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REPUBLIC ACT NO. 7356

**AN ACT CREATING THE NATIONAL COMMISSION FOR CULTURE AND THE ARTS,
ESTABLISHING A NATIONAL ENDOWMENT FUND
FOR CULTURE AND THE ARTS, AND FOR OTHER PURPOSES**

Sec. 1. Title. - This Act shall be known as the "Law Creating the National Commission for Culture and the Arts".

**TITLE I
DECLARATION OF PRINCIPLES**

Sec. 2. Culture as a Human Right. - Culture is a manifestation of the freedom of belief and of expression and is a human right to be accorded due respect and allowed to flourish.

Sec. 3. National Identity. - Culture reflects and shapes values, beliefs, aspirations, thereby defining a people's national identity. A Filipino national culture that mirrors and shapes Philippine economic, social and political life shall be evolved, promoted and conserved.

Sec. 4. Culture of the People. - The Filipino national culture shall be: a) independent, free of political and economic structures which inhibit cultural sovereignty; b) equitable, effectively creating and distributing cultural opportunities and correcting the imbalance that has long prejudiced the poor and other marginalized sector who have the least opportunities for cultural development and educational growth; c) dynamic, continuously developing in pace with scientific, technological, social, economic and political changes both in national and international levels; d) progressive, developing the vast potential of all Filipinos as responsible change agents of society; and (e) humanistic, ensuring the freedom and creativity of the human spirit.

Sec. 5. Culture by the People. - The Filipino national culture shall be evolved and developed by the people themselves in a climate of freedom and responsibility.

National cultural policies and programs shall be formulated which shall be:

a) pluralistic, fostering deep respect for the cultural identity of each locality, region or ethno-linguistic locality, as well as elements assimilated from other cultures through the natural process of acculturation; b)

democratic, encouraging and supporting the participation of the vast masses of our people in its programs and projects; c) non-partisan, open to all people and institution, regardless of creed, affiliation, ideology, ethnic origin, age, gender or class, with no organized group or sector having monopoly of its services, and d) liberative, having concern for the decolonization and emancipation of the Filipino psyche in order to ensure the full flowering of Filipino culture.

Sec. 6. Culture for the People. - The creation of artistic and cultural products shall be promoted and disseminated to the greatest number of our people. The level of consciousness of our people about our own cultural values in order to strengthen our culture and to instill nationhood and cultural unity, shall be raised formally through the educational system and informally through extra-scholastic means, including the use of traditional as well as modern media of communication.

Sec. 7. Preservation of the Filipino Heritage. - It is the duty of every citizen to preserve and conserve the Filipino historical and cultural heritage and resources. The retrieval and conservation of artifacts of Filipino culture and history shall be vigorously pursued.

TITLE II

ORGANIZATION OF THE NATIONAL COMMISSION FOR CULTURE AND ARTS AND THE ESTABLISHMENT OF THE NATIONAL ENDOWMENT FUND

Sec. 8. The Commission. - A National Commission for Culture and Arts is hereby created to formulate policies for the development of culture and arts, implement these policies in coordination with affiliated cultural agencies; administer the National Endowment Fund for Culture and Arts (NEFCA); encourage artistic creation within a climate of artistic freedom; develop and promote the Filipino national culture and arts; and preserve Filipino cultural heritage. The Commission shall be an independent agency. It shall render an annual report of its activities and achievements to the President and to Congress.

