

Philippines Intellectual Property Rights Understanding

UNDERSTANDING BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA REGARDING THE PROTECTION AND ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

REPUBLIC OF THE PHILIPPINES

KAGAWARAN NG KALAKALAN AT INDUSTRIYA

(Department of Trade Industry)

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April 6, 1993

The Honorable Michael Kantor

U.S. Trade Representative

Dear Ambassador Kantor:

I have the honor to refer to the consultations between representatives of the Government of the Republic of the Philippines and the Government of the United States of America in Manila on February 11-12, 1992, Bangkok on August 5, 1992, in Manila on November 23-25, 1992, and in Washington on December 4-5, 1992, and- March 2-3, 1993 regarding the protection and enforcement of intellectual property rights in the Philippines. These consultations were useful in clarifying aspects of the Philippine law and practice with respect to this issue.

Recognizing that strong protection for intellectual property advances the national interests of promoting creative and innovative activity in their territories as well as improved conditions for investment, trade and technological development, both of our governments will provide adequate and effective protection of intellectual property. In the interest thereof of attracting more foreign investments and accelerating technological development, the Philippine Government takes this opportunity to confirm the steps it has already taken to protect intellectual property rights and additional measures it will take to improve protection and enforcement of these rights as set forth below:

I. Copyright and Neighboring Rights Protection:

A. The Philippine Government has already implemented a resolution concerning textbook reprinting which narrows the parameters for the compulsory licensing of textbooks by raising the threshold price and limiting coverage of the Presidential Decree (PD) 1203. The resolution also provides a more realistic timetable for negotiating reprinting rights with the publishers.

B. The Philippine Government will also take the following steps:

1. Start the process of accession to the substantive provisions of the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention, 1971). In this regard, the Executive Branch of the Government will secure approval for accession by December 1993 and will exert best efforts to have the ratification by the Senate in December 1994.
2. Submit amendments to its copyright law and relevant PDs, regulations, rules and other measures which will bring these Provisions into conformity with the Paris Act of the Berne Convention, 1971, including the provisions of the Appendix of that Convention. The amendments shall include:
 - (i) Protection for phonograms (sound recordings) at a level commensurate with other copyrighted works, including, a term of at least 50 years from the date of first fixation or publication.
 - (ii) Exclusive rights for producers of sound recordings and their successors in interest to authorize or prohibit the rental, to the public, for purposes of direct or indirect commercial advantage, of the original or copies of protected sound recordings.
 - (iii) Freedom from imposition of formalities on works including sound recordings such as registration and deposit requirements.
 - (iv) An express statement that any limitations upon and exceptions to exclusive rights are limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of a right holder. This provision shall apply to the provisions of Section 10 of PD 49 regarding the exemptions for private use of copyrighted materials.
 - (v) An exclusive right for authors of computer programs and their successors in interest to authorize or prohibit the rental to the public, for purposes of direct or indirect commercial advantage, or originals or copies of their works.
 - (vi) An express statement that computer programs are protected as literary works.

II. With respect to trademarks, the Philippine Government confirms its commitment to provide adequate and effective protection for owners of trademarks. To this end, the Philippine Government will:

A. Submit amendments to its trademark law to:

1. Provide protection for internationally well-known marks in line with the Ongpin Memorandum, relevant jurisprudence and the provisions of Article 6 bis of the Paris Convention and Article 16 of the December 20, 1991 draft text on TRIPS. An internationally well-known mark shall not be denied protection because of lack of use or registration in the Philippines.
2. Eliminate the requirement that there be an actual sale of goods with an authorized mark as a precondition to prosecute infringement of trademarks.

B. Through the Director of the Bureau of Patents, Trademarks, and Technology Transfer (BPTTT) issue policy memorandum to:

1. Clarify that the recently adopted amendment to Rule 41 which grants national treatment to foreign applicants whose country of origin is a member country of the Paris Convention for the Protection of Industrial Property, would have the effect of doing away with the requirement that the foreign applicant shall submit proof of reciprocity.
2. Specify that justified non-use of a registered mark under Rule 141 relating to the special circumstances that justify non-use shall be reasonably determined on a case-by-case basis and shall be interpreted to mean that such special circumstances shall not be limited only to prohibition of sale by government regulation but other similar circumstances as well, including government restrictions on use or importation.

III. On Patents:

A. The Philippine Government, in considering what amendments will be made on its current patent laws, will not alter the requirements of patentability already embodied in its existing law, i.e., that patents shall be available for any inventions, whether for products or processes, in all fields of technology, provided that they are new, useful and unobvious, and ensure that any exclusions from patentability conform to the limits provided in the December 20, 1991 draft text on TRIPS. It will submit an amendment to its patent law in line with the provision of Article 31 of the TRIPS. It will also submit an amendment to indicate that importation of a patented product or the product of a patented process will be treated as "working" a patented invention.

