS

Sec. 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. (Sec. 46, P. D. No. 49a)

Sec. 209. *Communication to the Public.* - If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or for other communication to the public, or is publicly performed with the intention of making and enhancing profit, a single equitable remuneration for the performer or performers, and the producer of the sound recording shall be paid by the user to both the performers and the producer, who, in the absence of any agreement shall share equally. (Sec. 47, P. D. No. 49a)

Sec. 210. *Limitation of Right.* - Sections 184 and 185 shall apply mutatis mutandis to the producer of sound recordings. (Sec. 48, P. D. No. 49a)

Chapter XIV BROADCASTING ORGANIZATIONS

Sec. 211. *Scope of Right.* - Subject to the provisions of Section 212, broadcasting organizations shall enjoy the exclusive right to carry out, authorize or prevent any of the following acts:

211.1. The rebroadcasting of their broadcasts;

211.2. The recording in any manner, including the making of films or the use of video tape, of their broadcasts for the purpose of communication to the public of television broadcasts of the same; and

211.3. The use of such records for fresh transmissions or for fresh recording. (Sec. 52, P. D. No. 49)

Chapter XV LIMITATIONS ON PROTECTION

Sec. 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. (Sec. 44, P. D. No. 49a)

Chapter XVI TERM OF PROTECTION

Sec. 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. (Sec. 21, First Sentence, P. D. No. 49a)

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. (Sec. 21, Second Sentence, P.D. No. 49)

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. (Sec. 23, P. D. No. 49)

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. (Sec. 24(B), P. D. No. 49a)

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. (Sec. 24(C), P. D. 49a)

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. (Sec. 24(C), P. D. No. 49a)

Sec. 214. Calculation of Term. - The term of protection subsequent to the death of the author provided in the preceding Section shall run from the date of his death or of publication, but such terms shall always be deemed to begin on the first day of January of the year following the event which gave rise to them. (Sec. 25, P. D. No. 49)

Sec. 215. Term of Protection for Performers, Producers and Broadcasting Organizations. -

215.1. The rights granted to performers and producers of sound recordings under this law shall expire:

- (a) For performances not incorporated in recordings, fifty (50) years from the end of the year in which the performance took place; and
- (c) For sound or image and sound recordings and for performances incorporated therein, fifty (50) years from the end of the year in which the recording took place.

215.2. In case of broadcasts, the term shall be twenty (20) years from the date the broadcast took place. The extended term shall be applied only to old works with subsisting protection under the prior law. (Sec. 55, P. D. No. 49a)

Chapter XVII INFRINGEMENT

Sec. 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.

(d) 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. 28, P. D. No. 49a)

Sec. 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.

(e) 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. 29, P. D. No. 49a)

Sec. 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. ⁽ⁿ⁾**

Sec. 219. *Presumption of Authorship.* -

219.1. The natural person whose name is indicated on a work in the usual manner as the author shall, in the absence of proof to the contrary, be presumed to be the

author of the work. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.
219.2. The person or body, corporate whose name appears on an audio-visual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of said work. ⁽ⁿ⁾

Sec. 220. *International Registration of Works.* - A statement concerning a work, recorded in an international register in accordance with an international treaty to which the Philippines is or may become a party, shall be construed as true until the contrary is proved except:

- 220.1. Where the statement cannot be valid under this Act or any other law concerning intellectual property.
- 220.2. Where the statement is contradicted by another statement recorded in the international register. ⁽ⁿ⁾

Chapter XVIII SCOPE OF APPLICATION

Sec. 221. *Points of Attachment for Works under Sections 172 and 173.* -

- 221.1. The protection afforded by this Act to copyrightable works under Sections 172 and 173 shall apply to:
- (a) Works of authors who are nationals of, or have their habitual residence in the Philippines;
 - (b) Audio-visual works the producer of which has his headquarters or habitual residence in the Philippines;
 - (c) Works of architecture erected in the Philippines or other artistic works incorporated in a building or other structure located in the Philippines;
 - (d) Works first published in the Philippines; and
 - (f) Works first published in another country but also published in the Philippines within thirty days, irrespective of the nationality or residence of the authors.

221.2. The provisions of this Act shall also apply to works that are to be protected by virtue of and in accordance with any international convention or other international agreement to which the Philippines is a party. ⁽ⁿ⁾

Sec. 222. *Points of Attachment for Performers.* - The provisions of this Act on the protection of performers shall apply to:

- 222.1. Performers who are nationals of the Philippines;
- 222.2. Performers who are not nationals of the Philippines but whose performances:
 - (a) Take place in the Philippines; or
 - (b) Are incorporated in sound recordings that are protected under this Act; or
 - (c) Which has not been fixed in sound recording but are carried by broadcast qualifying for protection under this Act. ⁽ⁿ⁾

Sec. 223. *Points of Attachment for Sound Recordings.* - The provisions of this Act on the protection of sound recordings shall apply to:

- 223.1. sound recordings the producers of which are nationals of the Philippines; and
- 223.2. Sound recordings that were first published in the Philippines. ⁽ⁿ⁾

Sec. 224. *Points of Attachment for Broadcasts.* -

224.1. The provisions of this Act on the protection of broadcasts shall apply to:

- (a) Broadcasts of broadcasting organizations the headquarters of which are situated in the Philippines; and
- (b) Broadcasts transmitted from transmitters situated in the Philippines.

224.2. The provisions of this Act shall also apply to performers who, and to producers of sound recordings and broadcasting organizations which, are to be protected by virtue of and in accordance with any international convention or other international agreement to which the Philippines is a party. ⁽ⁿ⁾

Chapter XIX INSTITUTION OF ACTIONS

Sec. 225. *Jurisdiction.* - Without prejudice to the provisions of Subsection 7.1(c), actions under this Act shall be cognizable by the courts with appropriate jurisdiction under existing law. ^(Sec. 57, P. D. No. 49a)

Sec. 226. *Damages.* - No damages may be recovered under this Act after four (4) years from the time the cause of action arose. ^(Sec. 58, P. D. No. 49)

Chapter XX MISCELLANEOUS PROVISIONS

Sec. 227. *Ownership of Deposit and Instruments.* - All copies deposited and instruments in writing filed with the National Library and the Supreme Court Library in accordance with the provisions of this Act shall become the property of the Government. ^(Sec. 60, P. D. No. 49)

Sec. 228. *Public Records.* - The section or division of the National Library and the Supreme Court Library charged with receiving copies and instruments deposited and with keeping records required under this Act and everything in it shall be opened to public inspection. The Director of the National Library is empowered to issue such safeguards and regulations as may be necessary to implement this Section and other provisions of this Act. ^(Sec. 61, P. D. No. 49)

Sec. 229. *Copyright Division Fees.* - The Copyright Section of the National Library shall be classified as a Division upon the effectivity of this Act. The National Library shall have the power to collect, for the discharge of its services under this Act, such fees as may be promulgated by it from time to time subject to the approval of the Department Head. ^(Sec. 62, P. D. 49a)

