

Republic Act 8293: Protecting the Intellectual Property in the Philippines¹
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Background

Intellectual property (IP) refers to any creation or product of the human mind or intellect. It can be an invention, an original design, a practical application of a good idea, a mark of ownership such as trademark, literary and artistic works, among other things. The term intellectual property rights consists of (1) copyrights and related rights; (2) trademarks and service marks; (3) geographic indications; (4) industrial designs; (5) patents; (6) layout-designs (topographies) of integrated circuits; and (7) protection of undisclosed information (IPOP HL, 2013).

Intellectual creations are deemed necessary for a successful business since IPs allow the recognition and control over the commercialization of a creation or invention. An effective IP system is vital to ensure the development of domestic and creative activity, to facilitate the transfer of technology, to attract foreign investment and to ensure market access for products.

The Intellectual Property Office of the Philippines (IPOP HL)

Before the Intellectual Property Office (IPO) was established, all patent and trademark related activities were handled by the Bureau of Patents, Trademarks, and Technology Transfer (BPTTT) under the Department of Trade and Industry (DTI). The BPTTT was created by virtue of Executive Order (E.O.) No. 133 (the law reorganizing the DTI and its attached agencies), which was signed on February 27, 1987 by President Corazon C. Aquino.

After ten years, the Intellectual Property Office of the Philippines or the IPOP HL was created by virtue of Republic Act (R.A.) No. 8293. The law, otherwise known as the IP Code of the Philippines, was signed by President Fidel V. Ramos on June 6, 1997, and took effect on January 1, 1998. The IPOP HL, one of offices under the Office of the Secretary (OSEC) of the DTI, leads the implementation of state policies (i.e. registration and conflict resolution) on IP. It has more functions than the BPTTT, which was abolished by the IP Code.

The IPOP HL is headed by a Director General and has six Bureaus, namely: (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

¹ A short policy paper submitted to the Food and Fertilizer Technology Center (FFTC) for the project titled "Asia-Pacific Information Platform in Agricultural Policy". Short policy papers, as corollary outputs of the project, describe pertinent Philippine laws and regulations on agriculture, fisheries and natural resources.

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Bureau; and (f) the Administrative, Financial and Personnel Services Bureau. On February 28, 2013, President Benigno S. Aquino III signed R.A. 10372, an act amending certain provisions of R.A. 8239. Republic Act No. 10372 added the seventh bureau, the Bureau of Copyright and Other Related Rights with the following functions³:

- (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;
- (2) Accept, review and decide on applications for the accreditation of collective management organizations or similar entities;
- (3) Conduct studies and researches in the field of copyright and related rights; and
- (4) Provide other copyright and related rights service and charge reasonable fees therefor.

Coverage of the IP Code

The important provisions of the IP Code of the Philippines include among others (1) laws on patents, (2) laws on trademarks, service marks and trade names, and (3) laws on copyright.

The Law on Patents (Part II). The salient provisions under law of patents stipulate the patentable inventions and the right to a patent. It also has provisions on patent application, procedure for grant of patent, cancellation of patents and substitution of patentee, remedies of a person with a right to a patent, rights of patentees and infringement of patents, voluntary licensing, compulsory licensing, assignment and transmission of rights, registration of utility models and industrial design, the qualifications in applying for and the granting and cancellation of patents.

The IP Code define patentable as any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable. It may include or relate to a product, a process, or an improvement of any of the foregoing. The right to a patent belongs to the inventor, his heirs, or assigns. When two or more persons have jointly made an invention, the right to patent shall belong to them jointly. The exclusive right gives the inventor the right to exclude others from making, using, or selling the product of his invention during the life of the patent.⁴

An important feature under the Right to Patent is the "First to File Rule". This policy gives right to the patent to the person who had the earliest filing date, in case two or more applications are filed for the same invention. This rule is critical since an inventor may lose his/her claim if he/she does not file the patent at once. The term of patent shall be twenty (20) years from the filing date of the application.

The Law on Trademarks, Service Marks and Trade Names (Part III). A trademark is a tool used to differentiate goods and services from each other. Part III of the IP Code states that the rights in a mark shall be acquired through registration made validly in accordance with the provisions

³ Lifted verbatim from Section 3 of RA 10372. The Bureau of Copyright and Other Related Right.

⁴ Lifted from Chapters III and IV. Laws on Patents under IP Code of the Philippines.

of this law⁵. The certificate of registration shall remain in force for ten (10) years and may be renewed for periods of ten years at its expiration upon payment of the prescribed fee and upon filing of a request.

The Law on Copyright (Part IV). Copyright is the legal protection extended to the owner of the rights in an original work, which may refer to every production in the literary, scientific, and artistic domain. Among the literary and artistic works enumerated in the IP Code are books, and other writings, musical works, films, paintings and other works, and computer programs (IPOPPL, 2013).

Most of the amendments in R.A. 8293 as stated in R.A. 10372 or the revised IP Code are on provisions pertaining to the Law on Copyright. The powers of the Director General and Deputy Director General were broadened to include enforcement functions supported by concerned agencies such as the Philippine National Police (PNP), the National Bureau of Investigation (NBI), the Bureau of Customs (BOC), the Optical Media Board (OMB), and the Local Government Units (LGUs), among others. This is a strategic move to intensify the government's fight against pirated merchandise, protecting both the creators and the consumers. Another section added, is on the Adoption of Intellectual Property Policies by schools and universities to safeguard the intellectual creations of the learning institutions and its employees.

Repealed Laws. Republic Act 8293 repealed the following laws: R.A. No.165 or the Patent Law (creating the patent office) and R.A. No. 166 or the Trademark Law (providing for the registration and protection of trade-marks, trade-names and service-marks) which were signed on June 20, 1947; Articles 188 (subsisting and altering trade-mark, trade-names, or service marks) and 189 (unfair competition, fraudulent registration of trade-mark, trade-name or service mark, fraudulent designation of origin, and false description) of the Revised Penal Code; Presidential Decree (P.D.) No. 49, signed November 14, 1972 (decree on the protection of intellectual property); and P.D. No. 285, signed September 3, 1973 (authorizing the compulsory licensing or reprinting of educational, scientific or cultural books and materials).

Conclusion

With the continuous improvement in technology, our thoughts and imaginations before are now real and continuously changing. The IP Code is put in place to protect the creative minds of the Filipinos who have endless innovative works. Further amending the IP Code is a significant stride in the government's fight against piracy. The IP Code does not only protect the outputs of the creators, but also safeguards the general public from pirated merchandise, which may be cheaper but may have harmful effects. The success of IP Code implementation does not only rest on IPOPPL but also on the inventors and creators. They should be watchful against illegal copying and reproduction and at the same time responsible with their duties as inventors and creators (e.g. payment of fees) in order to protect their intellectual property.

⁵ Lifted verbatim from Section 122. How Marks are Acquired. IP Code of the Philippines.

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