

Republic of the Philippines
House of Representatives
Quezon City

Thirteenth Congress

First Regular Session

HOUSE BILL NO. 3308



Introduced by **Representative JOEY SARTE SALCEDA**

EXPLANATORY NOTE

The Constitution, in its Art. XIV, Section 13, enjoins the State to "protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creation..." In keeping with this fundamental mandate, Congress, in 1997, passed the Intellectual Property Code, Republic Act 8293, which sought to provide protection to all forms of intellectual creation. The Philippines, likewise, acceded to the Berne Convention which protects the property rights of artists and writers, and as a member of the World Trade Organization, is enjoined to recognize and protect intellectual creation expressed and distributed in the various modes and channels invented by man.

Information and communications technologies have broken new ground with the onset of a new channel for the dissemination of intellectual creation at high speed: *the internet*. Undeniably, the emergence of the so-called digital revolution has equipped mankind with a new empowerment, vastly expanded his knowledge and broke barriers amongst countries and individuals in the delivery of information, thus transforming the domains of information and communication into a borderless universe in cyberspace.

Lamentably, however, this spectacular invention of man also bred a new and awesome breed of pirates who utilize the same new technology in stealing intellectual property and infringing intellectual property rights in cyber space. Reportedly, based on the year- 2000 figures, the software industry in the Philippines had lost about \$27.1 million or about P1.4 billion in revenues as a result of a 61% piracy rate, depriving the government of some P170 million in taxes. The sound- recording industry estimated a piracy rate of 33% in the year 2000 with losses amounting to \$1.3 million or P65 million, while the entertainment software industry estimated a piracy rate of 98% for the same year with losses amounting to \$41 million or about P2 billion. Indeed, the threat to protected works assumes prime significance if one considers the role of organized and syndicated crime in the commission of piracy in the lanes of cyberspace. Pirated software in the form of illegal CDs, CD-ROMS, DVDs and similar optic products are openly and brazenly sold at extremely low prices. Copies of protected works are unmitigatedly downloaded in interactive networks or uploaded unto internet servers without the consent of their owners or rights holders. Property rights-violations swell by the day. Intellectual theft has reputedly become a lucrative and thriving industry in the country today, presumably because of the growing vigilance of many Asian countries over software piracy in their own domains. This

allegedly has encouraged pirates to bring their business to the Philippines which presumably offers a less hostile environment to intellectual thievery.

While our Intellectual Property Code (Code) was conceived with consummate vision at the time of its enactment, its provisions however have not kept pace with the awesome advances made in the area of intellectual rights-infringement in electronic commerce. While the marvel of digital technology has undoubtedly improved the quality of life and simplified the conduct of business and trade by a simple computer command, this same wonder has also been exploited for the pursuit of covert operations and profitable opportunities for intellectual theft and infringement.

Given these staggering realities, the stage is now set to retool the prevailing law by sharpening its focus, enlarging its protective coverage and reinforcing its potency to provide meaningful relief to victims of intellectual thievery and to strengthen current legal mandates to meet the challenges posed by new digital technologies thus hopefully averting the dangers proffered by the electronic environment.

This bill therefore seeks to amend the Code through the integration of comprehensive, swift, efficient and adequate strategies designed to respond to the criminal onslaught of internet piracy. At the same time, it seeks to give as much concern to the rights of performers, phonogram producers and broadcasters in the same breath as those accorded authors of artistic and literary works, by acknowledging the right of such phonogram producers, performers or broadcasters to control or be compensated for the various ways in which their works are used or enjoyed by others. This measure also seeks to recognize rights to distribution and rental, and rights to receive payments for certain forms of broadcasting or communication to the public.

The Sponsor likewise believes that through these amendments, the country can align itself with the breakthroughs made in intellectual property rights-protection by providing certain safeguards to insure that rights-holders can likewise effectively use technology to protect their own rights and to license their own works **online**, especially when their creations are disseminated in the internet, and by recognizing the utilization of safeguards to prevent the deletion or alteration of information that accompanies any protected material available online which identifies the work, its creator, performer or owner, as well as the terms and conditions for the use of such protected work. Furthermore, considering the speed and manner in which rights-violations and infringements are committed in the internet over valuable contents of stolen work, measures and legal options are, through these proposals, instituted in the Code to insure swift and effective protection of the rights of owners of protected works against infringing activities committed either directly or indirectly in the internet. More stringent penalties are likewise recommended for rights-violators, while immediate judicial relief and alternative options are proposed to be accorded actual and potential victims of infringement who would sustain incalculable losses for every minute that their works are used or exploited in the internet by infringers.