B. Both Governments recognize their respective rights to take measures to remedy an adjudicated anticompetitive practice.

IV. The Philippine Government confirms its commitment to ensure the effective

enforcement of intellectual property rights. To this end, it has taken, or will take, the following steps:

A. An Inter-Agency Oversight Committee on Intellectual Property Rights has been established under EO 60 of 26 February 1993 which will be the recommending, coordinating, enforcement oversight and program implementation body for intellectual property rights. This Committee will meet on a regular basis and will issue its operating instructions by August 31, 1993.

B. In drafting the guidelines, the Committee will include information on the evidence that right owners must submit to initiate administrative action against infringers and procedures for hearing officers to follow to determine whether an infringement has occurred. These guidelines will also include instructions on the levels of penalties to be imposed on infringers, including under what conditions business licenses of infringers should be revoked.

C. To address the situation of cable TV system operators that infringe copyright through unauthorized retransmission of copyrighted works:

1. The Videogram Regulatory Board (VRB) , National Telecommunications Commission (NTC) , and Movie Television Review and Classification Board (MTRCB) will work to have a coordinated program through a Memorandum of Agreement to ensure that copyright protection will be enforced with respect to retransmission of copyrighted works.

2. P. D. 1987 "An Act creating the Videogram Regulatory Board": prohibits the unauthorized retransmission of copyrighted works on cable TV system. Cable TV operators must first register with VRB in accordance with Sec. 6 of P.D. 1987 and must show proof of ownership of rights over films to be shown on his cable TV system before said films are broadcasted in accordance with VRB Memo Circular No. 12-87 dated 02 December 1987.

3. Violation of these provisions of law will subject the violator to administrative penalties of fines ranging from P6,000 - P100,000 revocation of license, closure of the cable TV system and/or criminal prosecution leading to imprisonment ranging from 3 months and 1 day to one year imprisonment plus a fine of not less than P50,000 to P100,000.

4. Enforcement of these provisions is done through regular inspection by VRB enforcement agents leading to administrative prosecution of offenders or through search and seizure operation or raid by VRB agents leading to criminal prosecution of the offender.

5. VRB welcomes and acts on complaints on the unauthorized retransmission of copyrighted works on cable TV screen.

6. Under the Philippine Government structure, the National Tele-communication Commission (NTC) under the Department of Transportation and Communication (DOTC) has authority to license the operation of cable and satellite TV's. Under Art. 10 of Department Circular No. 93, however, the DOTC has adopted the following policy:

"Authorized owners and operators of satellite television shall comply with intellectual property rights and other applicable laws. It is also the policy of the government to respect the legal rights of owners, producers, and authorized distributors of such programs."

Moreover, DOTC will require cable TV's companies to present proof of transmission rights or authority to redistribute from the copyright owner as a condition to use any material in their retransmissions. The NTC will coordinate with the VRB to ensure compliance with intellectual property rights and other applicable laws.

D. To ensure the effective prosecution of infringement crimes, Department of Justice Memorandum Order No. 235 was issued 25 August 1992 creating the Special Task Force on Piracy and Counterfeiting covering the key cities in 10 regions. Parallel to the creation of the Task Force, training of prosecutors handling infringement cases has been conducted and expanded. In addition, the Department of Justice shall issue instructions to prosecutors which shall direct prosecutors to:

1. Commence criminal investigations upon being presented with evidence of criminal copyright or trademark infringement and when the investigation confirms evidence of infringement, seek criminal indictments within 60 days.

- 2 . Seek sentences sufficient deter further infringements including jail sentences and the maximum fines permitted in criminal infringement cases.

E. The Philippine Government will also strengthen the enforcement effort by submitting amendments to each of the relevant laws increasing the available penalties in criminal infringement cases to levels sufficient to deprive infringers of the benefit of their illegal activity and to deter further infringement. The maximum period of imprisonment will be increased from a period of six months one year to a maximum of at least three years. The minimum level of fines will be established to reflect the seriousness of the infringement.

V. Recognizing that prevention of the importation of infringing goods has an important on the reputation of the Philippines with respect to the protection and enforcement of intellectual property rights, the Philippine Government will act to prevent the importation of such goods.

A. To meet this commitment, the Bureau of Customs will issue guidelines, by August 31, 1993, for the implementation of its authority under Section 30 of P.D. 49 (Copyright law) and Section 35 of RA 166 (Trademarks law).

