

FIFTEENTH CONGRESS OF THE REPUBLIC OF THE PHILIPPINES
HOUSE OF REPRESENTATIVES
H.B. No. 5307



**INTRODUCED BY THE HONORABLE ANGELO PALMONES
AND HONORABLE BEN P. EVARDONE**

**AN ACT FOR THE PROTECTION OF THE RIGHTS OF BROADCASTING
ORGANIZATIONS AND FOR OTHER PURPOSES**

Explanatory Note

The State recognizes the "vital role of communication and information in nation-building". To this end the State shall protect the rights of organizations that provide information to the public such as broadcasting organizations. The 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations seeks to provide protection of broadcasting organizations against certain acts such as the "broadcasting and the communication to the public of their live performances, the fixation of live performances, reproduction of such fixation if this was not originally consented to or if the reproduction is made for purposes other than those for which they made their consent". This protection reflects the technical, regulatory and competitive situation of 1961. It is totally inadequate today.

Today, we see a multiplicity of new broadcasters and specialist program channels, some local, some national and some transnational or trans-border in character. Their sources of funding are also diverse; ownership structures are often complex; but the fact that a particular local broadcaster may have as its ultimate owner a large international player makes no difference to the common obligation for all broadcasters to provide services that satisfy their own viewers and listeners, to generate income in order to finance these services and to invest in content/infrastructure according to objectives set at the local level and a business plan specific to their own particular market.

Technological developments over the last decades have increasingly exposed broadcasting organizations to misappropriation of their signals both within and, in particular, across borders. Their daily program output must be planned, produced and/or acquired, scheduled and transmitted. The infrastructure resulting in the ability of the general public to receive broadcasters' program-carrying signals requires major technical, organizational and financial investment by broadcasters. In today's competitive world, broadcasters have demonstrated how they need as never before to have proper means to protect and build on this investment, enabling them to decide when and how they wish to authorize or prohibit use by others of their signals in upstream or downstream markets.

Continued provision by broadcasters of programming to ensure a content-rich Information Society, including information for the general public on facts and events from all spheres of public life, is endangered as long as protection of signals is insufficient.

The protection granted under this Act shall cover the transmission of signals by the beneficiaries and to pre-broadcast transmissions intended for them.

Approved



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Lone District, Eastern Samar

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

SECTION 1. Title. This Act shall be known as the **Broadcasting Organizations Rights Act of 2011.**

SECTION 2. Declaration of Policy. Section 24 of the 1987 Constitution recognizes the vital role of communication and information in nation building. As such the State shall protect and secure the exclusive rights of broadcasting organizations to the transmission of their signals.

CHAPTER I - GENERAL PROVISIONS

SECTION 3. Definition of Terms.

- (a) "broadcasting" means the transmission of radio or television program for reception by the public, based on a program schedule; all such transmissions are to be regarded as broadcasting whether the means of transmission is by satellite, wire or wireless, and whether encrypted or not as long as the means of decrypting the transmission are made available by the broadcasting organization or with its consent;
- (b) "broadcasting organization" means the legal entity which takes the initiative for the assembly, and arrangement of the transmission, of the program output in accordance with its program schedule, assuming the liability of acquiring the requisite rights in its program, informing the public of its program schedule, taking editorial responsibility for the communication to the public of everything which is included in its program output;

- (c) "program schedule" means a compilation of information, intended to be communicated to the public, about the content of each of the broadcasting organization's services, identified by a broadcast channel name or other service indicator, and about the times of the program transmission, its duration or its period of availability for viewing or listening by the public;
- (d) "program" means a separately identifiable item of a program schedule, which is intended to be transmitted by that broadcasting organisation, on whatever medium or platform, irrespective of the ownership of any underlying rights in the content of such programme;
- (e) "transmission" means the sending, for reception by the public, of visual images, sounds or their representations by way of an electronic carrier;
- (f) "pre-broadcast transmission" means a third party's private transmission to a broadcasting organization of a program, or a part thereof, which that broadcasting organization intends to include in its program schedule;
- (g) "performance in public" of a program means the use by a third party of a program in premises or places open to the public;
- (h) "retransmission" means the simultaneous transmission of a program, by any means, by a third party for reception by the public.

CHAPTER II – SCOPE OF APPLICATION

SECTION 4. Scope of Application- This Act shall have the following coverage:

- (a) The protection granted under this Act extends only to the transmission of programs by the beneficiaries of the protection of this Act and to pre-broadcast transmissions intended for them, and not to works and other protected subject matter carried by such transmissions nor to any material in the public domain.
- (b) The protection afforded by this Act shall apply both in relation to the visual and sound elements of programs, whether or not these elements are broadcast separately.
- (c) The object of protection under the provisions of this Act shall not include mere retransmissions.
- (d) The simultaneous and unchanged transmission of its programs over computer networks by a broadcasting organization is to be regarded as if it were broadcasting, and is afforded the same protection under this Act.
- (e) The protection under this Act extends to any transmission of radio or television programs over computer networks for reception by the public based on a program schedule.