Concededly, the present Code was not and could not have been programmed to address what its framers had not foreseen, but since it is a law intended to be the guardian of intellectual property rights and the protector of the owners of such rights for all time, it should seasonably craft policy in order to maintain and sustain the rule of law in this new dimension of information technology and make intellectual property protection more vigorous and meaningful.

It is the Sponsor's belief that a strong, militant and uncompromising Intellectual Property law would not only fight piracy, but would stimulate creativity, spark individual talent, enkindle ingenuity, reward effort, protect science, safeguard invention, promote the arts, invigorate the entertainment and

broadcast industries, accelerate the growth of electronic commerce, spur software development, energize the economy and inspire investor-confidence which the country sorely needs at this time.

It is gratifying to note that the country abounds with talent, ingenuity and creativity in the traditional and non-traditional fields of intellectual expression. For this reason, the labors of the Filipino genius should not be held prey to, or be hostages by the pirates of commerce. It is time that the government eliminate, in strong and unmistakable terms, this modern day-buccaneering and bring the country to the global community of responsible governments.

Intellectual theft is not only morally wrong; it is an affliction that saps the vitality of the legal order. For this reason, a firm, resolute and inexorable national policy must now be articulated through these proposed amendments to the Intellectual Property Code, the passage of which amendments, I urge my esteemed colleagues in this Chamber to support.



JOEY SARTE SALCEDA

**Republic of the Philippines
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House Bill No. 3308

Introduced by **Representative JOEY SARTE SALCEDA**

**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”**

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

Section 1. Section 171.3 of R. A. 8293 is hereby amended to read as follows:

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

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 the works from a place and at a time individually chosen by them.

Section 2. Section 171.9 of the same Act 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 sound recording in any manner or form."

Section 3. 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 "EFFECTIVE TECHNOLOGICAL MEASURE" MEANS ANY TECHNOLOGY, DEVICE OR COMPONENT THAT, IN THE NORMAL COURSE OF ITS OPERATION, CONTROLS ACCESS TO A PROTECTED WORK, SOUND RECORDING, OR OTHER SUBJECT MATTER, OR PROTECTS ANY COPYRIGHT OR ANY RIGHTS RELATED TO COPYRIGHT AS PROVIDED BY THIS ACT.

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 OR 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. NOTHING IN THIS ACT REQUIRES THE OWNER OF ANY RIGHT IN THE WORK, SOUND RECORDING, OR PERFORMANCE TO ATTACH RIGHTS MANAGEMENT INFORMATION TO COPIES OF IT OR TO CAUSE RIGHTS MANAGEMENT INFORMATION TO APPEAR IN CONNECTION WITH A COMMUNICATION OF THE WORK, SOUND RECORDING OR PERFORMANCE TO THE PUBLIC.

Section 4. Section 177.3 is hereby amended to read as follows:

Sec. 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:

X X X

177.3 “THE IMPORTATION INTO THE PHILIPPINES, AND the first public distribution within the Philippines, of the original and each copy of the work, by sale or other forms of transfer of ownership.

Section 5. Section 178.5 is hereby amended by striking “exhibition” and inserting “exploitation” and to read as follows:

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

X X X

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 producer shall exercise the copyright to an extent required for the [exhibition] EXPLOITATION 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.

Section 6. Section 180 is hereby amended by inserting the following new paragraph to be known as 180.4 to read as follows:

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.

X X X

180.4 "ANY EXCLUSIVE RIGHT 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."

Section 7. Section 183 is hereby amended to read as follows:

Sec. 183. *Designation of Society.* - The copyright owners or their heirs may designate a society of artists, writers, or composers, OR A SIMILAR AGENT, to enforce their economic rights or moral rights on their behalf.

Section 8. Section 184(i) is hereby amended to read as follows:

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

X X X

- (i) The public performance or the communication to the public of a work, in a place where no admission fee is charged DIRECTLY OR INDIRECTLY 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; WHERE NO COMPENSATION OR FEE IS PAID TO ANY PERFORMER, PROMOTER, OR ORGANIZER OF THE PUBLIC PERFORMANCE OR COMMUNICATION; AND subject to such other limitations as may be provided in the Regulations.