Sec. 9. Composition. - The Commission shall be composed of the following members;

- a) the Undersecretary of the Department of Education, Culture and Sports;
- b) the Undersecretary of the Department of Tourism;
- c) the Chairman of the House Committee on Culture;

- d) the Chairman of the Senate Committee on Culture;
- e) the President of the Cultural Center of the Philippines;
- f) the Executive Director of the National Historical Institute;
- g) the Director of the National Museum;
- h) the Director of the National Library;
- i) the Director of the Institute of Philippine Languages;
- j) the Director of the Records Management and Archives Office;
- k) the Executive Director of the Commission;
- l) the Head of the Subcommittee on Cultural Communities and Traditional Arts;
- m) three (3) representatives from the private sector who shall be the elected heads of the three (3) Subcommittee identified hereunder, namely: the Subcommittee on Cultural Heritage, the Subcommittee on the Arts and the Subcommittee on Cultural Dissemination. They shall be elected by the chairpersons of the national committees under their respective Subcommissions. The Chairman of the Commission shall be elected by the members from among themselves. cdt

Sec. 10. Term of Office and Compensation. - The non-ex-officio members of the Commission shall serve for a term of three (3) years, and shall not serve for more than two (2) successive terms. Non-ex-officio members shall each receive a per diem of One thousand pesos (P1,000.00) for actual attendance in the meetings of the Commission, but not to exceed Five thousand pesos (P5,000.00) a month, and shall be reimbursed travel expenses incurred for actual attendance of meetings. Ex officio members of the Commission shall receive representation and travel allowances (RATA) in accordance with rates recommended by the Department of Budget and Management.

Sec. 11. Memberships Restrictions. - During his/her term as member of the Commission, a Commissioner shall not be eligible for any grant or such other financial aid from the Commission as an individual; Provided, however, That he/she may compete for grants and awards on the same level as other artists one (1) year after his/her shall have expired.

Sec. 12. Mandate. - The Commission is hereby mandated to formulate and implement policies and plans in accordance with the principles stated in Title 1 of this Act.

- a) To encourage the continuing and balanced development of a pluralistic culture by the people themselves, it shall;
 - 1) encourage and ensure the exercise of the freedom of expression

- by eliminating all forms of censorships inimical to cultural and artistic growth and development without prejudice to the rights of other people to develop their own culture, or to the enhancement of a genuinely Filipino culture;
- 2) extend financial and economic assistance such as subsidies, artist funds and social security to promote cultural development and protect artists and cultural workers;
 - 3) ensure the decentralization of opportunities for creative expression through the establishment of local culture and art centers in various regions, with resources needed for artistic cultural activities;
 - 4) extend recognition of artistic achievement through awards, grants and services to artists and cultural groups which contribute significantly in the Filipino's cultural legacy;
 - 5) promote the interests and welfare of artists and cultural workers by protecting their rights to intellectual and artistic properties as well as by associations which shall promote and protect the economic and moral rights of artists over the country;
 - 6) encourage and support research into Philippine artistic traditions which may be adopted for the creation of contemporary forms;
 - 7) adopt measures and recommend legislations to protect the intellectual and artistic rights and properties of Filipino artists, cultural workers and other matters concerning culture and arts;
 - 8) explore and adopt the best possible structure of relationship between the public and private sector at the local level, taking into account varying socio-cultural situations.
- b) To conserve and promote the nation's historical and cultural heritage, it shall;
- 1) support, monitor and systematize the retrieval and conservation of artifacts of Filipino culture and history and all Filipino cultural treasures from all over the archipelago and other countries;
 - 2) encourage and support the study, recognition and preservation of endangered human cultural resources such as weavers, chanters, dancers, and other craftsmen as well as the conservation and development of such artistic, linguistic and occupational skills as are threatened with extinction;
 - 3) support and promote the establishment and preservation of cultural and historical monuments, markers, names and sites;
 - 4) encourage and support the establishment and/or maintenance all over the country of museums, libraries, archives, private or

