



Newsletter March 2022

Philippines International Copyright Summit (PICS)

(from IPOPHL website)*

The first-ever Philippine International Copyright Summit (PICS) of the Intellectual Property Office of the Philippines (IPOPHL) last November 22 - 26, 2021 brought together formidable players, experts, policymakers and other stakeholders in the local and international creative economy to discuss copyright issues and opportunities in various fields.

The week-long virtual event with the theme "United in Copyright" highlighted the current state of the local and global publishing, visual arts, performing arts, photography, game development, app development, architecture, fashion, music, film and animation industries.

Various speakers also shed light on crucial but less known aspects of the legal copyright system such as resale rights, reprographic rights, distribution rights and freedom of panorama. PICS also helped clear out misconceptions between actual copyright infringement and sub-conscious copying.

Also taking center stage were the growing interest and concerns with digital music rights, non-fungible tokens, artificial intelligence and other technologies that are compelling a rethink of copyright laws today.

National Artist for Literature Nominee Jose "Butch" Dalisay, Jr., one of the guest speakers at the PICS, said he was thankful for IPOPHL's efforts to build copyright awareness among creators, something he had wished for when he was starting his career as a writer when his creative labor had been exploited several times.

"I have yet to meet a writer, an artist or a musician my age who does not recall some instance of being taken advantage of when they were starting off in their careers," Dalisay said.

For National Artist for Dance Alice Reyes, she found it "very embarrassing" to admit to learning about copyright only recently.

She added that upon learning about intellectual property, she reached out to as many choreographers as she could, to help more be made aware of their creative, moral and economic rights over their works.

"To our great joy, so many gems of Philippine dance works are now properly copyrighted," Reyes said.

National Artist for Music Ryan Cayabyab emphasized the need for societies to constantly find the delicate balance between protecting the rights of artists and the need to foster creativity through copyright.

"Music and copyright have had long and at times complex relationships. Without copyright, musical compositions and recorded music will have no legal protection and have little financial value. And yet the history of music... is replete with instances of borrowing, copying, using and building upon past works," Cayabyab said, while reassuring the music industry's support for IPOPHL in raising copyright awareness.

For its part, the World Intellectual Property Organization (WIPO) committed to step up awareness raising activities to help more creators make informed business and livelihood decisions.

"Despite the challenges this is an exciting time for the creative industry of the Philippines. WIPO looks forward to continuing our work together to find opportunities for creators in the Philippines and beyond, to take their ideas, their music, their films and creative content to the world," WIPO Director General Daren Tang said in his congratulatory speech for IPOPHL.

Copyright issues on Publishing, Text, and the Visual Arts

by: *Attys. Anna Mendoza, Ma. Patricia Paz, Anthony Dee, Sycip, Salazar, Herndandez and Gatmaitan Law Offices*

On November 23, 2021, the Intellectual Property Office of the Philippines (IPOP HL), as host of the 1st Philippine International Copyright Summit (PICS), kicked off Day 2 with virtual sessions on publishing, text, and the visual arts.

During the morning session, Mr. Melvin Choo, Executive Director of Alkem (Singapore) Pte. Ltd., gave a presentation on “*Digital Trends: Subscription Services & Protecting Copyright*” and introduced to the participants the Alkem Digital Library, an integrated platform of e-books and multimedia resources that secures, integrates, and fulfills e-books.

In the afternoon session, “*Shining the Spotlight on the Publishing Industry*”, moderated by Atty. Louie Calvario and Ms. Leonor Reyes, the summit featured various respected personalities and speakers from the local and global book publishing industry.

Representatives from the National Book Development Board (NBDB), namely Executive Director Charisse Aquino-Tugade, Senior Trade Industry Business Development Specialist Kyra Ballesteros, and Mr. Kevin Dy, facilitated discussion, introduced the NBDB to the participants and discussed how the organization works with various stakeholders in the industry. They spoke about the various initiatives and topics that the NBDB is working on, namely: [a] industry research such as the readership survey of the NBDB which aims to answer the question: *Who is the Filipino Reader?* [b] metadata and its relationship with book sales; [c] the NBDB Bibliographic Database; and [d] issues in the publishing industry such as (i) the import-export disparity in the Philippines; (ii) inaccessibility of Philippine-authored books; (iii) minimal books being printed in the mother tongue; (iv) the low functional literacy rate among children; and (v) intellectual property rights (IPR) issues.

Mr. Alvin Buenaventura, the Executive Director of Filipinas Copyright Licensing Society, Inc. (FILCOLS), then discussed the concept of collective rights management in the book publishing sector and gave an overview of the publishing industry ecosystem.

The next speaker, Mr. Jose Borghino, Secretary General of International Publishers Association (IPA), focused on the state of the global book publishing industry, elaborating on industry statistics, the impact of the COVID-19 pandemic, and copyright and how copyright legislation is being tackled at a national and international level.

Ms. Caroline Morgan, Chief Executive and Secretary General of International Federation of Reproduction Rights Organizations (IFRRO), then talked about collective management in a global perspective, giving a background on IFRRO and its members, collective management in the digital age, how Reproduction Rights Organizations (RROs) work, and the benefits of collective management (licensing).

The last speaker was Ms. Claudia Kaiser, Vice President for Business Development of the Frankfurt Book Fair/Frankfurter Buchmesse. She gave a background of the Frankfurt Book Fair as a trade and public fair and narrated how it was conducted in 2020 and 2021.

Lastly, the afternoon participants were treated to the session entitled “*The Global and Local State of Visual Arts: Issues and Challenges*”, as moderated by Atty. Jeremy Bayaras, which featured representatives from the visual arts industry.

The first panel speaker, Ms. Karen Ocampo Flores, the President of Filipino Visual Arts and Design Rights Organization, gave a talk on “*Copyright and Related Rights: Challenges and Opportunities for Visual Arts and Design*”, which focused on the advantages of organizing to promote artists' concerns, their rights and welfare, and the role of collective management organizations (CMOs). She also discussed resale rights practices.

The second speaker was Mr. Benjamin Ng, Regional Director for Asia Pacific, International Confederation of Societies of Authors and Composers, who gave a lecture on “*Artists' Rights and Resale Rights: The Experience of the Asia-Pacific*.” His key messages centered on the losses of creators due to reduced activity and suspension of exhibitions, auctions and other income streams, and how CMOs have shown their true value during the crisis.

The last speaker was Ms. Reema Selhi, Legal and Policy Manager of Design and Artist Copyright Society (DACS). She gave a talk on “*Artists' Rights and Resale Rights: The Experience of the Design and Artists Copyright Society (DACS)*,” and thoroughly introduced DACS as well as the core services offered by the organization to the participants.

Day 2 of PICS then culminated with testimonials from artist Wesley Valenzuela and collector Atty. Rudolf Philip Jurado.

A Bird's Eye View on the State of IP Enforcement in the Philippines

by: Quisumbing Torres Law Offices

The first step is to ensure that IP rights are duly protected, recognized and/or registered with the relevant government agencies, such as the IPO. Once IP protection is obtained, local laws would generally provide a sufficient basis for administrative, civil, and criminal actions against IP rights violations. Administrative actions are filed with the IPO and other government agencies, while civil and criminal actions are lodged with the commercial courts.

However, there are a number of practical difficulties that make effective enforcement elusive. For one, there is the inordinate length of time it takes to prosecute a criminal case or pursue a civil case for infringement or unfair competition. A second major practical problem is the lack of resources available to frontline government authorities whose role is to enforce IP laws. The government's declared policy is to discourage IP counterfeiting and to prosecute infringers. However, the proliferation of counterfeit products in the Philippines has remained largely unabated, despite earnest efforts to address the issue.

Efforts to enforce IP rights continue to be plagued by other problems, such as delays in obtaining search warrants; varying levels of standard of evidence required by trial court judges hearing search warrant applications; the underfunded investigative, prosecutorial and judicial system; and the lack of heightened public awareness of IP rights. Even after successful seizures, endless delays mar the post-raid enforcement system.

Notwithstanding many difficulties, experience has shown that immediate, decisive and aggressive action on the part of the IP owner upon detection of any violation of IP rights can lead to an expedited resolution of the problem. What is required is a detailed knowledge of the workings of the enforcement systems available, a rapport with local enforcement authorities, and a flexible and creative approach to enforcement actions.

Republic Act No. 10372, which became effective on 22 March 2013, amended portions of the IP Code and provided additional enforcement powers to the IPO, which gives IP owners another option in pursuing infringers of their IP rights. In this regard, the issuance of guidelines for IPO visits fully complements RA 10372.

Moreover, the IPO issued a memorandum in 2016 amending the Revised Rules and Regulations on Inter Partes Proceedings (IPC Rules), which expanded the authority of the IPO Hearing/Adjudication Officers. Under the amended IPC Rules, IPO Hearing/Adjudication Officers may now issue and sign decisions and final orders and perform other functions, such as issue orders relating to the IPO's enforcement and visitatorial powers.

The Supreme Court promulgated the Revised Rules of Procedure for Intellectual Property Rights Cases which took effect on 16 November 2020. The Revised Rules introduced the following relevant changes to the existing rules, among others: (1) the timeline for promulgation of judgment is shortened from 90 days after termination of pre-trial to 60 days; (2) in addition to the previously authorized Special Commercial Courts in Quezon City, Manila City, Makati City, and Pasig City, Special Commercial Courts in Baguio City, Iloilo City, Cebu City, Cagayan de Oro City and Davao City are now vested with the authority to act on applications for the issuance of writs of search and seizure or search warrants in both civil and criminal actions, which warrants shall be enforceable nationwide; (3) depositions and other modes of discovery may now be conducted via teleconferencing, videoconferencing and other electronic means; (4) the court could and should order the destruction of seized goods that are considered hazardous even if no criminal complaint is filed.

More recently, in an effort to more effectively curb online counterfeiting and piracy, the IPO issued the Revised Rules of Procedure on Administrative Enforcement of Intellectual Property Rights, which became effective on 3 March 2021. The Revised Rules expressly included electronic, digital or online channels as part of the scope of the enforcement functions of the Intellectual Property Rights Enforcement Office (IEO). Moreover, to ensure faster corrective actions, the Revised Rules shortened the standard period given to offenders for compliance with IEO decisions, i.e., from 60 days to 72 hours.

The outbreak of the COVID-19 pandemic also brought about changes in the operations of both the private and public sectors. The IPO was particularly swift to respond and address the need for a new system in place. Shortly after the government-imposed lockdown in March 2020, the IPO issued on 15 May 2020 Memorandum Circular No. 2020-013, which was the first of many issuances, to ease its transition to the use of electronic filing and payment procedures, as may be applicable. From this online filing and payment system, the IPO has also pioneered the shift to digitizing documents.

Thereafter, Memorandum Circular No. 2020-021, issued on 3 July 2020, paved the way for the IPO's shift to the online conduct of mediation conferences and hearings via video conference. Despite the challenges brought about by the abrupt shift in working conditions and the heightened health and safety risks, the IPO has been steadfast in its objective to have an end-to-end automation and digitization of processes so as to ensure the continuous delivery of services without compromising the health and safety of the people.

Gaming Industry Recognized as a Copyright-Based Industry in the First Philippine Copyright Summit

by: Atty. Arjel P. de Guzman

The gaming industry found its limelight when it was selected as one of the featured copyright-based industries in the recently held 1st Philippine International Copyright Summit (PICS), a week-long event aimed to highlight the current state of different copyright-based industries in the country as well as to provide an inclusive platform for intellectual property professionals and stakeholders. Hosted and organized by the Intellectual Property Office of the Philippines (IPOP), the event showcased daily talks and discussions focusing on issues and policies surrounding major copyright-based industries including film, music, literature and publishing, visual arts, broadcasting, photography, and computer software. A WIPO-commissioned study, released in 2014 reported that Philippine copyright-based industries contributed an estimated 7.34% to the country's GDP in 2010. Copyright-based exports, at 3.06% of total exports,

exceeded copyright-based imports at 0.81%. The same study found that workers in copyright-based industries formed 14.14% of all people employed in 2010.

The fifth day of the summit was held last November 25, 2020, where the talks are focused on film, animation, and gaming.

James Lo, the President of the Game Developers Association of the Philippines delved into the current state and realities of the local gaming industry in his talk "*The State of the Video Game Development Industry in the Philippines*".

The interplay of gaming and copyright was brought to the fore when Dr. Gaetano Dimita, Deputy Director of Queen Mary Intellectual Property Institute took the virtual stage and discussed the ramifications of copyright laws relative to the gaming industry.

Prof. Meir Perez Pugatch, LL.M., M.Sc., Chair of the Health System Administration Division of Management, University of Haifa, Israel discussed the "*Financing of IP-Based Mobile Apps*" a topic which proved compelling to game developers seeking to monetize their creations.

Equally invaluable was the talk delivered by Dr. Anke Moerland, Associate Professor of Intellectual Property Law in the University of Maastricht, The Netherlands, when she discussed the "*Intellectual Property Toolbox for Mobile Applications Developers*".

It was a fitting inclusion for the gaming industry as a copyright-based industry given that its recent rise carved an indelible niche in the copyright and creative landscape in the country.

The gaming industry is booming. A clear proof of its fast-rising status is the fact that eSports or electronic sports, which has video games as the main platform for competition, has been gaining attention even in conventional sports meets. Just recently, the International Olympic Committee (IOC) had acknowledged that competitive eSports may be considered as an official Olympic event in the future. In terms of revenue, Bloomberg projected that the gaming industry is estimated to figure USD196 billion in revenues by the year 2022.

In the local sphere, The Philippine Games and Amusement Board (GAB), the agency which regulates and supervises professional sports and allied activities in the country, legitimized eSports as an officially recognized sport in 2017 thus allowing gamers to secure licenses. Since then, the number of active gamers in the country steadily increased yearly by 12.9%, culminating in the estimate of over 43 million active gamers at present.

Copyright and Music in the Digital Market (Part 1)

by Atty. Danielle San Pedro, Villaraza Angangco Law Offices

Day four of the first Philippine International Copyright Summit (PICS) hosted by the Philippine Intellectual Property Office of the Philippines (IPOPHL) focused on copyright and the music industry and the specific challenges faced by composers and artists in the digital age.

While the movie industry was one of the hardest hit industries in the Philippines due to the pandemic, the local music industry actually saw positive growth in 2020 and 2021. David Pryce, Director of Insight and Analysis of the International Federation of Phonographic Industry (IFPI) reported a growth rate of 16% for music revenues in the Philippines in 2020, largely owed to the rise of music streaming in the country.¹ Per Atty. Marivic Benedicto, President of the Philippine Association of the Recording Industry (PARI), streaming services accounted for 93.4% or US\$31.5 Million of the total Philippine music revenues in 2020. In contrast, revenues from other sources like live performances, sales of physical records and even synchronization licensing largely declined.²

Due to a lack of new content on free-to-air television, viewers have shifted to online streaming, said Atty. Benedicto. This has resulted in a 41% increase in YouTube revenues, with traditional TV advertisers moving to online streaming platforms like YouTube.³

The exponential rise in popularity of video and music streaming in the Philippines during the pandemic has given the music industry a mixed bag of opportunities and challenges.

Globalizing Local Music and Artists

On the one hand, digital service providers (DSPs) such as online stores and streaming platforms provide an alternative way for composers and artists to promote their music and expand their reach globally, without the debilitating production costs usually required for traditional music publication and distribution. Atty. Benedicto noted a direct and observable relationship between virality on Tiktok and increase in streams on YouTube and Spotify, even generating renewed interest in older works that create new sources of revenue for composers and artists.

Payment for access to original music has also become normalized for Filipinos with the popularity of DSPs like iTunes and Spotify, which shows a positive shift in the local audience's attitude towards music and its economic value.

The rise of short-form video platforms like Tiktok has also produced opportunities for Filipino artists to promote not only their works to a broader audience but also themselves as marketable personalities, allowing them to self-publish new

¹ From: "*State of the Global Music Industry*" by David Pryce, presented on 25 November 2021 at the PICS.

² "*The State of the Philippine Local Music Industry*" by Atty. Marivic Benedicto, presented on 25 November 2021 at the PICS.

³ "*The State of the Philippine Local Music Industry*" by Atty. Marivic Benedicto.

works. Far from being discouraged by a lack of in-person gigs and live performances, the digitalization of the music industry has emboldened local artists to invest in themselves in exchange for full ownership and control over their works and revenues. This saw the rise in artist-owned record labels and artist-produced music videos on streaming platforms such as YouTube and Believe.⁴

Copyright Challenges in the Digital Environment

On the other, traditional copyright protection is absent and/or difficult to implement over digital platforms. Atty. Paolo Lanteri of the Copyright Law Division of the World Intellectual Property Organization (WIPO) highlighted several challenges for copyright protection in the digital environment.⁵

The first is territoriality. Intellectual Property protection is territorial but the digital market is *de facto* global. The cross border availability of music over the internet creates situations wherein different laws and rules apply to the same piece of work depending on the jurisdiction where it is accessed or used. What is protected by copyright in one territory may not be protected in another.

In relation to territoriality, the principle of exhaustion of rights or the first-sale doctrine in copyright law means that after the first legitimate sale of the goods embodying the copyrighted work, the owner's right is exhausted and they can no longer control the subsequent disposition of such goods.⁶ Each country has a different approach to this issue.

In the Philippines, for example, Section 177.3 of Republic Act No. 8293 as amended by Republic Act No. 10372, otherwise known as the Intellectual Property Code of the Philippines (IP Code), grants the copyright owner the exclusive right to authorize, carry out or prevent only the *first* public distribution of the original and each copy of the work by sale or other forms of transfer of ownership. This implies that after the first sale of the original or copy of the work, the copyright owner loses control over the distribution of the goods, which can then be transferred or re-sold by the new legitimate owner.

The principle of domestic and/or international exhaustion of rights raises two questions in the digital environment. First is whether a particular territory adheres to the principle and if yes, how is it implemented? Are there conditions and/or exceptions to its application? The second is whether the re-sale or re-distribution of digital versions of copyrighted works legitimately purchased online are allowed under the exhaustion principle, or if these actions are deemed as unauthorized reproductions and therefore, copyright infringement.

Third, what rights should copyright owners enjoy in the digital environment? International treaties and agreements like the Berne Convention for the Protection of Literary and Artistic Works,⁷ WIPO Copyright Treaty (WCT),⁸ the WIPO Performances and Programs Treaty (WPPT)⁹ and the Beijing Treaty on Audiovisual Performances (BTAP)¹⁰ provide different rights to different copyright owners in relation to the communication to the public of their works. The WCT recognizes only the exclusive right of an author to authorize any communication to the public of their works.¹¹

On the other hand, the WPPT grants performers and producers of phonograms the right to a single equitable remuneration for any communication to the public of their phonograms¹² and the exclusive right of authorizing the making available to the public of their phonograms.¹³ For audiovisual performers, the BPAT grants them the exclusive right to authorize the communication to the public of their fixed audiovisual performances or the right to an equitable remuneration for the use of their fixed performances.¹⁴ Audiovisual performers also have the exclusive right to make their fixed performances available to the public,¹⁵ and may be granted the right to receive royalties or equitable remuneration for any use of their performances under national laws or by agreement, independent of the transfer of their exclusive rights.¹⁶ Of course, the actual rights enjoyed by composers and artist will largely depend on national laws, whether implementing these international treaties or not.

Next is the question of remuneration. The value of DSPs as a business model is proven but there is surprisingly little revenue paid to featured performers and no revenue at all paid to non-featured performers.¹⁷ Music streaming services use two types of payment models, the Market-Centric Payment System (MCPS) or "pro-rata", and the User-Centric Payment System (UCPS). Under the MCPS model, royalties are distributed to rights-holders in proportion to their market share in the total streams over the platform.

In contrast, the UCPS model distributes royalties generated from a user's subscription fees according to what songs the user listens to over a given period.¹⁸ The current inequity in royalty payments received by artists can be traced to the MCPS model but switching to the UCPS model will not necessarily represent a viable alternative. One possible solution is to require DSPs to pay additional remuneration or royalty payments to both featured and non-featured

⁴ "The State of the Philippine Local Music Industry" by Atty. Marivic Benedicto.

⁵ "Digital Music Rights: A Global Debate" by Atty. Paolo Lanteri, presented on 25 November 2021 at the PICS.

⁶ See M. Hawin, "Parallel Importation of Copyright Material: A Comparative Analysis of the Position in Several Asian Countries" (Asia Law Review, Vol. 1:69-122] at 70.

⁷ 09 September 1886, as amended on 28 September 1979.

⁸ Adopted in Geneva, 20 December 1996.

⁹ Adopted in Geneva, 20 December 1996.

¹⁰ Adopted in Beijing, 24 June 2012).

¹¹ Article 8, WCT.

¹² Article 15, WPPT.

¹³ Articles 10 and 14, WPPT.

¹⁴ Article 11, BPAT.

¹⁵ Article 10, BPAT.

¹⁶ Article 12, BPAT.

¹⁷ From: "Digital Music Rights: A Global Debate" by Atty. Paolo Lanteri.

¹⁸ From: "Digital Music Rights: A Global Debate" by Atty. Paolo Lanteri, citing "Music Streaming: Impact of UCPS Settlement Model, Results of CNM-Deloitte Study".

performers.¹⁹ But the digital business is not only novel, but fiercely competitive and a single payment solution will not likely suffice. At the end of the day, DSPs remain largely in control of the market and artists will continue to struggle between the need for the exposure/opportunity provided by DSPs and their right to equitable remuneration for the commercial exploitation of their works.

Lastly, the digital music market creates a quagmire of logistical issues. Assuming that copyrights in the work are recognized, how can a user from one end of the world know who owns or holds them for purposes of acquiring the appropriate authorizations for their use? Similarly, the use of music in multiple jurisdictions at any one time makes monitoring, copyright enforcement, and the collection and distribution of earned royalties extremely complex. For the most part, these issues can be addressed by technological solutions such as global databases and free-access websites, as well as cooperation between collective management organizations (CMOs). But as the industry continues to grow, so too will the challenges that copyright owners face.

The foregoing issues continue to be a matter of global debate and require further analysis and discussion on a country-to-country level.

(Due to space constraint, part 2 will be continued in the next edition of the newsletter)

Traditional Knowledge and Traditional Cultural Expressions in the Philippines

by: Atty. Valeriano del Rosario, VERALaw

Atty. Val del Rosario discussed Republic Act No. 8371 or “The Indigenous Peoples’ Rights Act of 1997” during the ASEAN IP webinar last January 18, 2022.

The law recognizes and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) to their ancestral domains and to preserve and develop their cultures, traditions, and institutions.

This law created the National Commission on ICCs/IPs (NCIP) tasked to carry out and implement plans and programs to protect the ICCs/IPs.

Among the law’s powerful provisions is the ICCs/IPs’ right to stay in their territories and not be relocated without their free and prior informed consent. In consequence, any private projects and infrastructures affecting the ancestral lands will not proceed without the consent of the community.

As an example of how Republic Act No. 8371 was implemented in order to protect traditional cultural expression, sometime last year, the National Commission vigorously stepped in to protect Apo Whang-od, known as “The Last *Mambabatok*” (Kalinga tattooist) from the tribe of Butbut in Buscalan, Kalinga.

An online educational platform was accused of exploiting Filipino culture by organizing a course in learning the ancient art of tattooing for a fee without Apo Whang-od’s proper consent.

The National Commission intervened in the alleged exploitation and the supposed online course was taken down.

Disclaimer: The views and opinions expressed in the articles are those of the authors and do not necessarily reflect the official policy or position of IPAP.

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¹⁹ From: “Digital Music Rights: A Global Debate” by Atty. Paolo Lanteri.