

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

13th Congress
3rd Regular Session

House Bill No. 6102



Introduced by Representative Simeon L. Kintanar

EXPLANATORY NOTE

This bill seeks to grant to the National Telecommunications Commission (NTC) or its successor agency, the power of jurisdiction and regulation over all foreign programmers with regards to the manner, rates, terms and conditions by which they provide audio-visual content to the consuming public particularly through cable TV operators. Likewise, the NTC or its successor agency shall have similar powers with regards to resolving any and all disputes between foreign programmers and cable TV operators.

The 1987 Constitution codifies the sovereign will and recognizes the essential rights to be enjoyed by the people. In particular, much stress has been given to the rights of the people to information and education, both of which go hand in hand in attaining the aims which the 1987 Constitution highlights. Two of these aims are namely, the progress and development of our economy and the preservation and enrichment of our culture. To ensure enjoyment of the said rights and the attainment of the stated aims, ownership requirements have been imposed on relevant industries, that is, a 60% Filipino ownership requirement on entities engaged in the telecommunications industry and a 100% Filipino ownership requirement on entities engaged in the mass media industry.

However, due to the advancements in technology and increased complexity of society and the practices in the relevant industries, the Filipino ownership requirement on its own has not proven to be flexible nor broad enough to implement the mandate of the 1987 Constitution. The reality is that a substantial percentage of the mass media content disseminated throughout the country come from foreign entities. This is markedly so with regards to the audio-visual content provided by foreign programmers to cable TV operators. As the cable TV industry is a mass media industry that has considerable effect and influence on the consuming public's mindset, perspective and even mood and behavior, government intervention must be present. Likewise, the entry of audio-visual content from foreign programmers also gives rise to intellectual property issues which require the attention of our government. It is thus

time for these matters to be addressed head on in order that any and all actual and possible deleterious effects are arrested and prevented.

There is a need therefore, to regulate the manner, rates, terms and conditions by which foreign programmers provide audio-visual content to the consuming public particularly through cable TV operators. It is thus the State's responsibility to guarantee the rights to information and education of the consuming public, through guaranteeing the rights of cable TV operators to have and maintain nondiscriminatory access to appropriate and desirable audio-visual content that foreign programmers can provide under the framework of transparent, just and fair play, in order for the full attainment of the progress and development of our economy and the preservation and enrichment of our culture.

Hence, the immediate passage of this bill is earnestly sought.



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AN ACT
REGULATING THE PROVISION OF AUDIO-VISUAL CONTENT BY
FOREIGN PROGRAMMERS AND DESIGNATING THE NTC AS THE
APPROPRIATE REGULATING BODY

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

PART I. GENERAL PROVISIONS

Section 1. Title - This Act shall be known as the “Foreign Programmers’ Regulation Act of 2006.”

Section 2. Declaration of Policy -It is the declared policy of the State to regulate the manner, rates, terms and conditions by which foreign programmers provide audio-visual content services to the consuming public particularly through cable TV operators. It is thus the State’s responsibility to guarantee the rights to information and education of the consuming public, through guaranteeing the rights of cable TV operators to have and maintain nondiscriminatory access to appropriate and desirable audio-visual content that foreign programmers can provide under the framework of transparent, just and fair play, in order for the full attainment of the progress and development of our economy and the preservation and enrichment of our culture.

Section 3. Construction and Interpretation - The provisions of this Act shall be liberally construed in order to carry out the declared policy of the State.

1 **Section 4. Definition of Terms –**

2
3 **a. Foreign Programmers**

4 “Foreign Programmers” connote entities that provide audio-visual content
5 and have their headquarters outside the territory of the Philippines.
6

7 **b. Cable TV Operators**

8 “Cable TV Operators” connote domestic entities which provide audio-
9 visual content directly to the consuming public through the use of cable wires and
10 systems.
11

12 **c. Audio-Visual Content**

13 “Audio-Visual Content” connote assemblages of sounds and images,
14 meant to be heard and seen by the consuming public usually for the purpose of
15 entertaining and/or educating them, sent to cable TV operators for dissemination
16 through CATV systems.
17

18 **d. Consuming Public**

19 “Consuming Public” connote the end users of the audio-visual content,
20 usually the subscribers of the cable TV operators.
21

22 **e. Channels**

23 “Channels” connote labels referring to specific regions of the frequency
24 spectrum which carry particular audio-visual content and serve to separate them
25 from other audio-visual content.
26

27 **f. Headquarters**

28 “Headquarters” connote the premises where majority of the top executives
29 of the foreign programmer regularly hold office.
30

31 **g. Interested Parties**

32 “Interested Parties” connote parties who are to be directly affected by the
33 implementation of the provisions of this Act.
34

35 **PART II. TERMS AND CONDITIONS**

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37 **Section 5. Scope of Application** - The provisions of this Act shall be applicable to all
38 parties situated within the territory of the Philippines. In addition, the provisions of this
39 Act shall also apply to the following:
40

- 41 a. Foreign programmers who provide audio-visual content to cable TV operators
42 who cater to the consuming public;
43 b. Foreign programmers who provide direct delivery of audio-visual content to the
44 consuming public, and;
45 c. Foreign programmers who employ schemes and machinations designed to
46 circumvent the provisions of this Act.

1 **Section 6. Direct Delivery of Audio-Visual Content** - Where a foreign programmer
2 engages in direct delivery of audio-visual content to the consuming public and yet fails to
3 meet the 100% Filipino ownership requirement, it shall be enjoined from delivering
4 audio-visual content into the country.

5
6 **Section 7. Circumvention of the Provisions of this Act** - Where a foreign programmer
7 employs schemes and machinations designed to circumvent the provisions of this Act, it
8 shall be enjoined from delivering audio-visual content to the consuming public and shall
9 be subject to all applicable fines and penalties.

10
11 **Section 8. Right to Nondiscriminatory Access** - All foreign programmers are
12 required to provide, on a nondiscriminatory basis, any channel it carries whenever such is
13 requested by any cable TV operator, provided that the latter is able and willing to pay the
14 prescribed fair and reasonable rate.

15
16 Notwithstanding the above provision, any foreign programmer may refuse to
17 provide, on a nondiscriminatory basis, any channel it carries whenever it is due to
18 technical constraints as verified by the regulating body.

19
20 **Section 9. Right of First Refusal** - Once a foreign programmer refuses to provide to a
21 cable TV operator a particular channel it carries, it is bound to refuse to provide that
22 particular channel to other cable TV operators. If the foreign programmer wants to offer
23 that particular channel to other cable TV operators, it must offer it first to the cable TV
24 operator it earlier refused.

25
26 **Section 10. Right to a Fair and Reasonable Rate** - Both the foreign programmer and
27 the cable TV operator have a right to a fair and reasonable rate for the delivery of audio-
28 visual content. The fair and reasonable rate shall only be prescribed by the regulating
29 body after due hearing with the interested parties.

30
31 **Section 11. Right to Provide Audio-Visual Content** - All foreign programmers
32 shall have the right to provide audio-visual content to any and all cable TV operators,
33 provided the said foreign programmer conforms to the provisions of this Act and secures
34 a written authorization from the regulating body.

35 36 37 **PART III. REGULATING BODY**

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39 **Section 12. Regulating Body** - The National Telecommunications Commission (NTC)
40 or its successor agency is hereby designated as the appropriate regulating body. As the
41 regulating body, it has the power of jurisdiction and regulation over all foreign
42 programmers with regards to the manner, rates, terms and conditions by which they
43 provide audio-visual content to the consuming public particularly through cable TV
44 operators. Likewise, the regulating body shall have similar powers with regards to
45 resolving any and all disputes between foreign programmers and cable TV operators.
46

Section 13. Powers, Duties and Functions - Pursuant to the provisions of this Act, the NTC or its successor agency as the regulating body shall have the following powers, duties and functions:

- a. To authorize or reject and thus enjoin the delivery into the country of audio-visual content by foreign programmers and to provide for a procedure for such;
- b. To promulgate technical standards regarding the delivery into the country of audio-visual content by foreign programmers;
- c. To promulgate the rules, regulations and procedures to be imposed by the regulating body and the applicable fines for the violation of such;
- d. To determine the appropriate data that the foreign programmers shall be required to submit and to prescribe the manner of the submission of such;
- e. To determine and prescribe the applicable fair and reasonable rate for the delivery of audio-visual content into the country by foreign programmers;
- f. To have original and exclusive jurisdiction over any and all disputes between foreign programmers and cable TV operators, and;
- g. To perform such other powers and functions necessary to carry out the provisions of this Act.
- h. To recognize a 3rd Party Accounting Authority to interface with Industry on the submission and declaration of subscriber base of each and every CATV or content services provider.

Section 14. Timetable - The NTC or its successor agency as the regulating body shall, within two (2) months of the effectivity of this Act, set a timetable for the submission of position papers by interested parties for hearing and due deliberation so as to facilitate the discharge of its powers, duties and functions as provided by the provisions of this Act, particularly the previous Section.

The determination and public dissemination of the technical standards, rules, regulations, procedures, standards and specifications that the previous section requires shall be made within a year of the effectivity of this Act.

Likewise, the issuance of written authorizations for the foreign programmers shall be made within a year of the effectivity of this Act, save for exceptional circumstances. Where the issuance of a written authorization of a foreign programmer is pending, it may continue to deliver audio-visual content into the country until rejected and/or enjoined.

IV. FINES AND PENALTIES

Section 15. Violating the Provisions of this Act - Any party that is proven to have violated the provisions of this Act, such as but not limited to failure after due notice to submit the required data on the due dates and delivery of audio-visual content into the country without the written authorization of the regulating body, shall be assessed a fine

1 that is not less than ten thousand Pesos (P10,000.00) but in no case be more than fifty
2 million Pesos (P50,000,000.00).

3
4 **Section 16. Employing Schemes and Machinations for Circumvention** - Any party
5 that is proven to have employed a scheme or machination designed to circumvent the
6 provisions of this Act shall be assessed, in addition to the fine applicable under the
7 previous section, a fine that is not less than five thousand Pesos (P5,000.00) but in no
8 case be more than twenty million Pesos (P20,000,000.00).

9
10 **Section 17. Revocation of the Written Authorization** - Any party that is proven to have
11 violated the provisions of this act for three times in a span of five years shall have its
12 written authorization from the regulating body revoked.

13
14 **Section 18. Refusal of Jurisdiction** - Any party that is fined and/or penalized pursuant to
15 the provisions of this Act and refuses to and/or is unable to pay and/or rejects the
16 jurisdiction of the regulating body, shall be enjoined from providing audio-visual content
17 into the country. In addition, the unpaid fine shall serve as a lien against any award by
18 virtue of any judgment of any judicial or quasi-judicial court in the country that the said
19 party is entitled to.

20 21 **PART V. FINAL PROVISIONS**

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23 **Section 19. Appropriations** - The amount necessary for the implementation of this Act
24 shall be included in the General Appropriations Act of the year following its enactment
25 into law and thereafter.

26
27 **Section 20. Transitory Provision** - Contracts and acts of parties executed before the
28 effectivity of this Act shall be governed by the laws in force at the time of their
29 execution, except that any revocation, modification, novation or new contracts and acts
30 made after the effectivity of this Act shall be subject to the provisions of this new body of
31 laws.

32
33 **Section 21. Separability Clause** - If any provision of this Act is held invalid, all other
34 provisions not affected thereby shall remain valid.

35
36 **Section 22. Repealing Clause** - All laws, Presidential Decrees, Executive orders, rules
37 and regulations or any other issuances or parts thereof inconsistent with this Act are
38 hereby repealed or amended accordingly.

39
40 **Section 23. Effectivity** - This Act shall take effect fifteen (15) days from the date of its
41 publication in at least two (2) newspapers of general circulation.

42
43 **Approved**
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