Section 9. Section 184(k) is hereby amended to read as follows:

X X X

- (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 WITH RESPECT TO SUCH A WORK, ITS CREATION OR EXPLOITATION.

Section 10. Section 185.1 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 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] 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 INDISPENSABLE IN ORDER TO OBTAIN THE INFORMATION NECESSARY TO ACHIEVE SUCH INTER-OPERABILITY. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:

X X X

Section 11. Section 188.2 is hereby amended to read as follows:

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:

X X X

188.2 Notwithstanding the above provisions, it shall not be permissible to produce a volume of 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, UNDER SECTION 191, is entitled to receive copies of a printed work, shall be entitled, when special reasons so require, to reproduce a SINGLE REPROGRAPHIC copy of a published work which is considered necessary for the collection of the library but which is out of stock AND NOT REASONABLY AVAILABLE TO IT THROUGH COMMERCIAL CHANNELS.

Section 12. Section 190.1 is hereby amended by striking "Subsection 177.6" and in lieu thereof, substituting "Subsection 177.3," and by striking "Subsection 185.2" and in lieu thereof, substituting "Subsection 184.2", to read as follows:

190.1. *Importation for Personal Purposes* – Notwithstanding the provision of Subsection [177.6] **177.3** but subject to the limitation under the Subsection [185.2] **184.2** 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 by 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 forms 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).

Section 13. Section 190.3 is hereby amended to read as follows:

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 OR EXPORTATION OF INFRINGING ARTICLES OR of articles the importation OR EXPORTATION of which is prohibited under this [Section] ACT 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 OR BEFORE THEY ARE EXPORTED, OR WHILE IN TRANSIT THROUGH THE CUSTOMS TERRITORY OF THE REPUBLIC OF THE PHILIPPINES.

Section 14. Section 191 is hereby amended by striking “Subsections 172.1, 172.2 and 172.3,” and in lieu thereof, substituting “Subsections 172.1(a), (b) and (c)”, to read as follows:

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] **172.1(a), (b) and (c)** 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).

Section 15. Section 205.2 is hereby amended to read as follows:

205.2. The provisions of SectionS 184, 185 AND 190 shall apply *mutatis mutandis* to performers.

Section 16. Section 210 is hereby amended to read as follows:

210. Sections 184, 185 AND 190 shall apply *mutatis mutandis* to the producer of sound recordings.

Section 17. Section 208.1 is hereby amended to read as follows:

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

X X X

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

Section 18. Section 208 is hereby further amended by adding the following new paragraph to be known as Section 208.4, and to read as follows:

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

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 19. Section 212 is hereby amended to read as follows:

Sec. 212. *Limitations on Rights.* - SUBJECT TO THE APPLICATION MUTATIS MUTANDIS OF SECTION 184.2 OF THIS ACT, Sections 203, 208 and 209 shall not apply where the acts referred to in those Sections are [related to] CARRIED OUT IN CONNECTION WITH:

X X X

Section 20. Sections 213.1 and 213.2 of same Act are amended by deleting the word and the number 50 wherever they appear and in lieu thereof, substitute the word seventy and the number 70, to read as follows:

Sec. 213.1 *Terms 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)] SEVENTY (70) 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)] SEVENTY (70) years after his death.

Section 21. Sections 213.3 and 213.6 of same Act are amended by deleting the word and number 50 wherever they appear and in lieu thereof, substitute the word ninety five and the number 95, to read as follows:

213.3 In case of anonymous or pseudonymous works, the copyright shall be protected for [fifty (50)] NINETY FIVE (95) 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)] NINETY FIVE (95) years counted from the making of the work.

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)] NINETY FIVE (95) years from date of publication and, if unpublished, from the date of making

Section 22. Section 215.1 of same Act is amended by deleting the word fifty and the number 50 wherever they appear and in lieu thereof, substitute the word ninety five and the number 95.

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)] NINETY FIVE (95) years from end of the year in which the performance took place; and

- (b) For sound or image and sound recordings and for performances incorporated therein, [fifty (50)] NINETY FIVE (95) years from the end of the year in which the recording took place.

Section 23. Section 216 of the same Act is hereby amended and renumbered to read as follows:

“Section 216. INFRINGEMENT: WHAT CONSTITUTES: [Remedies for Infringement]

A PERSON INFRINGES A RIGHT PROTECTED UNDER THIS ACT WHEN HE:

- (a) DIRECTLY COMMITS AN INFRINGEMENT OR CAUSES AN INFRINGEMENT TO BE COMMITTED;
- (b) BENEFITS FINANCIALLY FROM THE INFRINGING ACTIVITY OF ANOTHER PERSON WHO COMMITS AN INFRINGEMENT IF THE PERSON BENEFITING HAS THE RIGHT AND ABILITY TO CONTROL THE ACTIVITIES OF THE OTHER PERSON; OR
- (c) ENABLES OR INDUCES INFRINGEMENT BY ANOTHER PERSON ENABLING OR INDUCING THE INFRINGEMENT HAS OR REASONABLY SHOULD HAVE KNOWLEDGE OF IT AND MATERIALLY CONTRIBUTES TO IT.

Section 24. Section 216.1 is hereby amended as follows:

“Sec. 216.1 REMEDIES FOR INFRINGEMENT Any person infringing a right protected under this law shall be liable:

X X X

Section 25. Section 216.1(b) of the same Act is hereby amended to read as follows:

X X X

- (b) TO [P]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 WHICH IT FINDS TO BE SUFFICIENT TO FULLY COMPENSATE THE RIGHT HOLDER FOR THE INJURY HE HAS SUFFERED, AND SUFFICIENT TO CONSTITUTE A DETERRENT TO FURTHER INFRINGEMENTS, and shall not be regarded as penalty.

Section 26. Section 216.1 is hereby amended by adding the following new paragraph at the end of said Section to be known as Section 216.1(f), and to read as follows:

(f) 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 INFRINGE-MENTS INVOLVED IN THE ACTION WITH RESPECT TO ANY ONE WORK FOR WHICH ANY ONE INFRINGER IS LIABLE, AS THE COURT CONSIDERS JUST, IN A CASE WHERE THE COURT FINDS THAT THE INFRINGEMENT WAS COMMITTED WILLFULLY, THE COURT IN ITS DISCRETION MAY INCREASE THE AWARD OF STATUTORY DAMAGES.

Section 27. Section 216.2 is hereby amended by adding a proviso at the end of said subsection, the amended subsection to read as follows:

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. *PROVIDED HOWEVER THAT:*

(a) UPON THE APPLICATION OF THE HOLDER OF ANY RIGHT UNDER THIS ACT, THE COURT MAY ORDER, AS PROVISIONAL MEASURES, ANY OF THE RELIEF IT IS AUTHORIZED TO AWARD UNDER THE PROVISIONS OF THIS SECTION, EXCEPT FOR MONETARY DAMAGES, WITHOUT NOTICE TO THE OTHER PARTY, WHEN THE COURT DEEMS IT NECESSARY TO PREVENT AN INFRINGEMENT OF AN

INTELLECTUAL PROPERTY RIGHT, OR TO PRESERVE RELEVANT EVIDENCE OF ALLEGED INFRINGEMENT.

- (b) SUCH RELIEF MAY INCLUDE, BUT IS NOT LIMITED TO, SEIZURE OR IMPOUNDMENT OF INFRINGING COPIES OF EQUIPMENT WHICH CAN BE USED TO MAKE INFRINGING COPIES OF BUSINESS RECORDS, AND OF DOCUMENTARY EVIDENCE IN ANY FORM, INCLUDING ELECTRONIC FORM.
- (c) PROVISIONAL MEASURES MAY BE ORDERED WITHOUT NOTICE TO THE OTHER PARTY WHEN THE COURT DETERMINES THAT DELAY IS LIKELY TO CAUSE IRREPARABLE HARM TO THE RIGHT HOLDER OR WHEN THERE IS A DEMONSTRABLE RISK OF EVIDENCE BEING DESTROYED OR WHEN THE COURT OTHERWISE DEEMS IT APPROPRIATE.
- (d) THE COURT MAY CONDITION THE AVAILABILITY OF PROVISIONAL MEASURES UNDER THIS SECTION UPON A SUFFICIENT SHOWING, BASED ON REASONABLY AVAILABLE EVIDENCE, THAT THE APPLICANTS RIGHTS HAVE BEEN OR ARE ABOUT TO BE INFRINGED, AND UPON SUBMISSION TO THE COURT OF A SUFFICIENT SECURITY TO PROTECT THE OTHER PARTY AND TO PREVENT ABUSE.
- (e) IF SO REQUESTED BY THE OTHER PARTY, THE PROVISIONAL MEASURES SHALL CEASE TO HAVE EFFECT IF PROCEEDINGS LEADING TO DECISION ON THE MERITS ARE NOT INITIATED BY OR ON BEHALF OF THE APPLICANT WITHIN 20 WORKING DAYS OR 31 CALENDAR DAYS FROM THE DATE OF IMPOSITION OF THE PROVISIONAL MEASURES, WHICHEVER IS LONGER, OR WITHIN SUCH OTHER REASONABLE PERIOD AS THE COURT MAY DETERMINE.

- (f) THE FOREGOING SHALL NOT PRECLUDE AN INDEPENDENT SUIT FOR RELIEF BY THE INJURED PARTY BY WAY OF DAMAGES, INJUNCTION, ACCOUNTS OR OTHERWISE.

Section 28. Section 217.3(b) and Section 217.3(c) are hereby amended to read as follows:

Sec. 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 infringing copy of the work for the purpose of:

X X X

- (b) Distributing, INCLUDING IMPORTING OR EXPORTING 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] EXHIBITING THE WORK in public, OR OTHERWISE USING THE ARTICLE IN A TRADE OR BUSINESS, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned.

X X X

Section 29. Section 218.1(c) is hereby amended to read as follows:

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:

X X X

- (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.

Section 30. There shall be two new sections to be added at the end of Section 220.2 to be known as Section 220A and 220B, to read as follows:

SECTION 220A DISCLOSURE OF INFORMATION

220A.1. WHERE ANY ARTICLE OR ITS PACKAGING OR AN IMPLEMENT FOR MAKING IT SEIZED OR DETAINED UNDER THIS ACT IS, OR IS REASONABLY SUSPECTED BY AN AUTHORIZED OFFICER TO BE IN VIOLATION OF THIS ACT, THE AUTHORIZED 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.

220A.2. IN THE CIRCUMSTANCES DESCRIBED IN THE PREVIOUS PARAGRAPH, AN AUTHORIZED OFFICER MAY DISCLOSE TO THE OWNER OF THE COPYRIGHT OR TO HIS AUTHORIZED AGENT THE FOLLOWING:

- (A) THE TIME, AND THE ADDRESS OR PLACE, OF SEIZURE OR DETENTION OF THE ARTICLE;
- (B) THE NAME AND ADDRESS OF THE PERSON FROM WHOM THE ARTICLE HAS BEEN SEIZED OR DETAINED;
- (C) THE NATURE AND QUANTITY OF ARTICLES SEIZED OR DETAINED;
- (D) ANY STATEMENT MADE TO AN AUTHORIZED OFFICER BY THE PERSON IN CONNECTION WITH THE SEIZURE OR DETENTION, EITHER WITH THE PRIOR CONSENT IN WRITING OF THAT PERSON OR WITHOUT SUCH CONSENT WHERE THE PERSON IS DEAD OR CANNOT AFTER REASONABLE ENQUIRIES BY AN AUTHORIZED OFFICER AS TO HIS WHERE-ABOUTS BE FOUND; AND
- (E) ANY OTHER INFORMATION OR DOCUMENT RELATING TO THE ARTICLE SEIZED OR DETAINED WHICH AN AUTHORIZED OFFICER DEEMS FIT TO DISCLOSE.

220A.3. THE OWNER OF THE COPYRIGHT OR HIS AUTHORIZED AGENT SEEKING DISCLOSURE OF ANY INFORMATION OR DOCUMENT THAT IS NOT REFERRED TO IN THE PREVIOUS PARAGRAPH OR THAT IS NOT DISCLOSED BY THE AUTHORIZED OFFICER MAY APPLY TO THE COURT FOR AN ORDER REQUIRING THE AUTHORIZED OFFICER TO DISCLOSE SUCH INFORMATION OR DOCUMENT AND THE COURT MAY ON SUCH AN APPLICATION MAKE SUCH ORDER FOR DISCLOSURE AS IT THINKS FIT.

SECTION 220B ACCEPTANCE OF PROPORTIONAL EXAMINATION OF ARTICLES SEIZED.

220B.1. WHERE PACKAGES, RECEPTACLES OR CONTAINERS CONTAINING COPIES OR IMPLEMENTS SUSPECTED OF VIOLATING THIS ACT ARE SEIZED OR DETAINED UNDER THIS ACT, IT SHALL BE SUFFICIENT ONLY TO OPEN AND EXAMINE ONE PERCENT OR ANY FIVE COPIES, WHICHEVER IS THE LESSER, OF THE CONTENTS OF EACH PACKAGE, RECEPTACLE OR CONTAINER SEIZED.

220B.2. WHERE PROCEDURES WERE CARRIED OUT IN ACCORDANCE WITH THE PREVIOUS PARAGRAPH THE COURT SHALL PRESUME THAT THE REMAINING COPIES CONTAINED IN THE PACKAGE OR RECEPTACLE ARE OF THE SAME NATURE AS THOSE COPIES EXAMINED.

Section 31. Chapter XVIII is hereby amended by adding a new Section at the end thereof to be known as Section 224A, to read as follows:

SECTION 224A PROTECTION OF EXISTING SUBJECT_MATTER:

(224A.1.) THE PROTECTION PROVIDED UNDER PART IV OF THIS ACT SHALL ALSO APPLY TO WORKS, SOUND RECORDINGS AND

PERFORMANCES FIXED IN SOUND RECORDINGS IN EXISTENCE UPON THE EFFECTIVITY OF THIS ACT, AND WHICH ARE THE SUBJECT OF INTERNATIONAL CONVENTIONS, TREATIES, OR AGREEMENTS TO WHICH THE PHILIPPINES IS A PARTY, **PROVIDED THAT:** ON SUCH DATE THE WORK, SOUND RECORDING, OR PERFORMANCE FIXED IN A SOUND RECORDING HAS NOT YET FALLEN INTO THE PUBLIC DOMAIN IN ITS COUNTRY OF ORIGIN OR IN THE PHILIPPINES THROUGH THE EXPIRY OF THE TERM OF PROTECTION WHICH WAS PREVIOUSLY GRANTED.

(224A.2.) COPIES OF WORKS, SOUND RECORDINGS AND PERFORMANCES FIXED IN SOUND RECORDINGS THAT ARE NEWLY PROTECTED SOLELY AS A RESULT OF THE APPLICATION OF THIS SECTION WHICH ARE IN EXISTENCE UPON THE EFFECTIVITY OF THIS ACT MAY BE SOLD OR OTHERWISE DISPOSED OF BY THE OWNER OF SUCH COPY UNTIL THE EXPIRATION OF THREE MONTHS FROM THE DATE OF EFFECTIVITY OF THIS ACT.

(224A.3.) NO OTHER EXERCISE OF EXCLUSIVE RIGHTS UNDER THIS ACT WITH RESPECT TO SUCH WORK, SOUND RECORDING, OR PERFORMANCE FIXED IN A SOUND RECORDING SHALL BE PERMITTED WITHOUT THE CONSENT OF THE AUTHOR OR OTHER RIGHTHOLDER OF SUCH WORK, SOUND RECORDING, OR PERFORMANCE FIXED IN A SOUND RECORDING.

Section 32. Section 226 of the same Act is hereby amended to read as follows:

Sec. 226. *Damages.* - No damages may be recovered under this Act IN ANY CASE INITIATED MORE THAN four (4) years from the time the cause of action arose.

Section 33. Part IV is hereby amended by adding a new Chapter at the end thereof to be known as Chapter XXI, to read as follows:

CHAPTER XXI. TECHNOLOGICAL PROTECTION MEASURES AND
RIGHTS MANAGEMENT INFORMATION

SECTION 229A TECHNOLOGICAL PROTECTION MEASURES

229A.1. ANY PERSON WHO DOES EITHER OF THE FOLLOWING SHALL BE GUILTY OF A CRIME, PUNISHABLE TO THE SAME EXTENT AS PROVIDED IN SECTION 217.1(B) OF THIS ACT FOR A FIRST OFFENSE, AND TO THE SAME EXTENT AS PROVIDED IN SECTION 217.1(C) FOR A SECOND OR SUB-SEQUENT OFFENSE, AND SHALL ALSO BE LIABLE UPON THE SUIT OF ANY INJURED PARTY, TO RELIEF BY WAY OF DAMAGES, INJUNCTION, IMPOUND-MENT, DESTRUCTION OR OTHERWISE, AND THE REMEDIES PROVIDED IN SECTION 216 SHALL APPLY, *MUTATIS MUTANDIS*, TO VIOLATIONS OF THIS SECTION:

- (a) KNOWINGLY, OR HAVING REASONABLE GROUNDS TO KNOW, CIRCUMVENTS WITHOUT AUTHORITY ANY EFFECTIVE TECHNOLOGICAL MEASURE; OR
- (b) MANUFACTURES, IMPORTS, EXPORTS, DISTRIBUTES, OFFERS TO THE PUBLIC, PROVIDES, OR OTHERWISE TRAFFICS IN DEVICES, PRODUCTS OR COMPONENTS OR OFFERS TO THE PUBLIC OR PROVIDES SERVICES, WHICH:
 - (i) ARE PROMOTED, ADVERTISED OR MARKETING FOR THE PURPOSE OF CIRCUMVENTION OF ANY EFFECTIVE TECHNOLOGICAL MEASURE; OR
 - (ii) HAVE ONLY A LIMITED COMMERCIAL SIGNIFICANT PURPOSE OR USE OTHER THAN TO CIRCUMVENT ANY EFFECTIVE TECHNOLOGICAL MEASURE; OR

- (iii) ARE PRIMARILY DESIGNED, PRODUCED, ADAPTED OR PERFORMED FOR THE PURPOSE OF ENABLING OR FACILITATING THE CIRCUMVENTION OF ANY EFFECTIVE TECHNOLOGICAL MEASURE.

229A.2. THIS SECTION PROHIBITS CIRCUMVENTION OF TECHNOLOGICAL MEASURES, AND DOES NOT REQUIRE AN AFFIRMATIVE RESPONSE TO SUCH MEASURES. THIS SECTION DOES NOT REQUIRE THAT THE DESIGN OF, OR THE DESIGN AND SELECTION OF PARTS AND COMPONENTS FOR A CONSUMER ELECTRONICS, TELECOMMUNICATIONS OR COMPUTING PRODUCT PROVIDE FOR A RESPONSE TO ANY PARTICULAR TECHNOLOGICAL MEASURE. THIS PARAGRAPH DOES NOT PROVIDE A DEFENSE TO A CLAIM OF VIOLATION OF PARAGRAPH (1)(B).

229A.3. A VIOLATION OF THIS SECTION IS INDEPENDENT OF ANY INFRINGEMENT THAT MIGHT OCCUR UNDER THIS ACT.

SECTION 229B INTEGRITY OF RIGHTS MANAGEMENT INFORMATION

ANY PERSON WHO DOES EITHER OF THE FOLLOWING SHALL BE GUILTY OF A CRIME, PUNISHABLE TO THE SAME EXTENT AS PROVIDED IN SECTION 217.1 OF THIS ACT, AND SHALL ALSO BE LIABLE UPON THE SUIT OF ANY INJURED PARTY, TO RELIEF BY WAY OF DAMAGES, INJUNCTION, IMPOUNDMENT, DESTRUCTION OR OTHERWISE, AND THE REMEDIES PROVIDED IN SECTION 216 SHALL APPLY, *MUTATIS MUTANDIS*, TO VIOLATIONS OF THIS SECTION:

- (a) KNOWINGLY AND WITHOUT AUTHORITY REMOVES OR ALTERS ANY ELECTRONIC RIGHTS MANAGEMENT INFORMATION FROM A COPY OF A WORK, SOUND RECORDING, OR FIXATION OF A PERFORMANCE, OR KNOWINGLY AND WITHOUT AUTHORITY DISTRIBUTES, IMPORTS FOR DISTRIBUTION, BROADCASTS,

COMMUNICATES OR MAKES AVAILABLE TO THE PUBLIC COPIES OF WORKS, SOUND RECORDINGS, OR FIXATIONS OF PERFORMANCES FROM WHICH ELECTRONIC RIGHTS MANAGEMENT INFORMATION HAS BEEN REMOVED; OR

- (b) ALTERS ELECTRONIC RIGHTS MANAGEMENT INFORMATION WITHOUT AUTHORITY, KNOWING OR (WITH RESPECT TO CIVIL REMEDIES) HAVING REASONABLE GROUNDS TO KNOW THAT SUCH ACTIVITY WILL ENABLE OR FACILITATE AN INFRINGEMENT OF ANY RIGHT PROTECTED UNDER THIS LAW.

Section 34. All laws, decrees, executive orders, issuances or regulations inconsistent with the provisions of this Act are hereby revised or amended accordingly.

Section 35. If any part of this law is declared unconstitutional or invalid, such parts or provisions thereof not so declared shall remain valid and subsisting.

Section 36. This Act shall take effect fifteen (15) days from publication in two (2) newspapers of general circulation in the country.

Approved,