1. These guidelines shall establish detailed procedures that, among other things, will enable Customs to make initial determinations of infringement of copyright and trademarks, and will also permit copyright and trademark owners or their authorized representatives to notify Customs of suspected infringing shipments. In establishing these guidelines, the Bureau of Customs will take into account current international practices on border enforcement, including practices of the United States. The Customs guidelines will also be consistent with the provisions of Section 4 of the December 20, 1991 draft text of the TRIPs agreement in defining the powers of Customs authorities, the rights of the copyright or trademark owner and the rights of owners, importers, or consignees of goods that are subject to interdictions for infringement of copyright and trademarks.

2. It is the Philippine Government's understanding that the U.S. authorities will provide, to the extent possible, necessary technical assistance and training for the implementation of subparagraph 1 above. In addition, copyright and trademark owners or their duly authorized representatives shall provide necessary assistance in the actual determination of infringing materials.

B. The VRB and Customs will establish a system for the monitoring of imports and seizure and destruction of infringing recorded materials in imports of all forms of videograms.

VI. With respect to the taxation of foreign trademarked cigarettes, the Philippine Government resolves to eliminate discriminatory tax treatment pursuant to its obligations under the General Agreement on Tariffs and Trade (GATT).

VII. The Philippine Government will continue to support efforts to establish a multilateral framework of standards, principles, regulations, measures and enforcement of intellectual property rights along the lines of the December 20, 1991 draft text on TRIPs.

VIII. The Philippine Government will make the necessary executive/administrative issuances covered by this note no later than August 31, 1993. Further, it will submit the necessary legislation to implement the undertakings

requiring new legislation during the next session of the present Congress and will exert best efforts to seek expeditious passage of these legislation by December 1994.

IX. Both Governments recognize that the private sector must play an active role in creating conditions for effective intellectual property rights protection that will be mutually beneficial to providers and users of these rights. To this end:

A. The US. private sector, including trade associations, will be encouraged to establish a market presence in the Philippines so as to make available to the public the products of their innovation and creativity. The Philippine Government will facilitate such market presence.

B. The Philippine Government will coordinate with the private sector, including trade associations, to develop more effective procedures for deterring infringements and prosecuting

infringement cases, providing assistance where necessary, such as technical advice and training on enforcement, and participating in administrative or judicial action in cases of infringement.

X. It is my Government's understanding that consultations regarding any matter related to the interpretation, implementation, or operation of this Understanding, including shipments of infringing products to third-country markets, will be held promptly at the request of either Government under the existing bilateral consultation mechanisms provided for in the Trade and Investment Framework Agreement signed between our two government on November 9, 1989. Both Governments will also consult on technological developments which have a substantive impact on intellectual property rights.

In consideration of these commitments by the Philippine Government and in the expectation that these commitments will be fully implemented, the US. Government will remove the Philippines from the "special 301" priority watch list effective on or before April 30, 1993.

Please confirm that this note and your note in reply constitute an Understanding between our two Governments.

With assurances of my highest consideration.

Very truly yours,

Rizalino S. Navarro

Secretary

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office Of the President

Washington, DC 20506

April 6, 1993

The Honorable Rizalino S. Navarro

Secretary

Department of Trade and Industry

Dear Secretary Navarro:

I have the honor to acknowledge receipt of your letter of April 6, 1993, concerning the protection and enforcement of intellectual property rights in the Republic of the Philippines. Your letter reads as follows:

"Dear Ambassador Kantor:

I have the honor to refer to the consultations between representatives of the Government of the Republic of the Philippines and the Government of the United States of America in Manila on February 11-12, 1992, Bangkok on August 5, 1992, in Manila on November 23-25, 1992, and in Washington on December 4-5, 1992, and March 2-3,

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(iii) Freedom from imposition of formalities on works including sound recordings such as registration and deposit requirements.

(iv) An express statement that any limitations upon and exceptions to exclusive rights are limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of a right holder. This provision shall apply to the provisions of Section 10 of PD 49 regarding the exemptions for private use of copyrighted materials.

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3. Violation of these provisions of law will subject the violator to administrative penalties of fines ranging from P6,000 - P100,000, revocation of license, closure of the cable tv system and/or criminal prosecution leading to

imprisonment ranging from 3 months and 1 day to one year imprisonment plus a fine of not less than P50,000 to P100,000.

4. Enforcement of these provisions is done through regular inspection by VRB enforcement agents leading to administrative prosecution of offenders or through search and seizure operation or raid by VRB agents leading to criminal prosecution of the offender.