- public, as repositories, respectively of all cultural/historical artifacts and artistic creation, printed works, archival records and all other materials indispensable to the study and evaluation of Filipino culture and history;
- 5) encourage the private sector to establish and maintain private museums and libraries;
 - 6) encourage and support scholarly research into and documentation of Philippine cultural traditions, arts and crafts, as well as significant cultural movements, achievements and personalities especially in the literary, visual and performing arts; and in mass media, as well as the various aspects of Filipino culture;
 - 7) encourage and support the writing of Philippine history from the Filipino perspective;
 - 8) encourage, support and systematize the audio-visual documentation of Filipino cultural expressions in the contemporary period.
- c) To ensure the widest dissemination of artistic and cultural products among the greatest number across the country and overseas for their appreciation and enjoyment, it shall, with the cooperation of the Departments of Education, Culture and Sports, Tourism, Interior and Local Government, Foreign Affairs and all other concerned agencies, public and private:
- 1) cause to be established and developed an intensified arts education program at all levels of the educational system, public and private, to ensure meaningful arts integration across the school curriculum;
 - 2) encourage and support programs through publication, exhibition, production, performance, staging, and reproduction of original Filipino creations;
 - 3) coordinate and provide technical and/or financial assistance for cultural events and related activities such as cultural festivals, competitions, lectures, seminars, forums and symposia;
 - 4) encourage and monitor a comprehensive translation program which shall make works by Filipinos and selected foreign classics equally accessible to Filipino as well as international readers;
 - 5) promote the popularization of information about artistic and cultural achievements and programs, in coordination with government agencies and non-government organizations and institutions;

- 6) reorient tourism programs to become an instrument for popular education of our people and other about the best of our heritage and creativity;
 - 7) 7) undertake a systematic collection of statistical and other data which reflects the state of cultural conditions in the country, to serve as essential quantitative and qualitative basis for formulating cultural policies; and
 - 8) create and support a sustained program of international cultural exchange, scholarships, travel grants and other forms of assistance;
 - 9) promulgate standards and guidelines for the protection and promotion of Filipino artists, cultural workers and creative works in other countries;
 - 10) encourage and support the continuous training of cultural workers and administrators by qualified trainers.
- d) To preserve and integrate traditional culture and its various creative expressions as a dynamic part of the national cultural mainstream, it shall;
- 1) help set up or encourage, monitor and subsidize companion systems at the regional, provincial and local levels, intended to develop traditional cultures such as arts/crafts centers, preferably in community settings apart from the usual museum settings, where exponents of living and crafts can practice and teach their art and enrich contemporary designs;
 - 2) encourage and subsidize cultural research and the retrieval of cultural research information (e.g. folklore, dance, music, crafts) through the training of students, teachers, and cultural researchers, and their revitalization by practice and performance;
 - 3) ensure that the ultimate beneficiaries of all research efforts, tourism programs and other activities affecting cultural communities are the people and cultural communities that are the subject of research, and that their cultures are nurtured rather than violated, damaged, or exploited;
 - 4) ensure that relevant information is made available to legislators who introduce laws with cultural implication;
 - 5) encourage and support the continuous training of cultural workers and administrators by qualified trainers.
- e) To ensure that standards of excellence are pursued in programs and activities implementing policies herein stated, it shall encourage and support continuing discussion and debate, through symposia,

workshops, publications, etc., on the highest norms available in the matrix of Philippine culture.

Sec. 13. Powers and Functions. - To carry out its mandate, the Commission shall exercise the following powers and functions:

- a) encourage and facilitate the organization of a network of regional and local councils for culture and the arts, hereunder described, to ensure a broad nationwide, people-based participation in the formulation of plans, the enforcement of culture-related laws and regulations, the implementation of programs/projects and the review of funding requirements.
- b) establish a secretariat under an Executive Director for the administrative and day-to day operations of the Commission;
- c) set up a system of networking and coordination with and among all existing government cultural agencies for the effective implementation of programs and activities;
- d) create committees and other mechanisms to help expedite the implementation of plans and strategies;
- e) call upon and coordinate with other government and non-government art and cultural institutions and agencies for assistance in any form;
- f) generate resources, both from the Government and private sectors, local, national and international, for its operation, as well as for the National Endowment Fund for Culture and Arts;
- g) receive and accept donations and other conveyances including funds, materials, and services, by gratuitous title;
- h) administer the National Endowment Fund for Culture and Arts and give grants for the development, protection, preservation and dissemination of Philippine culture and arts, and designate a comptroller;
- i) prepare an annual budget of the Commission and submit the same to the President for inclusion in the annual General Appropriations Act;
- j) advise the President on matters pertaining to culture and the arts, including the creation of a special decoration or award, for persons who have significantly contributed to the development and promotion of Philippine culture and arts;
- k) promulgate rules, regulations and undertake any and all measures as may be necessary to implement this Act;
- l) regulate activities inimical to preservation/conservation of national cultural heritage/properties.

Sec. 14. The Secretariat. - The Commission shall organize a secretariat headed by an Executive Director. The Commission shall fix its staffing pattern, determine the duties, qualifications, responsibilities and functions as well as the compensation scheme for the positions to be created upon the recommendation of the Executive Director. The staffing pattern shall be approved and prescribed by the Commission within one hundred twenty (120) days from the approval of this Act.

Sec. 15. The Subcommissions. - The Commission shall oversee the operation and maintenance of National Committees under the following Subcommissions:

- a) Subcommission on Cultural Heritage, which shall cover but will not be limited to the following areas: libraries and information services, archives, museums, galleries, monuments, and sites, and historical research;
- b) Subcommission on the Arts, which shall cover but he will not be limited to the following areas; literary arts, visual arts, architecture, dramatic arts, broadcast arts, musical arts, dance, and film;
- c) Subcommission on Cultural Dissemination, which shall cover but will not be limited to the following areas: language and translation, cultural events, cultural education and information;
- d) Subcommission on Cultural Communities and Traditional Arts, which shall cover but will not be limited to the following areas; Agta culture and arts, cultures and arts of Northern cultural communities, Southern cultural communities, Muslim cultural communities, and lowland cultural communities.

Sec. 16. Local, Provincial or Regional Councils. - The Commission may establish or coordinate with local, provincial, or regional government or non-government councils/groups to promote, develop and implement programs and plans of the Commission.

Sec. 17. The National Advisory Board. - The chairpersons of the National Committees shall form the National Advisory Board.

Sec. 18. The National Cultural Agencies. - The Commission shall coordinate with the national cultural agencies including but not limited to the Cultural Center of the Philippines, the Institute of Philippine Languages, the National Historical Institute, the National Library, the National Museum, the Records Management and Archives Office, However, they shall continue operating under their respective charters or as provided by law

where provisions therein are not inconsistent with the provisions of this Act. They shall serve as the national repository and/or showcase, as the case may be of the best of Philippine culture and arts. For this purpose, these agencies shall submit periodic reports, including recommendations to the Commission.

Sec. 19. Program Plans. - The Commission shall within three (3) months after having been officially constituted and finally staffed, adopt and immediately cause to be implemented in coordination with cultural agencies, a short-range program in support of relevant existing projects and activities; and within six (6) months, a long range three-year development program. This development program shall be developed and subjected to annual review and revision by the Commission in coordination with the councils as well as public and private cultural agencies and organizations.

Sec. 20. The National Endowment Fund for Culture and Arts. - A National Endowment Fund for Culture and Arts (the Fund) is hereby established exclusively for Philippine art and cultural programs, projects and activities all over the country.

- a) The contribution of the Fund shall be the following:
 - 1) the amount of One hundred million pesos (P100,000,000.00) as seed capital shall be taken from the Philippine Amusement and Gaming Corporation (PAGCOR) fund at Five million pesos (P5,000,000.00) per month for twenty (20) months: Provided, That no grant shall be awarded by the Commission except from the interest drawn from the funds; Provided, further, That no grant shall be awarded until after one (1) year from the organization of the Fund. aisa dc
 - 2) ten percent (10%) of the travel tax collection, the share to be taken from the annual allotment of the travel tax given to the Philippine Tourism Authority.
- b) Government corporations are hereby authorized to give grants to the Fund at their discretion, but not to exceed fifteen percent (15%) of their unimpaired surplus;
- c) The private portion of the Fund shall be raised from donations and other conveyances including funds, materials, property and services, by gratuitous title;
- d) Contributions to the Fund shall be deductible for income tax purposes in accordance with the provisions of Section 29(h)(2)(A) of the National Internal Revenue Code;