CHAPTER III - RIGHTS OF BROADCASTING ORGANIZATIONS

SECTION 5. Specific Rights of Broadcasting Organizations. It shall be unlawful for organizations, individuals or groups of individuals, to undertake the following without authorization of the broadcasting organizations:

a) Right of Retransmission

Broadcasting organizations shall enjoy the exclusive right of authorizing the retransmission of their broadcasts by any means, including rebroadcasting, retransmission by wire, and retransmission over computer networks.

b) Right of Communication to the Public

Broadcasting organizations shall enjoy the exclusive right of authorizing the communication to the public of their broadcasts, if such communication is made in places accessible to the public against payment of an entrance fee.

c) Right of Fixation

Broadcasting organizations shall enjoy the exclusive right of authorizing the fixation of their broadcasts.

d) Right of Reproduction

Broadcasting organizations shall enjoy the exclusive right of authorizing the direct or indirect reproduction, in any manner or form, of fixations of their broadcasts.

e) Right of Distribution

Broadcasting organizations shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of fixations of their broadcasts, through sale or other transfer of ownership.

f) Right of Transmission Following Fixation

Broadcasting organizations shall have the exclusive right of authorizing the transmission by any means for the reception by the public of their broadcasts following fixation of such broadcasts.

g) Right of Making Available of Fixed Broadcasts

Broadcasting organizations shall enjoy the exclusive right of authorizing the making available to the public of their broadcasts from fixations, by wire or wireless means, in

such a way that members of the public may access them from a place and at a time individually chosen by them.

h) Protection in Relation to Signals Prior to Broadcasting

Broadcasting organizations shall enjoy adequate and effective legal protection against any acts referred to in paragraphs a) to h) of Section 5 of this Act in relation to their signals prior to broadcasting.

SECTION 6. Exceptions of Rights. Notwithstanding the provisions of Section 5, the following acts are permitted without the authorization of the broadcasting organizations and without payment of any remuneration:

- (a) private use;
- (b) short excerpts used in connection with the reporting of current events;
- (c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;
- (d) use only for the purposes of teaching or scientific research;
- (e) use with the sole objective of making the broadcast accessible to disabled persons;
- (f) use by publicly accessible libraries or museums, or by archive services, which do not seek to obtain economic or commercial benefit.

ARTICLE IV – PROTECTION OF RIGHTS

SECTION 7. Term of Protection. The term of protection granted to broadcasting organizations under this Act shall last, at least, until the end of a period of 50 years computed from the end of the year in which the broadcast took place.

SECTION 8. Technological Protection Measures. Broadcasting organizations are hereby provided with adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by broadcasting organizations in connection with the exercise of their rights under this Act and that restrict acts, in respect of their broadcasts, that are not authorized by the broadcasting organizations concerned or are not permitted by law. Provided, that the circumvention of an imposed effective technological measure, used by a broadcasting organization, to obtain access to a broadcast for the purpose of non-infringing use of that broadcast shall not constitute an infringement of the measures implemented by virtue of this section.

In particular, broadcasting shall be entitled to effective legal remedies against those who:

- (i) decrypt an encrypted program-carrying signal;
- (ii) receive and distribute or communicate to the public an encrypted program-carrying signal that has been decrypted without the express authorization of the broadcasting organization that emitted it;
- (iii) participate in the manufacture, importation, sale or any other act that makes available a device or system capable of decrypting or helping to decrypt an encrypted program-carrying signal.

CHAPTER V – RIGHTS MANAGEMENT INFORMATION

SECTION 9. Rights Management Information. Broadcasting organizations are hereby provided with adequate and effective legal remedies against any person knowingly performing any of the following acts, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Act:

- (i) to remove or alter any electronic rights management information without authority;
- (ii) to distribute or import for distribution fixations of broadcasts, to retransmit or communicate to the public broadcasts, or to transmit or make available to the public fixed broadcasts, without authority, knowing that electronic rights management information has been without authority removed from or altered in the broadcast or the signal prior to broadcast.

As used in this Section, “rights management information” means information which identifies the broadcasting organization, the broadcast, the owner of any right in the broadcast, or information about the terms and conditions of use of the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with (1) the broadcast or the signal prior to broadcast, (2) the retransmission, (3) transmission following fixation of the broadcast, (4) the making available of a fixed broadcast, or (5) a copy of a fixed broadcast.

CHAPTER III – PENAL AND MISCELLANEOUS PROVISIONS

SECTION 10. Penal Provisions. The penalty for the violations of the rights of broadcast organizations defined in Section 5 of this Act shall be imprisonment for 5-7 years or a fine ranging from Four Hundred to Five Hundred Thousand Pesos (PhP 400,000 to PhP 500,000) or both at the discretion of the court.

SECTION 11. Implementing rules and regulations – The Intellectual Property Office (IPO) shall issue within 90 days from the date of approval of this Act, the implementing rules and regulations for this Act.

SECTION 12. Separability clause - Any portion or provision of this Act which may be declared unconstitutional or invalid shall not have the effect of nullifying other portions or provisions hereof.

SECTION 13. Repealing Clause. - All other laws, ordinances, rules, regulations, and other issuances or parts thereof, which are inconsistent with this Act, are hereby repealed or modified accordingly.

SECTION 14. Effectivity Clause - This Act shall take effect immediately after its publication in two (2) Newspapers of general circulation.

Approved.