5. IMB welcomes and acts on complaints the unauthorized retransmission of copyrighted works on cable TV screen.

6. Under the Philippine Government structure, the National Telecommunication Commission (NTC) under the Department of Transportation and Communication (DOTC) has authority to license the operation of cable and satellite TV's. Under Art. 10 of Department Circular No. 93, however, the DOTC has adopted the following policy:

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2. Seek sentences sufficient to deter further infringements including jail sentences and the maximum fines permitted in criminal infringement cases.

E. The Philippine Government will also strengthen the enforcement effort by submitting amendments to each of the relevant laws increasing the available penalties in criminal infringement cases to levels sufficient to deprive infringers of the benefit of their illegal activity and to deter further infringement. The maximum period of imprisonment will be increased from a period of six months one year to a maximum of at least three years. The minimum level of fines will be established to reflect the seriousness of the infringement.

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1. These guidelines shall establish detailed procedures that, among other things, will enable Customs make initial determinations of infringement of copyright and trademarks, and will also permit copyright and trademark owners or their authorized representatives to notify Customs of suspected infringing shipments. In establishing these guidelines, the Bureau of Customs will take into account current international practices on border enforcement, including practices of the United States. The Customs guidelines will also be consistent with the provisions of section 4 of the December 20, 1991 draft text of the TRIPs agreement in defining the powers of Customs authorities, the rights of the copyright or trademark owner and the rights of owners, importers, or consignees of goods that are subject to interdictions for infringement of copyright and trademarks.

2. It is the Philippine Government's understanding that the US. authorities will provide, to the extent possible, necessary technical assistance and training for the implementation of subparagraph I above. In addition, copyright and trademark owners or their duly authorized representatives shall Provide necessary assistance in the actual determination of infringing materials.

B. The VRB and Customs will establish a system for the monitoring of imports and seizure and destruction of infringing recorded materials in imports of all forms of videograms.

VI. With respect to the taxation of foreign trademarked cigarettes, the Philippine Government resolves to eliminate discriminatory tax treatment pursuant to its obligations under the General Agreement on Tariffs and Trade (GATT) .

VII. The Philippine Government will continue to support efforts to establish a multilateral framework of standards, principles, regulations, measures and enforcement of intellectual property rights along the lines of the December 20, 1991 draft text on TRIPS.

VIII. The Philippine Government will make the necessary executive/administrative issuance covered by this note no later than August 31, 1993. Further, it will submit the necessary legislation to implement the undertakings requiring new legislation during the next session of the present Congress and will exert best efforts to seek expeditious passage of these legislation by December 1994.

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A. The U.S. private sector, including trade associations, will be encouraged to establish a market presence in the Philippines so as to make available to the public the products of their innovation and creativity. The Philippine Government will facilitate such market presence.

B. The Philippine Government will coordinate with the private sector, including trade associations, to develop more effective procedures for deterring infringements and prosecuting infringement cases, providing assistance where necessary, such as technical advice and training on enforcement, and participating in administrative or judicial action in cases of infringement

X. It is My Government understanding that consultations regarding any matter related to the interpretation, implementation, or operation of this Understanding, including shipments of infringing products to third-country markets, will be held promptly at the request of either Government under the existing bilateral consultation mechanisms provided for in the Trade and Investment Framework Agreement signed between our two governments on November 9, 1989. Both Government will also consult on technological developments which have a substantive impact on intellectual property rights.

In consideration of these commitments the Philippine Government and in the expectation that these commitments will be fully implemented, the US Government will remove the Philippines from the "special 301" priority watch list effective on or before April 30, 1993.

Please confirm that this note and your note in reply constitute an Understanding between our two Governments.

With assurances of my highest consideration.

Very truly yours,

Rizalino S. Navarro

Secretary

I have the honor to confirm that this exchange of notes constitutes an Understanding between our two Governments. I also confirm that as stated in your note, the U.S Government will remove the Philippines from the "special 301" priority watch list effective on or before April 30, 1993.

I look forward to working with you in the future on trade issues.

Sincerely,

Michael Kantor

April 6, 1993

Agreed Minutes

Representatives of the Government of the Republic of the Philippines and the Government of the United States of America hereby state their mutual understanding of the following points.

1. Consultations will be held before August 31, 1993 concerning the drafting and implementation of the Custom guidelines specified in Article V (A) (1) of the April 6, 1993, Understanding between our Governments (Understanding).
2. Within 90 days after the signing of the Understanding, consultations will be held with the aim of specifying when a patent compulsory license may be granted.
3. Consultations will be held before December 31, 1994, to review the status of legislation required to implement the Understanding with a view to developing an action plan to achieve the objective of enacting and implementing such legislation.

For the Government of The United States of America

For the Government of The Republic of the Philippines

TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency.