

# THE PHILIPPINES

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2012 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that the Philippines be on the Watch List.<sup>1</sup>

**Executive Summary:** IIPA members continue to express concerns about piracy in the Philippines, but note positive developments in the past couple of years which seem to indicate the situation may be improving. Passage of the Copyright Bill should be a top priority in 2012, with implementing rules to follow to address remaining concerns including those raised in this filing. The issuance in October 2011 of new Supreme Court Rules of Procedure for Intellectual Property Cases holds promise for more and speedier civil and criminal trials and a possible resolution of the longstanding warrant “quashal” issue. It is hoped that the IP Office’s resolve and creative approaches to reducing street and mall piracy will continue to bear fruit in 2012, and their attention to Customs to address import piracy seems the right approach. The strategies being employed to reduce mall piracy have already led to closure of pirate traders in the Quiapo district, an extremely positive sign. The passage of the anti-camcording law in 2010 saw a reduction in detections of illegal camcording of major motion pictures from twenty in 2010 to only one in 2011, but to our knowledge there remain no judicial outcomes under the new law. It is important that the Philippine Government, with the new leadership at both the IP Office of the Philippines and the Optical Media Board (OMB), and the Philippine Anti-Piracy Team (PAPT) including Philippine National Police (PNP) and National Bureau of Investigation (NBI),<sup>2</sup> all mobilize to deal more effectively with end-user piracy of business software, book piracy (textbook copying and pirate or counterfeit bestsellers), Internet piracy (including notorious site *Kat.ph* and any others identified), and that it addresses emerging issues such as mobile device piracy.

## PRIORITY ACTIONS REQUESTED IN 2012

### Enforcement

- Implement new Rules of Procedure for Intellectual Property Cases to provide for speedier and more effective civil and criminal pre-trial procedures and trials, and resolution of the warrant “quashal” issue.
- Ensure effective action against online and mobile device infringements, and enhance anti-piracy enforcement work carried out by OMB by including mobile device piracy within its purview.
- Increase the budget of the OMB so it can conduct, in conjunction with the PNP, nationwide enforcement efforts.
- Bring deterrent criminal cases under the Anti-Camcording Act of 2010.
- Remedy enforcement bottlenecks, including inquests and preliminary investigations by prosecutors with the Department of Justice, including by streamlining signing procedures.
- Ensure that both the Department of Education and the Commission on Higher Education take an active role to ensure the use of legitimate copyright materials at colleges and universities.

### Legislation

- Enact amendments to the IP Code (including a landlord liability provision) already passed by the House, addressing concerns raised in this filing, whether in the legislation or through implementing rules.
- Enhance the E-Commerce Act to facilitate removal of infringing material or services from the Internet through an effective notice and takedown system, which establishes Internet service provider (ISP) responsibility and fosters ISP cooperation.
- Include CD-R burning and border enforcement in OMB’s purview under the Optical Media Act.

<sup>1</sup>For more details on the Philippines’ Special 301 history, see Additional Appendix available at <http://www.iipa.com/pdf/2012SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years’ reports at <http://www.iipa.com/countryreports.html>.

<sup>2</sup>Specifically, IIPA members work with the Philippine National Police (PNP), the National Bureau of Investigations (NBI) (and its Intellectual Property Rights Department (IPRD)), and the Optical Media Board (OMB) (which continues to run raids on an *ex officio* basis but remains inadequately funded).



- Implement Republic Act 9184,<sup>3</sup> such that the government will not permit the purchasing of illegal software, and will allow only suppliers of legitimate software to participate in government bidding.

### Training

- The U.S. and the Philippines should effectuate a “judge swap” whereby a U.S. judge familiar with copyright cases would swap places with one of the Philippine judges for a period of time (e.g., one year) to have a direct consultancy approach to the workings of the new IP Commercial Courts.

## PIRACY AND ENFORCEMENT UPDATES IN THE PHILIPPINES

Previous IIPA submissions have documented the physical piracy issues remaining in the Philippines (including mall piracy, street stall piracy, textbook and trade book piracy, and end-user piracy of business software), as well as emerging issues such as Internet piracy, illegal camcording of movies, and mobile device piracy. Enforcement by the OMB and PAPT in the past have led to significant seizures, and these continued in 2011 (with greater cooperation and participation with right holders, consistent with IIPA’s previous recommendations). With very little chance of deterrent outcomes in the courts, however, piracy remained pervasive. The following provides updates on the piracy and enforcement situation in the Philippines, and reports on initiatives taken by the Philippine Government and industry to address piracy concerns.

**Issuance of New Supreme Court Rules of Procedure for Intellectual Property Cases:** The issuance in October 2011 of the Supreme Court of the Philippines Rules of Procedure for Intellectual Property Cases, (A.M. No. 10-3-10-SC, En Banc) (effective November 8, 2011) holds the promise of more and speedier civil and criminal trials, since the time limits imposed by the Rules dictate case closure within about half a year, provide for civil and criminal search and seizure orders, confirm strong presumptions of subsistence and ownership, and address other evidentiary issues that have been and remain of concern. While they do not resolve entirely the warrant quashal issue that has plagued right holders over the years, the Rules may help since warrants will be granted by the new Commercial Courts (with specialized IP expertise), not by the “Executive Judge” of the local trial court, which in the past led to many of the quashals.<sup>4</sup> The Rules for the most part appear to strengthen the hand of right holders and make court processes speedier and smoother with respect to copyright cases,<sup>5</sup> but only time will tell if the Rules as implemented truly result in a more effective judicial remedy.

<sup>3</sup>Republic Act 9184 (An Act Providing For The Modernization And Regulation Of The Procurement Activities Of The Government And For Other Purposes).

<sup>4</sup>One of the most problematic aspects of the Philippine court system has been the challenges by defendants and quashals of warrants based on the argument (or a variation) that the police officer obtaining the warrant based on probable cause did not personally witness the infringement taking place. A line of decisions beginning with *Solid Laguna (Sony Music Entertainment (Phils), et al v. Hon. Judge Dolores Español et al* (G.R. No 156804, March 14, 2005), *Telmarc Cable (Telmarc Cable v. Hon. Antonio M. Eugenio, Jr., CA-G.R. SP. No. 96767 May 31, 2007)*, and *Powermac Centre Company* (2008), all undermined the Supreme Court’s decision in the *Columbia* case, which held that “testimonial or documentary evidence, depositions, admissions or other classes of evidence tending to prove the *factum probandum*” is sufficient for issuance of a warrant, “especially where the production in court of object evidence would result in delay, inconvenience or expenses out of proportion to its evidentiary value.” The downward turn continued in 2010 with the *New Fields*, *Tyger 828*, *The X-Habit*, and *Global Team Space* cases. In the *New Fields* case, on May 20, 2010, the PNP was able to secure search warrants, served on May 24, 2010, resulting in the confiscation of 83 computers loaded with unauthorized and unlicensed software, including 17 counterfeit CD installers of various software titles. The defendant petitioned to quash the warrant, and on July 8, 2010, local BSA counsel received a copy of the Order of the trial court dated June 29, 2010 in which the court directed the “immediate” return of the seized items to the defendant, and despite motions filed to stay the execution of that order, the local sheriff returned the 83 computers to the defendant the same day (mediation with the defendant has concluded without settlement and the case is currently on appeal). On April 5, 2010, NBI served search warrants on two sister companies, *Tyger828 Phils., Inc.* and *The X-Habit, Inc.* for alleged unlicensed use of software, resulting in the confiscation of 26 computers loaded with unauthorized and unlicensed software. The defendants filed a Motion to Quash the search warrants. Without hearing, on August 27, 2010, local counsel was informed by the NBI that the Motion to Quash was granted (by the same *New Fields* judge), although they were not notified by the court until September 1, 2010, citing “lack of board authorizations” authorizing the search warrants. The case is ongoing with a Motion for Reconsideration of the quashals that, to date, has not yet been resolved by the court. On November 5, 2009, the NBI served search warrants on *Global Team Space* in which a total of 50 computers loaded with unauthorized and unlicensed software programs. Following the tactic employed in the *New Fields*, *Tyger 828*, and *The X-Habit* cases, *Global Team Space* filed a Motion to Quash before the same court which quashed the search warrants in those cases, and on October 27, 2010, the same court granted the motion to quash and ordered the return of all seized items, which again was immediately carried out by the Sheriff, despite the timely filing of a Motion for Reconsideration. These are just the latest examples in a litany of cases in which search warrants for blatant piracy have been quashed and pirate goods (and materials and implements used in piracy) have been returned to defendants. This line of cases calls into question whether a search warrant is “available” as required under the TRIPS Agreement.

<sup>5</sup>The following are some highlights of the Supreme Court of the Philippines Rules of Procedure for Intellectual Property Cases, (A.M. No. 10-3-10-SC, En Banc) (effective November 8, 2011) with a few additional questions:

Up until the issuance of the new Rules, there had only been five criminal convictions under the Copyright Act (and three under the Optical Disc Act) (we have provided the case list in previous submissions). To our knowledge there were no criminal convictions in 2011 for copyright piracy. The largest criminal fine ever imposed in the Philippines for copyright piracy was a modest P200,000 (approximately US\$4,300), and in only two known cases did the penalty include imprisonment (in each case, one year, although the defendant in one case absconded and remains at large). Problems begin at the criminal inquest procedure at the Department of Justice and do not cease through to the criminal trial. Right holder inquests and preliminary investigations by the Department of Justice have often been delayed by purely bureaucratic signing procedures, as the Chief Prosecutor must sign off on every resolution issued by all prosecutors. There has also been little assistance by prosecutors in putting together evidence, obtaining witness testimony, and obtaining business records. Past trials have taken years, leading to many additional problems.<sup>6</sup> It is hoped the new Rules will help resolve these longstanding deficiencies in the judicial system. The regular civil court system remains backlogged and extremely slow (an estimated 7,000 civil cases are presently backlogged at the Supreme Court). To assist with a strong implementation of the Rules, we suggest that a “judge swap” occur between the U.S. and the Philippines. In addition, training for prosecutors on techniques in copyright cases should occur.

**Closure of Quiapo and Effect on Street and Mall Piracy:** IIPA was heartened to hear that a new, apparently more effective, policy toward street and mall piracy took hold in the Philippines in 2011. The closure of the market (and distribution hub) in the Quiapo district of Metro Manila rippled throughout the community.<sup>7</sup> It demonstrates that with a credible threat of enforcement, piracy can be reduced. OMB and the Mayor of Manila should be commended for these unprecedented enforcement actions. Other city/district leaders in Metro Manila have indicated they would like to follow the example,<sup>8</sup> and, in conjunction with the OMB, are in the process of implementing plans to clean up the streets of physical piracy. The closure of Quiapo, attempts to turn pirate vendors away from illegal businesses and legalize their businesses (e.g., toward the sale of legitimate locally-produced cultural products), and the IP Philippines’ approach toward mall owners, represent a fresh approach to the piracy problem in the Philippines.

Notwithstanding these positive recent developments, physical piracy continues to be the main problem in the Philippines, evident in Metro Manila, Cebu (in the Visayas group of Islands), Davao (in Mindanao), and Baguio (in Luzon). Hard goods piracy still consists of pirated CDs, DVDs, CD-Rs, CD-ROMs, and DVD-Rs. Music and movies remain prevalent, with a noted decrease in pirated business software. An estimated 80% are imported into the Philippines, mainly from China, according to the IP Office of the Philippines, although industry reports a significant

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- The Rules place searches, seizures, warrantless arrest, pre-trial, trial, and provisional measures such as destruction of pirated materials, in the hands of these commercial courts.
  - The Rules set time limits for all aspects of an IP case from pre-trial (except “court-annexed mediation” for the civil portion of the criminal claim which appears to have no time limit) to trial, with 30 days for pre-trial, then possible judgment (if no issues for trial remain) within 30 days, or, if there are issues, trial, which apparently may last no longer than 150 days.
  - Rule 10, Section 2 provides that the Special IP Commercial Courts have purview over criminal searches and seizures, taking them out of the hands of the “Executive Judge” which we understand may have been the cause of previous quashals. The criminal complaint must then be filed 60 days from issuance of the Order.
  - Rule 11, Section 4 leaves consideration of motions “to quash a search warrant or to suppress evidence obtained thereby or to release seized goods” in the hands of the trial court.
  - Rule 16, Section 1 confirms that copyright infringement is subject to strict liability. Rule 16, Section 2 still requires consularization of copyright registration certificates, although Rule 19, Section 1 provides a strong presumption of subsistence and ownership, which can only be rebutted by “evidence” to the contrary (not merely placing subsistence or ownership into issue). Rule 19 confirms that registration is not a condition to “a claim of copyright infringement.”
  - While Rule 20 provides for destruction of infringing materials, labels, etc, it does not include machinery (materials and implements) used in the infringement which appears to be a drawback.

