


**NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)**



'22 JUL 26 P 3 :09

**SENATE
S. No. 891**

RECEIVED BY: 

Introduced by SENATOR FRANCIS "TOL" N. TOLENTINO

**AN ACT
AMENDING SECTION 177 AND SECTION 216 OF REPUBLIC ACT NO. 8293,
OTHERWISE KNOWN AS THE "INTELLECTUAL PROPERTY CODE OF THE
PHILIPPINES," AS AMENDED BY REPUBLIC ACT NO. 10372, AND FOR
OTHER PURPOSES**

Explanatory Note

Under Article XIV, Section 13 of the 1987 Constitution, the State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as provided under existing laws. To this end, Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended by Republic Act No. 10372, was enacted to establish an effective intellectual and industrial property system recognized as vital to the development of domestic and creative activity, which facilitates the transfer of technology, attracts foreign investments, and ensures market access for our products. The said law further declares as a State policy the enhancement of the enforcement of intellectual property rights in the Philippines.

Similarly, the State recognizes the protection of intellectual property as an integral aspect of nation building. Being a signatory to international intellectual property laws and agreements, the State shall respect and abide by the parties of these international agreements and shall strive to provide adequate protection and enforcement of intellectual property rights. Notably, the Philippines is a state party to

the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement") - an international agreement between all the member nations of the World Trade Organization (the "WTO"), which establishes minimum standards for the regulation of different forms of intellectual property. Under Article 10 of the TRIPS Agreement, computer programs, whether source or object code, shall be protected as literary works under the Berne Convention (1971). This provision confirms the obligation to protect computer programs under copyright.

Over the past few decades, technology has evolved rapidly and allowed users to freely upload and download information on the internet, including music, texts, and other works of art through linking, torrenting, and streaming, among others, which lead to the rampant violations of digital copyright infringement.

In the enforcement of the provisions of the Intellectual Property Code of the Philippines (the "IP Code") in relation to the Philippines' obligations as a state party to the TRIPS Agreement, the Supreme Court of the Philippines, in the case of ***NBI-Microsoft Corporation, et. al. v. Hwang, G.R. No. 147042 (2005)***, held that the copying of genuine Microsoft software to produce fake CD-ROMs and their distribution are in violation of Microsoft's copyright even if the copier or distributor is a Microsoft licensee. In this case, Hwang, et. al. contended that the CD-ROMs were left to them merely for safekeeping. The Supreme Court, however, found this reasoning untenable given the mass production of the CD-ROMs without securing Microsoft's prior authorization.

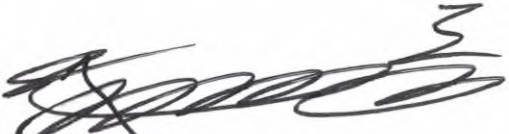
Further, secondary liability for copyright infringement has to be revisited in light of the increasing cases of online infringements and cybercrime issues. Section 22 of R.A. No. 10372 amended Section 216 of R.A. No. 8293 to expand copyright infringement liability not only to cover direct infringement but also third party infringement.

In ***ABS-CBN Corp. v. Gozon, G.R. No. 195956 (2015)***, the Supreme Court held that "[k]nowledge of infringement is only material when the person is charged of

aiding and abetting a copyright infringement under Section 217 of the Intellectual Property Code." The rampant use of internet service providers (ISPs) and peer-to-peer (P2P) networks, however, present novel and more complex issues on construing "aiding and abetting a copyright infringement" that give rise to copyright disputes.

In consonance with the foregoing legal developments, this measure seeks to amend the following Sections of the IP Code, as amended: *a)* Section 177 to take into account rampant digital reproduction of copyrightable works; and *b)* Section 216 of the IP Code, as amended, to address increasing concerns on secondary liability and online copyright infringement issues, such as those related to P2P networks and ISPs. The Bill considers the right of copyright owners to prevent others from copying, uploading, scanning, digitizing or distributing their creative work. As such, it likewise amends existing laws on third party infringement and clarifies parameters for imposing secondary liability. In so doing, this measure will further the right of the copyright owner to determine how his or her work may be used which is well within such owner's right based on the IPC and treaties wherein the Philippines is currently a party to.

In view of the foregoing, the immediate passage of this Bill is earnestly sought.



FRANCIS "TOL" N. TOLENTINO

NINETEENTH CONGRESS OF THE)
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First Regular Session)



Senate
Office of the Secretary

'22 JUL 26 P 3 :08

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OTHERWISE KNOWN AS THE "INTELLECTUAL PROPERTY CODE OF THE
PHILIPPINES," AS AMENDED BY REPUBLIC ACT NO. 10372, AND FOR
OTHER PURPOSES

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

1 **SECTION 1.** Section 177 of Republic Act (R.A.) No. 8293 is hereby
2 amended to read as follows:

3 "SECTION 177. Copyright or Economic Rights. - Subject to the
4 provisions of Chapter VIII, copyright or economic rights shall
5 consist of the exclusive right to carry out, authorize or prevent
6 the following acts:

7 177.1. Reproduction of the work or substantial portion of the work
8 **INCLUDING THE DIGITAL REPRODUCTION THEREOF,**
9 **SUCH AS BUT NOT LIMITED TO THE FOLLOWING ACTS:**
10 **COPYING AND PASTING OF TEXT OR ARTICLES,**
11 **PHOTOCOPYING, UPLOADING OF MOVIES OR MUSIC**
12 **ONLINE, COPYING A COMPUTER PROGRAM, SCANNING**
13 **OR DIGITIZING PRINTED TEXT OR IMAGES INTO A**
14 **DIGITAL FILE, OR RIGHT CLICKING A PHOTOGRAPH OR**
15 **ITEM ONLINE AND SAVING IT IN A COMPUTER;**

1 177.2. Dramatization, translation, adaptation, abridgment,
2 arrangement or other transformation of the work;

3 177.3. The first public distribution of the original and each copy
4 of the work by sale or other forms of **DIGITAL DISTRIBUTION**
5 **OR** transfer of ownership;

6 x x x x

7 177.6. Public performance of the work; [and]

8 177.7. Other communication to the public of the work; **AND**

9 **177.8 ANY OTHER UNAUTHORIZED USE OF THE**
10 **COPYRIGHTED WORK DESPITE THE EXISTENCE OF A**
11 **LICENSING AGREEMENT IF SUCH USE IS NOT INCLUDED**
12 **IN SUCH AGREEMENT."**

13 **SECTION 2.** Section 216 of R.A. No. 8293, as amended by Section 22 of R.A.
14 No. 10372, is hereby amended to read, thus:

15 "Sec. 216. *Infringement.* – A person infringes a right protected
16 under this Act when one: x x x

17 ~~"[(c) With knowledge of infringing activity induces, causes or~~
18 ~~materially contributes to the infringing conduct of another]."~~

19 **(C) SECONDARILY COMMITS AN INFRINGEMENT**
20 **THROUGH VICARIOUS ACTS OR INTENTIONAL**
21 **INDUCEMENT.**

22 **SECONDARY LIABILITY THROUGH VICARIOUS**
23 **INFRINGEMENT IS COMMITTED WHEREBY THE**
24 **OFFENDER HAD A RIGHT AND ABILITY TO SUPERVISE OR**
25 **CONTROL THE INFRINGING ACTIVITY, AND HAS A**
26 **DIRECT FINANCIAL INTEREST IN SUCH ACTIVITIES.**

1 **SECONDARY LIABILITY THROUGH INTENTIONAL**
2 **INDUCEMENT IS COMMITTED WHEREBY THE OFFENDER**
3 **WITH KNOWLEDGE OF INFRINGING ACTIVITY,**
4 **INTENTIONALLY AIDS, ABETS, INDUCES, CAUSES,**
5 **COMPELS, OR MATERIALLY CONTRIBUTES TO THE**
6 **INFRINGING CONDUCT OF ANOTHER, WITH**
7 **PURPOSEFUL INVOLVEMENT AND FINANCIAL GAIN AND**
8 **WILL THUS BE LIABLE FOR DAMAGES.”**

9 **SECTION 3. *Separability Clause.*** – If, for any reason, any part of provision of
10 this act is declared invalid or unconstitutional, the remaining parts or provisions not
11 affected shall remain in full force and effect.

12 **SECTION 4. *Repealing Clause.*** – All other laws, executive orders, presidential
13 decrees, rules and regulations inconsistent with the provisions of this act are hereby
14 repealed, amended or modified accordingly.

15 **SECTION 5. *Effectivity.*** – This Act shall take effect after fifteen (15) days
16 following its complete publication in the Official Gazette or in at least one (1) national
17 newspaper of general circulation.

Approved,