



Newsletter April 2024



IPOP HL Corner

Leveraging IP in Culture & Arts for Social Transformation & Governance (Part 1)

by: Director General Rowel Barba, Intellectual Property Office of the Philippines

IP is intrinsically tied to culture and the arts. After all, the World Intellectual Property Organization (or WIPO) defines IP as the “creations of the mind,” referring to inventions; literary and artistic works; designs; and symbols, names, and images that can be used in commerce.

As the agency mandated to protect the nation’s IP rights under Republic Act (RA) 8293, or the IP Code of the Philippines, IPOP HL’s efforts to mainstream IP is also helping mainstream our arts and culture.

This is also in line with IPOP HL’s evolution from a mere regulator of IP to a more developmental role as an enabler of small businesses, industries, the youth, the academe, and, of course, our creative community

IP in our culture and the arts is also contributing towards our nation’s social transformation and governance.

Ensuring that our people can maximize the use of their IP rights will promote greater innovation and creativity—from relevant, innovative technological solutions that address modern-day challenges to creative artistic works that will push our society forward.

As such, IP can contribute in fostering an enabling environment for our nation’s social and economic transformation to help us realize our vision of a “*matatag, maginhawa, at panatag na buhay para sa lahat*” as declared by President Ferdinand Marcos, Jr.

Innovation is already an integral component in our Philippine Development Plan (or PDP) 2023-2028 and our National Innovation Agenda Strategy Document (or NIASD) 2023-2032, with both helping us to aim for an IP-enabled dynamic innovation environment.

Meanwhile, we remain fully committed to creating a creative environment through IP protection to support our Creative Industries, especially with the passage of RA 11904 or the Philippine Creative Industries Development (or PCID) Act, in 2022.

Creative economy to GDP

According to the Philippine Statistics Authority (PSA), our nation’s creative economy¹ amounted to Php 1.60 trillion and contributed 7.3% to the country’s gross domestic product (or GDP) in 2022. What’s more, the industry currently employs more than seven million Filipinos.

Thus, by harnessing Filipino creativity as a key driver of economic growth, we can develop a robust and all-inclusive creative ecosystem in the Philippines while providing a better life for many of our people.

To this end, IPOP HL is working with the NCCA in the 19-member PCID Council to raise IP awareness across the creative economy and capacitating sectors to protect their IP, especially their copyright and related rights.

For underserved artists

With this in mind, IPOP HL is constantly finding ways to encourage our people to nurture and develop their creative prowess while pushing them to register their creative works so that they can protect their copyrights.

For example, our Bureau of Copyright and Related Rights (BCRR) has a flagship program, Copyright Plus, that is aimed at educating creators on the economic and cultural benefits of protecting their copyright through registration.

Focusing on underrepresented sectors, this program supports minority groups or persons in society to unlock their creative prowess while raising their appreciation of copyright’s role in their community, as well as in their future success.

Last year, we had four projects: the production of a short documentary on the making of an indie film to educate budding filmmakers; a tabletop card game to teach players about the value of IP; a workshop to teach aspiring writers and artists on creating comics or mangas; and the last on a workshop on storytelling and creating a graphic novel that is a manual on storytelling.

There is also the Copyright Bulletin released quarterly by the BCRR that discusses issues and emerging trends in the local and international creative economy. The bulletin provides recommendations as well on best practices in copyright management and market success.

Raising copyright awareness

The BCRR is also conducting webinars and information awareness programs targeting specific sectors of the Creative Industries. Additionally, these programs are aimed at the regional level to widen our engagement among our people and ensure greater inclusivity and collaboration.

For example, the Copyright Caravan is a BCRR initiative focusing on knowledge-sharing copyright matters through seminars, and the promotion of copyright registration, projects and activities. It also seeks to establish linkages and build rapport with the copyright-based industries, especially in the provinces.

For this year, BCRR visited General Santos City last October and Tacloban last November as part of this initiative.

IPOPHL had also partnered with the National Book Development Board (or NBDB) this year to raise copyright awareness during their Philippine Book Festival.

Our BCRR team joined the NBDB's first Book Festival at the World Trade Center in Manila last June, as well as their Book Festival in Davao City last August. At both events, our copyright experts conducted seminars as well as fielded questions at the IPOPHL booth about copyright and how to register works with us.

IPOPHL also took part in the Big Bad Wolf (BBW) Sale last June when they came back to the Philippines after a three-year hiatus due to the pandemic. During this event, the BCRR team ran copyright seminars and addressed IP questions and concerns at the IPOPHL booth during the 11-day event.

Aside from our own Copyright Caravan, we continue to partner with and participate in events organized by local government units (LGUs), other government agencies, and the private sector. This ensures we are able to take advantage of and maximize opportunities to bring about a greater awareness of copyright, especially among our people in the countryside.

In particular, our BCRR worked with SIKAP (or the Creative Content Creators Association of the Philippines, Inc.) for their flagship event, AYO2023, in Cebu, as well as the AYO Roadshow in Iligan.

We also worked with the NCCA for their various events in Bacolod, as well as the Department of Information and Communications Technology (DICT) on their 1st Philippine Digital Nomad Summit in Siargao.

Further, IPOPHL partnered with the Department of Trade and Industry (DTI) for their creative events and creativity summits in Manila, Iligan and Cagayan De Oro. Lastly, IPOPHL also participated in the Philippine Blockchain Week some three months back.

(Part 2 in next issue).

Philippines to host 2024 conference of Asian Patent Attorneys Association (APAA)

by: Atty. Dennis R. Gorecho, Sapalo Velez Bundang & Bulilan Law Offices

The Philippines will be the venue of the Asian Patent Attorneys Association (APAA) council meeting this year at Pasay City, Metro Manila from November 18 to 21, 2024.

Last year's APAA 20th General Assembly and 74th & 75th Council Meeting was held from November 3 to 7, 2023 at the Marina Bay Sands in Singapore. The last time that APAA held its Council Meeting in Singapore was back in 2008.

Some 40 Filipino intellectual property lawyers attended the event along with almost 1,400 other delegates from different countries.

The Philippines hosted the APAA council meetings in 1990 (Manila Hotel), 2000 (Cebu), and 2011 (Shangri-La Makati).

The APAA is a non-governmental organization dedicated to promoting and enhancing intellectual property (IP) protection in the Asian region.

Established in December 1969, membership of APAA is open to individuals practicing the profession of patent attorney in the Asian region as well as organizations that comprise such individuals and are constituted in the Asian region.

The association now has more than 2,500 members from 21 recognized groups in Australia, Bangladesh, Cambodia, Hong Kong, India, Indonesia, Japan, Korea, Laos, Macau, Malaysia, Myanmar, Nepal, New Zealand, Pakistan, Philippines, Singapore, Sri Lanka, Taiwan, Thailand and Vietnam, as well as from Bhutan, Brunei, Laos and Mongolia.

"In the foreseeable future, the growth of IP in Asia is going to be galloping off at a tremendous pace. It is likely to be for the next couple of years, at least, the strongest growing region, IP-wise, in the world," according to Minister for Culture, Community and Youth Edwin Tong SC.

Tong added that he believes APAA will have a crucial role to play, in helping businesses in the different jurisdictions unleash the hidden IP potential, tap into the markets, realize their potential, and really grow economically.

Some of APAA's activities include exchanging information and views concerning IP protection.

Country representatives presented their respective reports on issues involving anti-counterfeiting, copyright, patents, designs, trademarks, and emerging IP rights.

There were also roundtable discussions on women empowerment; handling cross-border trademark infringement or counterfeit products online and off-line; artificial intelligence and patentability of computer-implemented inventions; unified patent court litigation system in Europe; trade secrets and cross-border misappropriation cases; intersection of competition and IP laws; work life balance; trends in equality, diversity, inclusivity; approaches to drafting a patent specification that is suitable for multiple jurisdictions.

The Intellectual Property Association of the Philippines (IPAP) was founded on March 31, 1977 with the aim of professionalizing the steadily growing practice of IP law in the Philippines.

IPAP is the sole Philippine national group recognized by the APAA, the Asean Intellectual Property Association, and the Association Internationale pour la Protection de la Propriete Industrielle.

IPAP's founding member Atty. Alonzo Ancheta is the 2006-2009 president of APAA, the first Filipino to hold this position.

IPAP's past president Atty. Pablo Gancayco received the Enduring Award during the Gala dinner.

IPOPHL Extends Patent Cooperation Treaty Filing Assistance Program

by: Atty. Ma. Sophia Editha C. Cruz, Abrencia, Villaraza & Anganco Law Offices

In order to assist Filipino inventors and qualified foreign inventors to protect their inventions internationally through the Patent Cooperation Treaty ("PCT") filing system, the Intellectual Property Office of the Philippines (IPOPHL) extends the PCT Filing Assistance Program ("FAP") under Memorandum Circular 2024-004.

To recall, the PCT FAP waived the IPOPHL Search Fee and Preliminary Examination Fees under Memorandum Circular 2019-004. Subsequently, the effectivity of the PCT FAP under the said Memorandum Circular was extended for several years until 31 December 2023.

The PCT FAP aims to assist inventors, applicants and Innovation & Technology Support Offices ("ITSO") to use the PCT method to protect their inventions internationally, promote the IPOPHL as office of first filing, and promote IPOPHL services as PCT International Authority. (Section 1 of Memorandum Circular 2024-004)

Eligible for the PCT FAP are individuals who are Filipino inventor/applicants, higher educational institutions that are member of the ITSO support network, and foreign inventor/applicants from states in the WIPO list of eligible nationals or residents for 90% reduction in certain PCT fees which designated IPOPHL as competent International Searching Authority and Preliminary Examining Authority, and where the IPOPHL is the office of first filing from January to December 2024. (Section 2 of Memorandum Circular 2024-004)

Under the PCT FAP, the IPOPHL shall provide the following assistance for PCT filing (Section 3.1 of Memorandum Circular 2024-004):

- 1- Waiver of the IPOPHL Search Fee;
- 2- Waiver of the IPOPHL Preliminary Examination Fee;
- 3- Information and technical consultation regarding PCT system and process.

To avail of the benefits under the PCT FAP, inventors or applicants shall submit the duly accomplished request form to the Bureau of Patents, along with the request for an International Search Report. (Section 3.2 of Memorandum Circular 2024-004)

Monitoring of the implementation of the PCT FAP shall be done by the Bureau of Patents and the Documentation Information and Technology Transfer Bureau shall monitor availment by the ITSOs. The Bureau of Patents is tasked to consolidate and submit the report of all applications under the PCT FAP to the IPOPHL Director General. (Section 4 of Memorandum Circular 2024-004)

Implementation of the PCT FAP extension starts from 01 February 2024 and extend until 31 December 2024. Memorandum Circular 2024-004 was signed on 29 January 2024 by IPOPHL Director-General Rowel S. Barba.

New Novelty Assessment Guidelines for Industrial Design Applications

by: Attys. Richmond K. Lee & Rowena D. Palma, Angara Abello Concepcion Regala and Cruz Law Offices

On 18 July 2023, the Intellectual Property Office of the Philippines, through the Bureau of Patents (IPOPHL-BOP), issued the "Interim Guidelines for Novelty Assessment and Visibility Requirements for Industrial Design" (Design Guidelines). The Design Guidelines shall serve as basis by the IPOPHL-BOP for future office actions regarding novelty determination of industrial design applications.

Pursuant to the directive of the Director of Patents, the Design Guidelines was issued following the release of the Decision on the Verified Adverse Information for the application PH 3/2021/050062, titled "A TAMPER PROOF CONTAINER". The said Decision provides a definitive ruling from the Director on how to determine novelty and registrability for industrial design applications. It also defined the "Ordinary Observer Test" and introduced a second-tier test called the "Circumspect Observer Test". This Decision of the Director is said to be in line with the Decision of the Court of Appeals in *Happy Choice Disposable Packaging, Inc. vs. Warren Co.* (CA-G.R. SP No. 171108, 29 March 2023).

Under the Revised Implementing Rules and Regulations for Patents, Utility Models, and Industrial Designs (Revised Rules), an industrial design shall only be registrable if it is new or original under the perspective of an ordinary observer. It may be recalled that the Revised Rules adopt an expeditious registration process for industrial design so long as the formal requirements are met and the required fees are paid. Novelty assessment of industrial design applications are only initiated either upon the issuance of a registrability report, by order of the Director *motu proprio*, or upon filing of a Verified Adverse Information or a Pre-Grant Opposition by any interested party within one month from the publication of the industrial design application.

The Design Guidelines provide that the Ordinary Observer Test alone is sufficient to determine novelty if the application is at the stage of prosecution with the Examiner. An "ordinary observer" is defined as "a regular purchaser, consumer, user, or viewer who possesses merely ordinary skills and ordinary discernment in relation to objects he purchases, uses, or views." "Traders" are included within the ambit of the term "consumers," as they are the persons who are appropriate in determining the actual status of trade and distribution of the article. An ordinary observer is not a design expert, collector, or connoisseur. The Ordinary Observer Test provides that an industrial design application is novel over the prior art if such ordinary observer, when looking at both design embodiments side-by-side, can easily distinguish one from the other. It is based on the overall look and features of the designs and is not focused on minor or miniscule differences.

In case a Verified Adverse Information or a Pre-Grant Opposition is filed against an Industrial Design application, wherein an earlier design is being cited as novelty-destroying, the IPOPHL-BOP will employ a two-step analysis for

novelty assessment. The first step is the previously discussed Ordinary Observer Test. Should the industrial design application fail the Ordinary Observer Test, a new test called the "Circumspect Observer Test" should be applied. Under the Circumspect Observer Test, an analysis based on the minor differences between the subject application and the cited novelty-destroying design will be made. The common and different visual points should be selected based upon which of the common visual points draw the observer's attention the most. Several matters should be taken into consideration in identifying said visual points, such as nature, purpose, use, and manner of use of the articles. Should the overall difference between the subject application and the cited design be deemed insignificant or negligible, then the subject application shall be considered to be not novel over the cited design. The rationale for this test is that "in a real-life situation, if the ordinary observer cannot distinguish one design from the other, said observers will then turn circumspect and will turn to looking at minor differences in the design in order to distinguish one from the other."

In summary, the following are the steps to be followed by the IPOPHL-BOP in determining registrability and novelty of industrial design applications:

STEP 1: IS IT NEW VS. PRIOR ART?

* If at the stage of prosecution before Examiner

Step a: Does it pass the *Ordinary Observer Test*?

If yes, it is novel.

If no, it is not novel.

* If during pre-grant opposition:

Step a: Does it pass the *Ordinary Observer Test*?

If yes, it is novel.

If no, apply Step b.

Step b: Does it pass the *Circumspect Observer Test*?

If yes, it is novel.

If no, it is not novel

STEP 2: IS THE NEW DESIGN DICTATED BY TECHNICAL OR FUNCTIONAL REASONS?

* If yes, reject on this particular ground of non-registrability.

* If no, may be registered if new.

STEP 3: IS THE NEW DESIGN CONTRARY TO PUBLIC ORDER, HEALTH, OR MORALITY?

* If yes, reject on this particular ground of non-registrability.

* If no, may be registered if new.

It is worth noting that the Design Guidelines, particularly the introduction of the Circumspect Observer Test for novelty assessment, was issued by the IPOPHL-BOP pursuant to its "duty to exercise due care and caution in granting intellectual property rights, whether patents or industrial designs." The Design Guidelines are interim in nature and do not constitute binding legal provisions and may be deviated from in exceptional circumstances. Applicants are strongly encouraged to check that their industrial design applications are in conformance not only with the Design Guidelines, but also with the requirements of the Intellectual Property Code and the Revised Rules.

Intellectual Property Rights of Karaoke

by: *Atty. Dennis R. Gorecho, Sapalo Velez Bundang & Bulilan Law Offices*

Karaoke is a significant and integral part of Filipino culture, synonymous with happiness and goodwill. Rain or shine, no true Filipino party is complete without Karaoke!

Shigeichi Negishi, the inventor of the world's first commercially-available karaoke machine, has died in Japan last January 26, 2024 at the age of 100 years old.

Negishi was in his 40s when he came up with the idea in 1967 of prototyping a mass-produced, coin-operated karaoke machine, branded "Sparko Box."

The Sparko Box employed the wiring of a microphone, speaker and eight-track cassette tapes of commercially available instrumental recordings, with lyrics provided in a paper booklet. However, Negishi dissolved it in 1975 due to financial problems. He never secured a patent for his invention.

Filipino Roberto del Rosario is the known sole patent holder in the world of the karaoke machine who developed the karaoke's sing-along system in 1975 and is partially responsible for the popularity of karaoke in the Philippines today.

This was confirmed in the case of *Del Rosario, v. Janito Corp.* (G.R. No. 115106. March 15, 1996) wherein it ruled that there was a violation of Del Rosario's patent rights as the models performed the same function, or accomplished the same result by identical or substantially identical means and the principle or mode of operation are substantially the same.

Cablecasting of karaoke channels is likewise considered an infringement of intellectual property rights, specifically copyright, as held in *Philippine Home Cable Holdings, Inc. vs Filipino Society of Composers, Authors, and Publishers, Inc./ Filscap* (G.R. No. 188933, February 21, 2023).

Filscap monitored Home Cable and found that its members' musical compositions were being played on channels 22 and 32 without a license and later sued for copyright infringement under R.A.10372, or the Intellectual Property Code.

Home Cable's defenses include, among others, (a) its re-transmission of channels 22 and 32 was not public performance under copyright law; (b); Filscap did not hold the communication to the public rights over its principals' musical compositions (c) Filscap or its principals had already been paid for Home Cable's use of the copyrighted materials (d) Home Cable, as a cable television systems operator, does not exercise financial or editorial responsibility over the content of programs it retransmits.

To uphold a copyright infringement claim, the following must be proved: first, the complainant's ownership of a validly copyrighted material, and second, the defendant's exercise of any the enumerated economic rights without the consent of the copyright owner or holder. For the second element, it must further be shown that the exercise of the economic

right was inconsistent with any of the limitations on copyright and permissible unauthorized reproductions and importations.

The Supreme Court ruled in favor of Filscap that the unauthorized exercise of the copyright holders' communication to the public rights as a result of cablecasting the two karaoke channels is copyright infringement.

In a decision penned by my UP Law professor and SC Associate Justice Marvic Leonen, the Court ruled that when a cable television system operator transmits a musical composition fixed in an audiovisual derivative work over a channel they control and operate, the operator is making that work accessible to members of the public from a place or time individually chosen by them. This is the essence of the "communication to the public" right in the IP Code.

The Supreme Court in essence upheld FILSCAP's argument that while Section 177 of Republic Act No. 8293 does not use the term "broadcasting right," its equivalent is either or both the "public performance" and "communication to the public" rights. Home Cable's retransmission of works through the simultaneous relay of broadcast signals exercised both these exclusive rights, without the consent or authority granted by the copyright holder over those works.

A later amendment to the IP Code further expanded the scope of "communication to the public" to include broadcasting, rebroadcasting, retransmitting by cable, and retransmitting by satellite.

All intellectual property rights are not mere economic exercises. The Constitution and laws recognize their social function and benefit to the common good. Copyright, in particular, is linked with culture.

To encourage the creation, proliferation, and innovation of literary, artistic, and scientific works, our laws have designed a regime of protection that balances the incentives to an individual for disclosing their works and the eventual benefit to the public once the protections lapse and these works become freely available. An essential component of this balance is certainty of enforcing creators' rights against unauthorized trespass.

Philippines: National Privacy Commission amends certain provisions of its Rules of Procedure

by: Attys. Divina P.V. Ilas-Panganiban, Reena C. Mitra-Ventanilla, & Berenice Joanna G. Dela Cruz, Quisumbing Torres, Law Offices Manila

In Brief

The National Privacy Commission (NPC) recently issued NPC Circular No. 2024-01 ("Circular"), which amends certain provisions of the 2021 Rules of Procedure ("NPC Rules of Procedure"). The Circular aims to further streamline the process of receiving complaints and instituting investigations on matters affecting any personal information. The amendments impose certain requirements in case of privacy violation complaints by minors or persons alleged to be incompetent. There are likewise new rules on service of judgments and other resolutions through electronic mail, joinder of parties, and alternative dispute resolution through mediation. The Circular also provides for the procedure to be adopted in case of breach notification and data breach investigations and covers the procedures for various compliance checks that may be performed by the NPC like privacy sweeps, warning letters, notice of documents submission, and onsite visits.

The Circular took effect on 10 February 2024.

Criteria on persons who may file a complaint

Data subjects who are affected by a privacy violation or data breach may file complaints with the NPC.

In the case of a minor or a person alleged to be incompetent, proof of the relationship with the complainant must be presented to the NPC as an attachment to the complaint. In case the minor is represented by a parent, his or her birth certificate shall be considered as sufficient proof. On the other hand, for a guardian, a court order designating such person as his or her guardian is sufficient.

The Circular provides that one or more data subjects may be represented by a single juridical person. The juridical person must be authorized by the data subjects to appear and act on behalf of their behalf through a special power of attorney (SPA). Further, the person representing the juridical person must be authorized through a Board Resolution contained in a duly notarized Secretary's Certificate or its equivalent in case of government agencies.

In case the complainant is a non-resident citizen who has no authorized representative in the Philippines or is unable to appoint such a representative, such person may still submit a complaint in accordance with the NPC Rules of Procedure. However, the complaint should be notarized by the Philippine Embassy/Consulate, or with an apostille certificate from the country of origin.

Service of judgements, orders, or resolutions through electronic systems and electronic mail

Judgments, orders, or resolutions may now be served by electronic systems which comprise of sending through user accounts and auto-generated notifications implemented by the NPC. At its discretion, the NPC may also serve judgments, orders, or resolutions: (1) personally; (2) by registered mail; (3) by courier; or (4) by other electronic mail.

Joinder of parties and entities without judicial personality

All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may join as complainants or be joined as respondents in one complaint, where any question of law or fact common to all such complainants or to all such respondents may arise in the action.

For parties in interest without whom no final determination can be had of an action must be joined either as complainants or respondents. Further, whenever in any complaint or pleading in which a claim is asserted a necessary party is not joined, the pleader shall set forth the party's name, if known, and shall state why the party is omitted. Should the NPC find the reason for the omission unmeritorious, it may order the inclusion of the omitted necessary party if jurisdiction

over the person may be obtained.¹⁵ The failure to comply with the order for a necessary party's inclusion, without justifiable cause, shall be deemed a waiver of the claim against such party.

When two or more persons not organized as an entity with juridical personality enter into a transaction, they may be sued under the name by which they are generally or commonly known. Further, in the answer of such respondent, the names and addresses of the persons composing the entity must be accurately stated. The address to be used shall be the last known address of the respondent.

Alternative dispute resolution through mediation proceedings

The Circular provides that parties, by mutual agreement, may signify their intent to explore the possibility of settling issues through mediation during the preliminary conference or at any stage of the proceedings but before the endorsement of the case for decision by the Legal and Enforcement Office (LEO) Director or the NPC, as the case may be.

The Circular allows parties to apply for mediation through their representatives, provided that the latter are duly authorized by a SPA to appear, offer, negotiate, accept, decide, and enter into a mediated settlement agreement without additional consent or authority from the party. For a juridical person, the representative must be authorized by a Board Resolution contained in a duly notarized Secretary's Certificate, or any equivalent written authority.

In addition to the NPC premises, the Circular has now allowed video conferencing as an alternative venue for mediation proceedings, to enable the remote appearance and testimony of parties.

Moreover, parties are now allowed to re-apply for mediation despite a prior failure to reach settlement provided that the application is filed before the endorsement of the case for decision by the NPC and subject to compliance with the Rules.

Breach investigation and notification

The Circular provides that the CMD shall be the initial recipient of data breach notifications and shall immediately assign an Evaluating Officer to review the data breach notification. Upon receipt of the data breach notification, the Evaluating Officer shall recommend to resolve preliminary requests from the controller or processor for: (a) extensions to notify data subjects; or (b) extensions to file full breach report. The preliminary requests for extensions granted by the CMD shall be for a period of 20 calendar days counted from the date of the request.

The Circular has added that the breach notification evaluation report may contain a recommendation for: (1) a possible violation of the DPA arising from the breach matter; and (2) the imposition of administrative fines on other infractions. Moreover, upon the finding of a possible data privacy violation that requires further investigation, the CMD shall: (1) endorse the final breach notification evaluation report to the NPC for the resolution of the breach case; and (2) endorse the matter to the CID for further investigation for a possible data privacy violation.

The Circular also clarifies that the CID may use this information to initiate a *sua sponte* investigation if the NPC receives information that a possible data breach occurred but the controller or processor did not submit any notification to the NPC.

Compliance checks

The Circular provides that a compliance check may be conducted based on any of the following considerations below.

- i. Level of risk to the rights and freedoms of data subjects posed by personal data processing by a controller or processor
- ii. Reports received by the NPC against the controller or processor, or its sector
- iii. Non-registration of a controller or processor that is subject to the mandatory registration requirement
- iv. Unsecured or publicly available personal data found on the premises and on the internet that may be traced to a controller or processor
- v. Other considerations that indicate non-compliance with the DPA, its implementing rules and regulations (IRR), or NPC issuances
- vi. In the discretion of the CMD, there is an urgent need to ensure the protection of voluminous personal data records and such can only be done by actual physical inspection of said records within the controller or processor's office premises

A privacy sweep shall refer to the initial mode of compliance check where the NPC shall review a controller or processor's compliance with respect to its obligations under the DPA, IRR, and NPC issuances, based on publicly available or accessible information, including but not limited to, websites, mobile applications, raffle coupons, brochures, privacy notices, social media pages or accounts, and other physical or digital forms. The CMD may also conduct an on-the-spot privacy sweep on the premises, pop-up stores, kiosks, or stalls where personal data is processed.

Pursuant to the privacy sweep, the CMD shall issue a warning letter in any of these instances: (1) CMD discovers data privacy issues involving a controller or processor who has not yet registered or whose registration has expired; or (2) CMD determines that a risk to the rights and freedoms of a data subject is present and requires the controller or processor's urgent and immediate action.

The CMD shall issue a notice of document submission based on the instances: (1) the CMD discovers that the controller or processor has failed to demonstrate substantial compliance with the DPA, IRR, and other NPC issuances; (2) if the CMD requires additional information to fully determine the controller or processor's level of compliance; or (3) if the CMD requires further verification to determine if the controller or processor has embedded data privacy policies and data protection measures in its operations.

The CMD shall conduct an on-site visit (OSV) to: (1) the principal place of business of the controller or processor; or (2) where personal data is processed in cases where there are persistent issues or substantial findings of non-compliance with the obligations indicated in the DPA and NPC issuances.

The CMD shall issue a deficiency report based on the OSV that there are existing gaps in the controller or processor's compliance with the DPA, IRR, and NPC issuances. If the controller or processor fails to address the issues raised in a deficiency report or is determined to be non-compliant with the DPA, IRR, and other issuances of the NPC after being subjected to any of the modes of compliance checks, the CMD shall issue the notice of deficiencies indicating the period of time within which to correct the identified deficiencies, which shall not be less than 10 days from receipt of the notice.

The NPC shall issue a compliance order in any of the following instances: (1) after the lapse of the period provided in the notice of deficiencies and no action was taken by the controller or processor to correct the identified deficiencies; (2) after the lapse of the period provided in the notice of deficiencies and such identified deficiencies persist; (3) in the course of the conduct of an OSV, the controller or processor refuses or fails to provide access to premises, records or prevents the conduct of the inspection; or (4) in the course of the conduct of the on-the-spot privacy sweep, the controller or processor refuses or prevents the conduct of the inspection on otherwise publicly available areas or information.

The CMD shall issue a certificate of no significant findings to a controller or processor: (1) that has undergone document submission or an OSV; (2) where no substantial deficiencies were found; or (3) the deficiencies identified in the deficiency report or notice of deficiencies have already been addressed to the satisfaction of the NPC.

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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