<sup>6</sup>Cases listed for trial proceed on non-consecutive days with multiple adjournments of several months at a time. For example, a ten-day trial with three-month adjournments would typically take at least two and a half years to conclude. During the extended trial period, many problems often arise, including the transfer of prosecutors and judges; the use of delay tactics by defendants’ counsel challenging search warrants or seeking further delays due to technicalities; and even the disappearance of key witnesses, the defendants themselves (the PNP have shown no sustained inclination or interest in searching for defendants), or key evidence needed to properly adjudicate the case. Challenges by defendants’ counsel (even those without merit) usually result in automatic consideration, leading to further months of delay before such technicalities are adjudicated.

<sup>7</sup>The Quiapo market was cited for a couple of years by IIPA in its filings on “notorious markets,” and recognized in turn by the U.S. Trade Representative.

<sup>8</sup>Cities in Metro Manila having the most piracy problems are Manila, Quezon City, Muntinlupa, and Pasay.

amount of CD-R and DVD-R burning (to order) continues to take place. The Optical Media Board reported that from January to October 2011, they seized roughly 8,500 “sacks” of pirated DVDs and other pirated CDs (CD-Rs, C-ROMs, etc.), with an estimated value of P1.16 billion (almost US\$37.5 million). Such sustained raiding by OMB (and police)<sup>9</sup> has led many who had permanent kiosks and stalls to close their permanent stalls and instead sell on foot or set up makeshift tables that can be folded down easily in the event of raids. Dubbed by OMB as “Guerilla” piracy, this phenomenon is indication that the hard goods optical media piracy problem may be starting to move underground. Remaining street vendors avoid arrest by not having significant stocks on hand. Many vendors have backpacks (full of pirated optical media) and are itinerant, hawking to customers in a more secretive and ad hoc manner, hanging around 24-hour drugstores, convenient stores, clubs, restaurants and bars, and mostly selling at night. With OMB involvement, PNP officers have become more attentive to the problem of open physical street and mall piracy, but it remains the case that in most of the country, police are generally apathetic to these practices.

**Getting to the Source – Customs “Choke Points” and Optical Media “Burning”:** To do an even more effective job dealing with hard goods piracy in the Philippines, it is necessary to attack the supplies of such goods, which would involve stopping imported discs at the borders and cracking down on domestic burning of recordable optical media. IP Philippines has indicated a new approach is to seek choke points (e.g., through Customs at the airports and other ports throughout the Philippines) to reduce the numbers of imported discs over time. IIPA supports this approach which seems to have had positive results in late 2011 seizures.<sup>10</sup> We also recommend that OMB continue its focus on confiscating “burning” machinery detected during raid actions.

**Other Issues – Hard Disk Loading and Mobile/Mobile Device Piracy:** While recent developments have constituted a blow to hard goods optical media piracy, other problems which law enforcement have spent less time addressing, but which cause increasing harm in the Philippines, remain largely unaddressed. Hard disk loading, the pre-installation of unlicensed software or other copyright materials on new PCs or other devices is still prevalent even among established computer stores and computer parts stalls. Mobile device piracy is a similar but more recent phenomenon, with mobile device vendors often masking as “repair” shops, stalls or kiosks, offering at the point of sale or as an after service the downloading onto a device (including cell phones, mp3 players, hard disks, thumb/flash/USB drives) music, ring tones, games, software, and published materials, especially medical and nursing titles and trade books. The recording industry estimates sales declines in the first half of 2011 of 19% compared with the same period in 2010, and attributes mobile device piracy and Internet piracy (discussed below) as chief causes. Such downloading stalls which appear even in reputable malls must be eliminated.

With mobile penetration exceeding 90 million in 2011 (in a country of 94 million),<sup>11</sup> and even with broadband mobile services in their relative infancy, there are increasing reports of infringing wireless application providers (WAP) which provide pirate content directly through wireless communications onto mobile phones/devices. While the copyright industries in the Philippines have legitimate business with all three major telecommunication companies, it has been difficult to convince telecommunication companies to block access to pirate sites on a voluntary basis. IIPA recommends empowering the National Telecommunications Commission (NTC) to work closely with the IP Office of the Philippines to act aggressively against piracy and other copyright issues conducted over mobile networks, and enhancing anti-piracy enforcement work carried out by OMB by including mobile device piracy within its purview.

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<sup>9</sup>There continue to be some reports of irregularities within the police ranks. This problem has somewhat been ameliorated by the direct involvement of OMB, authorizing the PNP to conduct raids and seizures themselves, followed by immediate reporting to the OMB, documenting and surrendering seized items to the OMB. There remain reported instances of leaks of information related to search warrants (target areas, suspects involved) in the vicinity of the courts which are responsible for issuing search warrants. The lag time between the application for a warrant and the day of the operation adds to the opportunities for information to be leaked. Another problem for the OMB is logistics and geography of the Philippines, mainly due to OMB’s paltry budget; this confines OMB activities mainly to Metro Manila, since enforcement on a national scale would require resources to travel to cities in other island groups.

<sup>10</sup>In early December 2011, the Bureau of Customs reportedly turned over hundreds of boxes of Blu-ray Discs (in high-quality tin cans) and Christmas Videoke DVDs containing mixed English/Filipino songs. These pirated optical media were detected at the Manila (Sea) Port using Customs’ x-ray machines. The estimated market value of seized pirated products was P35 Million or over US\$800,000.

<sup>11</sup>See *Research and Markets: Philippines - Mobile Communications - Market Overview and Forecasts – 2011*, November 1, 2011, at [http://www.researchandmarkets.com/research/b9c036/philippines\\_mobi](http://www.researchandmarkets.com/research/b9c036/philippines_mobi).

**Business Software End-User Piracy/Government Legalization:** The rampant use of unlicensed software in the workplace by businesses continued to cause the greatest revenue losses to the software industry in 2011, thereby stunting the growth of the information technology sector.<sup>12</sup> A September 2010 study by the International Data Corporation (IDC) and the Business Software Alliance (BSA) shows that reducing the piracy level by ten percentage points in the Philippines will lead to job creation in the thousands, the generation of millions in tax revenues and hundreds of millions to the country's GDP.<sup>13</sup> The OMB has done *ex officio* corporate inspection visits on more than 200 establishments since 2009 which has helped drive software legalization. Unfortunately, as a result of the search warrant quashal issue discussed above, BSA only conducted two raids against end-user piracy targets in 2011, down from eight raids in 2010. Inquest procedures with DOJ prosecutors remain difficult, with them insisting on burdensome requirements before they will even file charges in court.

It remains important that the Philippine Government work to fully legalize government software usage and have procurement practices in place to pay for software. Republic Act 9184 (An Act Providing for the Modernization and Regulation of the Procurement Activities of the Government and for Other Purposes) must be implemented to ensure the government refrains from purchasing illegal software and allows only suppliers of legitimate software to participate in government bidding.

**Book and Journal Piracy:** Illegal commercial-scale photocopying of scientific, medical, technical books (STM), as well as textbooks (on or near college, medical, and nursing school campuses), and trade books/bestsellers remains the predominant problem in the Philippines. Unauthorized scanning of books and the sale of unauthorized compilations of educational and professional review materials burned on to CD-Rs (with 100-200 titles per disc) are additional problems. Online piracy of medical textbooks, professional books, and trade books, is also increasing in the Philippines.

The large number of college and graduate students in the Philippines results in high demand for university textbooks, technical books, and professional medical and nursing books. Unfortunately, much of this demand is being met through unauthorized photocopying and through downloads of unauthorized digital (scanned) copies of books onto mobile devices. The "university belt" in Metro Manila is notorious for illegal photocopying activities occurring at the many copy shops in the area. Copy shops also operate in and around hospitals, and near government regulatory agencies. Areas such as Morayta and Dapitan Street (in front of the Professional Regulations Commission main office) in Manila are commonly known for photocopying entire books, burning onto optical discs (CD-ROMs, DVDs) educational and review materials for professional examinations, as well as the sale of pirated books and CD-ROMs with educational materials. Many shops now operate on a "print-to-order" basis, thus avoiding stockpiles of infringing books in their establishments and thereby complicating investigations and enforcement actions. Vendors of pirated books also sell the infringing copies of books door-to-door at doctors' offices, medical establishments, and trade fairs. The Department of Education and, in particular the Commission on Higher Education, should take a more active role in developing appropriate use and copyright policies, encouraging the use of legitimate materials at colleges and universities, and ensuring that institutions of higher learning to adopt and implement such policies.

While the industry has been able to obtain some raids against notorious pirate operations, the court system has stymied efforts to carry these cases through to justice due to the inordinate delays and costs. The

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<sup>12</sup>BSA's 2011 software piracy statistics will not be available until after the filing deadline for this submission, but will be released in May 2012, at which time piracy rates and U.S. software publishers' share of commercial value of pirated software will be available at [www.iipa.com](http://www.iipa.com). In 2010, the software piracy rate in the Philippines was 69%, representing a commercial value of unlicensed software attributable to U.S. vendors of US\$167 million. These statistics follow the methodology compiled in the Eighth Annual BSA and IDC Global Software Piracy Study (May 2011), <http://portal.bsa.org/globalpiracy2010/index.html>. These figures cover packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA's 2012 Special 301 submission at <http://www.iipa.com/pdf/2012spec301methodology.pdf>.

<sup>13</sup>See IDC and BSA, *The Economic Benefits of Reducing Software Piracy A Report by IDC*, September 2010, at <http://portal.bsa.org/piracyimpact2010/studies/piracyimpactstudy2010.pdf>, which demonstrated that a reduction in end-user software piracy over four years (2010-2013) of ten percent (from 69 to 59 percent) would result in \$329 million in additional revenue to the GDP, \$30 million in tax revenues, and 1,097 new jobs. A reduction of ten percent in just two years would multiply the positive effects.

*Multilinks/Marquez* case<sup>14</sup> remains pending, now some 5 years after the initial action. While currently raids are obtained through complaints filed with PNP or NBI, it is hoped the passage of the Copyright Bill will permit IPO Philippines to play a more active and coordinating role.

**Internet Piracy:** Internet piracy remains an emerging issue in 2011, with Internet penetration nearing thirty million people, and broadband penetration topping six million people by mid-2011 according to industry statistics (although higher speed connections remain mostly cost-prohibitive). Most of the Internet piracy experienced in the Philippines is over peer-to-peer (P2P) filesharing services, through the use of deep linking sites, and the use of one-click hosting sites (sometimes referred to as cyberlockers) whereby those engaged in piracy on those sites sell passwords to their stored infringing materials.<sup>15</sup> The Motion Picture Association of America (MPAA) notes that Peer Media Technologies reported that during 2011, users initiated over 12 million downloads/uploads of unauthorized copies of major U.S. movie titles via certain P2P protocols in the Philippines.<sup>16</sup>

In addition, *Kat.ph* – a site with connections to the Philippines (including a mirror site there)<sup>17</sup> – is an example of a site that employs or facilitates the use of the BitTorrent file sharing protocol to enable pirated content to be quickly located and downloaded, and in particular, allows for extremely fast downloads of the largest pirate files of all kinds of copyright content, including music, movies, software, games, and published materials. The site is notable for its commercial look and feel, indexes over 8.5 million torrents, and is ranked among the top 320 sites visited in the world. *Kat.ph* was cited by IIPA in its filing seeking to identify “notorious markets” for piracy, and on December 20, 2011, the U.S. Trade Representative listed *Kat.ph* as a notorious market.<sup>18</sup> In 2011, sites engaged in the sale of physical hard goods also increased.

The legal framework and enforcement infrastructure to deal with Internet piracy in the Philippines has not caught up with the technology. The E-Commerce Law establishes important legal principles for liability (i.e., contributory and vicarious liability are codified in the law), but there is no statutory notice and takedown system (without relying on court-issued relief) in that law or in the current Copyright Law. Such a mechanism, as well as fostering cooperation with service providers to effectively deal with infringing websites and services and P2P piracy activities, including effective and fair termination policies for repeat infringers, should be added. The National Telecommunications Commission (NTC) in coordination with the IP Office of the Philippines should be much more aggressive in seeking workable approaches to this growing problem. In the meantime, there is no cooperation from local ISPs, as they do not currently feel compelled to do so.

**Camcording Piracy:** The passage of the anti-camcording law (Philippines. Republic Act No. 100,088) in 2010 saw an impressive reduction in forensic matches back to the Philippines of illegal camcords of major motion pictures, from twenty in 2010 to only one in 2011. This represents a remarkable turnaround, demonstrating the

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<sup>14</sup>The *Multilinks* case was brought against the printing operation being run by Mr. and Mrs. Marquez, who were engaged in unauthorized reprinting of medical text books. A previous case against Catherine Marquez was moderately successful, resulting in the defendant’s conviction, but the conviction has not been served as the defendant absconded. Mr. Marquez is a co-defendant in the current *Multilinks* proceeding, which has remained plagued by delays.

<sup>15</sup>While there are no dedicated Philippine Internet sites selling illegal copies of books, books are found in general trade portals such as *sulit.com*, and illegal versions of e-books are available from *pinoyssp.com*. Internet piracy greatly limits the establishment of legitimate online distribution platforms and services for consumers, harming consumers and right holders alike. Revenue from these platforms and services are critical to financing the development of new creative works. For example, for independent motion picture producers who license content country-by-country, online piracy exports troubled marketplaces and high piracy rates to other markets instantly. The independent production sector is limited in its ability to shift to technology-enabled new business practices that might limit piracy, for example, independents cannot engage in worldwide same day “day-and-date” releases (which may prove an effective method to curb or delay piracy for the major studios) due to the fact that national distributors release on their own schedule.

<sup>16</sup>A major U.S. movie is defined as a movie released in 1,000 or more theaters in the U.S. These estimates reflect only a subset of movie-related piracy activity occurring during the monitoring period, as they account for only initiated downloads or uploads of major U.S. films through the listed P2P protocols. They do not include 1) downloads/uploads of unauthorized copies of movies that are not major U.S. releases, including local titles, through these P2P protocols; 2) downloads/uploads of unauthorized copies of any movies via other P2P protocols or through non-P2P technologies (e.g. websites); or 3) streaming of unauthorized copies of any movies via any technologies. Also, since local language title versions for scanning are not always available from established sources, and access to foreign language BitTorrent sites may fluctuate, results in certain countries are likely underrepresented.

<sup>17</sup>*Kat.ph* (formerly *Kickasstorrents.com*) currently receives its Internet connection from a provider in Romania. The local recording industry has notified the domain registration company which has not taken any positive action, and is in the process of discussing the issue with the IPO Philippines, but in the meantime, *kat.ph* remains operational in the Philippines.

<sup>18</sup>United States Trade Representative, *Out-of-Cycle Review of Notorious Markets*, December 20, 2011, at [http://www.ustr.gov/webfm\\_send/3215](http://www.ustr.gov/webfm_send/3215).

importance of passage of the statute in 2010. Industry has also invested significant resources in training, and appreciates the support of the Philippine Government in attending to this important aspect of implementation of the Law. Cinema owners have done their part as well, such that in 2011, there were a total of 49 interdictions (compared with 22 in 2010) by cinema security staff, resulting in five court actions which remain pending.

Despite these successes, more needs to be done. For example, of the interdictions, unfortunately, the Philippine authorities admit that in well over a dozen cases, the police ended up erasing the contents of the illegal camcorders. In addition, we still do not have the first criminal conviction under the new law. It is critical that the government not stop now, since camcording is particularly damaging in the Philippines because it fuels rampant online piracy, negatively impacting worldwide distribution, and prevents the establishment of legitimate online distribution platforms. Philippine movie pirates engaging in this activity typically choose films that release earlier than, or day-and-date with, the U.S., and notably, a day-and-date release in the Philippines is still more than half a day earlier than a U.S. release.<sup>19</sup> This piracy has had a devastating impact on the life cycle of many U.S. motion pictures, eroding their viability not just in the Philippines and other Asia Pacific markets, but also in the U.S.

**Karaoke Music Licensing Issue:** Karaoke is popular in the Philippines, and various machine brands are sold in Raon, Quiapo with accompanying discs containing as many as 5,000 karaoke tracks. These tracks consist of both local and international repertoire. Some brands come preloaded with karaoke recordings of legitimate record companies. Roughly ten brands have sought licenses from music publishers, but there are many that have not. Exacerbating the problem are a few manufacturing companies which incorporate USB ports onto their karaoke machines which allow the manufacturers or the owners of the machines to add unauthorized copies of tracks, including unauthorized tracks from the manufacturer's websites. IIPA thanks the OMB for coordinating discussions on proper licensing for these uses of music, and understands that negotiations are ongoing with chief outliers.

**Pay TV (Cable and Satellite) Piracy:** Signal theft in the Philippines continues to cost right holders in filmed and television content significant revenues with pirates stealing entire program streams and reselling them to subscribers without compensation to the rights holder. The NTC continues to renew the licenses of companies engaged in signal theft and no pirate cable company has been sanctioned by the courts or government. Under-declaration by legitimate providers also continues to cause losses to content owners, as does individual illegal connections to Pay TV signals.

**Other IPO Enforcement Initiatives:** In 2011, IPO issued revised "IP Violation Rules" giving IPO the ability to hear, on an administrative basis, applications for immediate injunctive relief (TROs), summary hearings to extend the TRO for an additional 17 days, and an expedited hearing for permanent injunctions as to infringing activity. The BSA has had one successful test case of this program. In addition, IPO launched a "brand" inspection program, by which 26 brands were listed for which "counterfeiting" is to be disallowed in the malls. There is nothing precluding copyright owners with "brands" from informing IPO about the authorized distributor in the Philippines, which would allow such goods to be subject to seizure.

## **COPYRIGHT LAW AND RELATED ISSUES**

Copyright protection is governed under Republic Act 8293, the Intellectual Property Code (IPC) of the Philippines (in force January 1, 1998). Since that time, various copyright revision drafts have been introduced into each Congress over the years, with the intent to fully modernize the law, fix some deficiencies, and fully implement the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) to which the Philippines acceded in 2002. IIPA understands that the Philippine Congress is currently considering IP Code amendments. IIPA further understands that House Bill 3841 (HB 3841) passed its third reading on May 23, 2011, while a Senate consolidated bill, which contains some differences with the HB, passed first reading in the Senate as

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<sup>19</sup>Philippine-traced camcords of *Inception* and *The Losers* were available the same day as their U.S. release. Philippine-traced camcords of *Alice in Wonderland* and *Iron Man 2* were available prior to their U.S. release dates.

consolidated SB 2842 on May 25, 2011, although latest reports indicate that the Senate Bill, which was to be introduced before the Christmas break 2011, and then again in mid-January 2012, has been delayed by the impeachment proceedings against the Chief Justice of the Philippine Supreme Court.<sup>20</sup>

HB 3841 contains many elements needed to establish a fully modern copyright system, but does not contain all of the strong elements contained in previous bills (e.g., in SB 2628). We support: i) granting the IP Office of the Philippines greater enforcement functions,<sup>21</sup> ii) the broad definition of the “communication to the public” critical for protection of copyright in the online (and mobile) environment,<sup>22</sup> iii) the express “making available” right for related (but this should be expanded as the general rule to all communications to the public),<sup>23</sup> iv) the confirmation that temporary reproductions are covered under the reproduction right (subject to the “fair use” defense as defined in Section 185 as amended), v) the addition of an exportation seizure remedy,<sup>24</sup> vi) the provision of “double” damages and mandatory maximum sentences for unlawful “circumvention,” and vii) the helpful enforcement disclosure requirements.<sup>25</sup>

There remain some aspects of HB 3841 (like SB 2842) that need clarification or revision and are not as strong as previous bills (like SB 2628). It is hoped that many of these issues can be resolved with implementing regulations, should the Senate finally pass the current Bill, or even in explanatory memoranda. Among IIPA’s chief concerns are:

- **Technological Protection Measures:**

- HB 3841 lacks explicit coverage of access control TPMs. Previous bills were superior to the alternative House and Senate drafts in that the previous bills contained coverage of TPMs in line with the WCT and WPPT, defining them to include both measures used to restrict unauthorized access as well as the exercise of exclusive rights. By contrast, HB 3841 would need further interpretation, possibly through implementing regulations, to confirm coverage of “access control” TPMs.<sup>26</sup>
- HB 3841 (in draft Section 216.1(b)(i)) contains no prohibition on trafficking in or providing services related to circumvention devices, technologies, or tools, prohibiting only the act of circumvention expressly.<sup>27</sup>

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<sup>20</sup>IIPA previously expressed support for a different Senate Bill (SB 2628, introduced by Senator Loren Legarda on December 14, 2010).

<sup>21</sup>HB 3841 confirms that the Director General of IP Philippines may “undertake enforcement functions supported by concerned agencies such as the Philippine National Police, National Bureau of Investigation, Bureau of Customs, Optical Media Board, local government units, among others” and “conduct visits to establishments and businesses engaging in activities violating intellectual property rights and provisions of this act based on report, information or complaint received by the office.” This new set of powers could be very useful in transitioning the IP Office of the Philippines from what was mainly a political and bureaucratic office into a more operational role.

<sup>22</sup>HB 3841 achieves a broad expansion in Philippine law of the concept of “communication to the public” including “any communication to the public, including broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite” as well as the express (WCT/WPPT-compatible) making available right.

<sup>23</sup>An express “making available” right is added for related rights, with the additional seemingly helpful language “as well as other transmissions of a sound recording with like effect.” Record companies increasingly seek new methods to make their recordings available for consumers to enjoy on different digital platforms. To encourage right holders to make their works available under a broad range of licensing schemes and prices and to invest in new and innovative services, an effective legal framework for right holders to control all types and forms of communication of the work to the public needs to be in place. Therefore, it should also be provided, as the general rule, that, aside from very limited (e.g., analog, non-interactive) circumstances, all communications to the public as to related should be afforded with an exclusive right.

<sup>24</sup>Section 190 is amended to provide that Customs has the authority to seize not only prohibited imports but also exports, and to seize, condemn and destroy infringing items “before they are exported.” This could be very helpful.

<sup>25</sup>HB 3841 introduces Section 220A which provides the requirement for the enforcement authorities to “notify the owner of the copyright in question or his authorized agent of the seizure or detention” of infringing articles, packaging or implements, where “reasonably practicable.” The particulars are set out in 220A.2 and 220A.3 of the House Bill and should be supported over the Senate Bill since they appear to be very helpful if this is carried out in practice.

<sup>26</sup>It may be that the drafters intend the phrase “restrict acts ... which are not authorized ... or permitted by law” to include access controls, but the previous wording, “any technology, device or component that, in the normal course of its operation, controls access to a protected work,” was clearer and preferable. We suggest that the term be clarified in implementing regulations to provide the latter quoted explanation.

<sup>27</sup>SB 2628 Article 229A.1(b) provided that any person who “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 marketed for the purpose of circumvention of any effective technological measure; or ii) have only a limited commercially 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” is guilty of a crime and is assimilated to a copyright infringement subject to civil remedies. It is hoped that the definition of “circumvention” could be confirmed in the explanatory memorandum and in implementing regulations to cover these trafficking activities. If the outlawing of trafficking and circumvention services are not covered, and/or access controls are not covered, the bills cannot be said to fully implement the WCT and WPPT.

- HB 3841 deems the circumvention of TPMs merely as an aggravating circumstance, but a corresponding Senate version (S.B. 2487) criminalizes the circumvention of TPMs. The corresponding Senate version is preferable on this point.
- **Civil Damages/Statutory Damages:** Previous bills (e.g., SB 2628) were superior to the current bills, as their civil damages provisions set forth the goal of awarding damages which the court “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.” HB 3841 contains no such language: while it retains statutory damages, and while draft Section 261.1(b) provides a structure for additional damages (“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”), it sets the minimums very low at US\$1,140 and it is unclear whether the recovery amount is per work or per infringement. In addition, the meaning of statutory damages “in a sum equivalent to the filing fee of the infringement action” is unclear. This should be clarified. Damages should be “adequate to compensate for the injury the right holder has suffered” as provided for in TRIPS Article 45.
- **Duty to Account:** HB 3841 (in draft Section 180.5) introduces a new and confusing provision requiring an “accounting” from an assignee or licensee to a “copyright owner” (which is used interchangeably with “author”). In many countries, a joint author may use a joint work without authorization of the other joint author subject to an accounting, which may have been the intention of the drafters, but the insertion of a duty to account to all licenses or assignments is completely unwarranted and unduly interferes with the exercise of exclusive rights by right holders and impinges on their freely negotiated licenses and assignments. The Section should be removed from the substitute HB. The Senate Bill appears less harmful and restrictive as it simply indicates, “The copyright owner has the right of regular statements of accounts.” The House Bill creates unreasonable restrictions on contract and presumes a right of remuneration even after an assignment or license, namely,

“the copyright owner has the right to regular statements of accounts from the assignee or the licensee with regard to assigned or licensed work. The accounting shall be made in writing and shall be given to the author at least once a year accompanied by such information, including books of accounts, contracts reassigning his rights to his work, and such other documents that will help the author or copyright owner determine the proper remuneration due him.”

The passage interchangeably refers to the “copyright owner” having the right, and then the “author” being given the information to determine “the proper remuneration due him,” adding to the confusion.

- **Exceptions:** Several exceptions in HB 3841 must be examined and altered to ensure they meet the Berne Convention three-step test.
  - **Exception for the visually impaired:** HB 3841 (draft Section 185) introduces a new exception to “reproduce” and “distribute” works “in a specialized format exclusively for the use of the blind, visually- and reading-impaired persons.” This Bill should be amended to apply only to “print” or “written” materials, consistent with what is being proposed at the WIPO level. The Bill contains some limiting provisos, including that the reproduction and distribution be “on a non-profit basis” and that it comply with the three-step test (i.e., the 2<sup>nd</sup> and 3<sup>rd</sup> steps). It contains the worrisome phrase “this distribution is also permitted in case the copies have been made abroad and the conditions mentioned have been fulfilled.” It must be confirmed (for example, in implementing regulations or in the explanatory memorandum) that the phrase “the conditions mentioned have been fulfilled” means that only lawfully made or distributed copies would be subject to this exception. The Senate Bill (draft Section 184(l)) suffers from potential over-breadth (it is not being expressly bound by the three-step test), but does not expressly permit copies made abroad to be distributed.
  - **Library Exception Broadened:** Another example is the broadening (in draft Section 188 of HB 3841) of the exception for reprographic reproductions for libraries from a “single copy” to a “limited number of copies” of

the work “as may be necessary for such institutions to fulfill their mandate.” It is unclear whether this broader exception, with the vague use of the phrase “necessary ... to fulfill their mandate” can pass muster under international treaties to which the Philippines is party. Further, this exception should be subject to the three-step test and limited to copies necessary for archival and purposes and preservation of the work. It should be noted that previous draft bills (e.g., SB 2628) contained limiting language, e.g., in draft Section 188.2, the limitation is narrowed to a “single” reprographic copy and subject to the work being “not reasonably available to it through commercial channels.” The latter phrase is not included in the new draft bill.

- **Decompilation Exception:** A third example is the “decompilation” exception. In previous draft bills (e.g., SB 2628), the appropriately narrowing language allowing decompilation “to the extent that such decompilation is indispensable in order to obtain the information necessary to achieve such inter-operability” was changed in HB 3841 to the much broader “to the extent that such decompilation is done for the purpose of obtaining the information necessary to achieve such inter-operability.” The narrower formulation should be reinstated.
- **Exploitation Right in Audiovisual Works:** The current bills are missing a provision (in previous draft bills) ensuring that the producer of an audiovisual work had the “exploitation” right in the work, not just the right in “exhibition” of the work. While it is usually the case that contractually, the producer will exploit the copyright, clear recognition of this in the statute simplifies the process by which rights licensed can be recognized in the Philippines and recognizes the longstanding commercial practice of the film industry.
- **Notice Provision for Liability:** HB 3841 imposes liability if a person “benefits financially from the infringing activity of another person who commits an infringement if the person benefiting *has been given notice of the infringing activity* and has the right and ability to control the activities of the other person.” [emphasis added] This appears in the physical environment to create a structure for landlord liability, and in the online space (particularly in prong 3) provides a modified form of contributory liability as understood in the U.S. The language “has been given notice of the infringing activity” represents a narrowing of the provision when compared with previous drafts. In the least, “given notice” should also be understood in the explanatory memorandum to include constructive knowledge (e.g., red flag knowledge, such that liability will attach if one has awareness of facts or circumstances from which infringing activity is apparent).<sup>28</sup>
- **Importation Right:** HB 3841 leaves out a provision included in previous draft bills which would have added an “importation” right to the current distribution right, since a key component of many laws to provide the author with the ability to authorize imports and prevent unauthorized imports.
- **Designation of Agent to Enforce Rights:** HB 3841 draft Section 183 falls short of defining who may enforce rights on behalf of copyright owners,<sup>29</sup> and would introduce a new collective management regime. This formal introduction of accreditation of a “collecting society” system must not be implemented in a way to restrict the activities of the “collecting society” such as its tariff structure and should not restrict the number of collecting societies operating in the Philippines.
- **Term Extension:** One of the important changes to be made in the Philippines is the extension of term of protection, to life of the author plus 70 years, or 95 years from publication for works whose term is calculated from such event. Previous bills contained term extension, which would avoid Philippine works and objects of related rights falling into the public domain in other countries on a discriminatory basis, and would bring its law into line with the international trend. It is unfortunate that HB 3841 removed this important and positive change.

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<sup>28</sup>SB 2628 (Section 216(b)) had set forth that liability attaches, e.g., if a person “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.”

<sup>29</sup>SB 2628 had added “or a similar agent” to Section 183, to ensure that right holder representatives can act on right holders’ behalves in effectuating protection of their rights in the Philippines.

- **Rights Management Information Protection:** Rights management information provides the basis for online licensing and benefits both right holders and users by certifying the integrity and authenticity of digital works. The draft bill should introduce provisions to prohibit dissemination of copies in which rights management information has been removed or altered and this prohibition should apply to all types of copyright works.
- **Express Coverage of Import, Export, and “Using” an Article “in a Trade or Business” as a Crime:** Previous draft bills included “import,” “export” and the “use of an article in a trade or business” without authorization as a crime. This language should be included in the draft bill.

**Service Provider Issues:** While the new copyright law, when enacted, will spell out with specificity some important criteria for copyright liability in general, the E-Commerce Law 2000 (Republic Act No. 8792) already deals with specific issues of copyright liability for Internet infringements as well as the role of service providers. First, the law contains a general copyright provision outlining infringements involving the Internet (or other devices using telecommunications).<sup>30</sup> Second, the Law states that service providers can be liable for direct infringement, for inducing or causing another person or party to commit any infringement or other unlawful act, or for indirect infringement, i.e., knowingly receiving a financial benefit directly attributable to the unlawful or infringing activity. It then provides a limitation on liability for service providers who “merely provide access” to an “electronic data message or electronic document” that infringes copyright, provided that the service provider does not have actual knowledge of infringement, or is not aware of the facts or circumstances from which infringement is apparent. These provisions are helpful in setting forth important liability principles, but the law should be modernized to provide for a statutory notice and takedown system (e.g., in the absence of court ordered relief) and policies to effectively and fairly address non-hosted infringements and repeat infringers. Under the current Law, service providers must only abide by “injunctive relief issued by a court ... requiring that the service provider take or refrain from actions necessary to remove, block or deny access to any material, or to preserve evidence of a violation of law.”

## **MARKET ACCESS ISSUES**

**Restrictions on Advertising:** Over the years, a number of bills have attempted to limit advertising on Pay TV. The most recent iteration is HB 545 which would impose a 10-minute per hour advertising limitation and also prohibit foreign advertisements. Restricting advertisement placement tends to reduce the utility of advertising, leading to a reduction in advertising-based revenue and further impeding the development of the television industry in the Philippines.

**Unreasonable Taxes and Duties on Motion Picture Business:** Several taxes/duties imposed on film companies remain inordinately high. For example, U.S. companies are burdened with a 30% income tax on net profits, a 5% withholding tax on gross receipts chargeable to income tax liability, and a 10% tax on the distributor’s share of the box office. Import duties are assessed at 15% of the invoice costs, plus freight and insurance, on all prints and trailers imported into the Philippines, and related advertising materials are dutiable at a 10% amount. There is a 15% tax on royalty remittances (to producers) on profit remittances or dividends. A municipal license tax of 0.75% of a company’s prior year gross receipts is also imposed on motion picture companies. Philippines reduced the national entertainment tax rate ceiling from 30% to 10% in 2009. These oppressive tax burdens detrimentally impact the development of a legitimate audiovisual business.

**Customs Duty for Films Should Remain Based on the Physical Carrier Medium:** In 2010 and 2011, the Philippines Bureau of Customs considered reinterpreting its customs valuation of imported film prints to a transaction

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<sup>30</sup>Section 33(b) of the E-Commerce Act provides, “Piracy or the unauthorized copying, reproduction, dissemination, distribution, importation, use, removal, alteration, substitution, modification, storage, uploading, downloading, communication, making available to the public, or broadcasting of protected material, electronic signature or copyrighted works including legally protected sound recordings or phonograms or information material on protected works, through the use of telecommunications networks, such as, but not limited to, the internet, in a manner that infringes intellectual property rights shall be punished by a minimum fine of One hundred thousand pesos (P100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years.”

value assessment that included royalties generated from the exhibition of the film. Such a duty assessment is a violation of the World Trade Organization's Customs Valuation Agreement, since prints are not generally "sold" into the Philippines, thus rendering the application of the transaction value (not to mention the inclusion of royalties) a moot point. By the beginning of 2012, Customs appears to have moved away from royalty assessments but this issue requires continued monitoring.

**Foreign Ownership Restrictions for Media Companies:** Foreign investment in mass media, including the Pay TV sector, is strictly prohibited under the Philippines Constitution. Draft cable legislation dating back to 2005 remains under consideration, but if enacted, would allow for up to 40% foreign ownership/investment in cable systems that do not produce their own programs or content. As the broadcast industry moves towards a converging environment where operators are encouraged to provide both infrastructure and content, such restrictions will continue to impede development of the cable television market. Pending legislation in the form of a Convergence Bill could provide some relief, but consideration of this Bill remains stalled.

**Television Restrictions and Local Agent Requirement:** In October 2003, the NTC signed Implementing Rules and Regulations Governing Community Antenna/Cable television (CATV) and Direct Broadcast Satellite (DBS) Services to Promote Competition in the Sector. The rules limit the ability of content providers to enter into exclusive distribution agreements with local cable providers. Prior exclusivity arrangements are presumed valid, but may be subject to NTC review at its discretion, while future exclusivity arrangements are deemed presumptively anti-competitive and must be approved by NTC. In addition, the regulations require foreign content providers to maintain a local agent if they have such exclusive agreements in place. These regulations add costs, delays and uncertainty limit the ability of motion picture companies to distribute content in the Philippines and should be discarded.

## **GOVERNMENT COORDINATION, TRAINING, AND PUBLIC AWARENESS**

First, we commend the Intellectual Property Office of the Philippines for its efforts to bring under its agency a coordinating role of enforcement organs for the protection of IP throughout the country, and others (like Customs and even the Bureau of Immigration). Its efforts also seem aimed at enhancing transparency of anti-piracy activities throughout the Philippines. Most recently, the IPO jointly organized with WIPO the 1st Philippine Anti-Counterfeiting and Piracy Summit with members of the National Committee on Intellectual Property Rights (NCIPR) on October 24-28, 2011. While results of these liaison activities remain to be seen, IIPA views the IPO's role as a positive one aimed at effecting real change in the enforcement landscape for right holders.

The industries have conducted capacity-building trainings for judges, prosecutors, enforcement agencies, and hearing officers of the Intellectual Property Office in 2011. Specifically targeted trainings also occurred throughout the year. For example, the motion picture industry conducted anti-camcording trainings for cinema staff, going through the latest *modus operandi* of the syndicates running the illegal camcording operations, and reviewing procedures for apprehension of those caught camcording. In all, the Motion Picture Association (MPA) organized or participated in 15 training sessions in 2011 with 257 participants. MPA also coordinated with local exhibitors to produce and finance warning posters in cinemas. Local exhibitors have upon their own initiative produced anti-camcording trailers for exhibition in the theaters and MPA regularly updates the "Make a Difference" training materials. They also sponsored a local Filipino student filmmaker to attend a MPA-sponsored film workshop in China.

The Optical Media Board's Chairman has devised a slogan *Bawal Kumopya* (copying is prohibited) and used it as an awareness-raising initiative. Members of the creative industries in the Philippines still use the slogan to this day in anti-piracy campaigns with businesses, representatives of local government, and in schools. The Chairman with the help of local Rap Artists D-coy, Dinky Doo, and Artstrong made an Official Optical Media Board Theme Song also called "Bawal Kumopya." The Chairman is also visiting different schools to create awareness and invites group of students and concerned citizens in his office to discuss the further need for anti-piracy efforts.

As for U.S. Government training initiatives, as noted above, IIPA recommends that continuous exchanges occur with opportunities for judges from the new IP Commercial Courts (established by the new Supreme Court IP Court Rules) and prosecutors to come to the U.S. One suggestion which has been made by the IPO is for a “judge swap” occur between the U.S. and the Philippines. In addition, training for prosecutors on techniques for streamlining copyright cases and on the new Rules should occur as well.

## **GENERALIZED SYSTEM OF PREFERENCES**

The GSP program, designed to promote economic growth in the developing world by providing preferential duty-free entry for products from designated beneficiary countries and territories, expired on December 31, 2010, but on October 21, 2011, President Obama signed legislation to reauthorize the program through July 31, 2013. GSP trade benefits became effective 15 days after the President signed the bill (November 5, 2011) and apply retroactively from January 1, 2011. The Philippines has been a major beneficiary of the GSP program. During the first eleven months of 2011, more than US\$1.04 billion in imports to the U.S. from the Philippines enjoyed duty-free treatment under the GSP Program, or almost 12.4% of the Philippines’ entire imports into the U.S.<sup>31</sup> Among the criteria which GSP beneficiary countries must meet are to provide “adequate and effective protection of intellectual property rights,” and “equitable and reasonable access to the markets ... of such country.” 19 USC 2462(c)(4) and (5).

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<sup>31</sup>During 2010, almost US\$912.7 million in imports to the U.S. from the Philippines enjoyed duty-free treatment under the GSP Program, or almost 11.5% of the Philippines’ entire imports into the U.S.