- e) For the sound and judicious management of the Fund, the Commission shall appoint a reputable government-accredited investment institution as Fund Manager, subject to guidelines promulgated by the Commission;
- f) The Commission shall be the administrator of the Fund, and as such, shall prepare implementing guidelines and decision-making mechanisms, subject to the following:
 - 1) unless otherwise stipulated by the private donor, only earnings of private contributions shall be used;
 - 2) no part of the seed capital of the Fund, including earnings, thereof, shall be used to underwrite overhead expenses for administration; casia
 - 3) not more than twenty percent (20%) of the Government's annual contribution to the Fund shall be devoted to administrative functions of the Commission; at least ten percent (10%) shall be earmarked as part of the fund's capital, and the balance shall be used for its programs and projects;
 - 4) The Commission shall organize a separate staff, administratively independent of the secretariat to be headed by a comptroller appointed by and directly responsible and accountable to the Commission;
 - 5) There shall be an external auditor to perform an annual audit of its performance;
 - 6) The Fund shall be exempt from pre-audit by the Commission on Audit.

Sec. 21. Tax Exemption. - The Commission shall be exempt on all its income and duty obligations. All materials that are reasonably necessary and are not manufactured or produced locally for the use of the Filipino artists shall be tax of duty free.

Sec. 22. Revolving Fund. - The income of the Commission not exceeding the amount of Five hundred thousand pesos (P500,000.00) derived from the proceeds of sales of cultural items or publications shall be constituted as a revolving fund for the fabrication of such items or printing of such publications. Sales proceeds in excess of the aforementioned amount shall be remitted to the National Treasury and shall accrue to the General Fund.

TITLE III
MISCELLANEOUS PROVISIONS

- Sec. 23. Transitory Provisions. - a) All the personnel, properties, assets and liabilities of the Presidential Commission on Culture and Arts (PCCA) created by Executive Order No. 188, are hereby transferred to the Commission as its successor-in-interest. b) within a period of one year after the first meeting of the Commission, it shall harmonize the policies of the cultural agencies referred to, but limited to those enumerated in Section 18 of this Act, with those of the Commission as over-all policy-making and coordinating body, as herein indicated.
- Sec. 24. Notice or Consent Requirement. - If any organizational change herein authorized is of such substance or materiality as to prejudice third persons with rights recognized by law or contract such that notice to or consent of said persons or creditors is required to be made or obtained pursuant to any agreement entered into with any of such creditors, such notice or consent requirement shall be complied with prior to the implementation of such organizational change.
- Sec. 25. Separability Clause. - Any portion or provision of this Act that may be declared unconstitutional shall not have the effect of nullifying other portions or provisions thereof as long as such remaining portions or provisions can still subsist and be given effect in their entirety.
- Sec. 26. Saving Clause. - All laws, rules, regulations, other issuances or parts thereof which are inconsistent with this Act are hereby repealed or modified accordingly. All provisions of Executive Order No. 118 not inconsistent with this Act shall however remain in full force and effect.
- Sec. 27. This Act shall take effect immediately upon its approval.

Approved: April 3, 1992

REPUBLIC ACT NO. 7355

AN ACT PROVIDING FOR THE RECOGNITION OF NATIONAL LIVING TREASURES, OTHERWISE KNOWN AS THE MANLILIKHA NG BAYAN, AND THE PROMOTION AND DEVELOPMENT OF TRADITIONAL FOLK ARTS, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

Sec. 1. Title. - This Act shall be known as the Manlilikha ng Bayan Act.

Sec. 2. Policy and Objectives. - It is hereby declared to be the policy of the State to preserve and promote its traditional folk arts whether visual, performing, or literary, for their cultural value, and to honor and support traditional folk artists for their contribution to the national heritage by ensuring that the artistic skills which they have painstakingly cultivated and preserved are encouraged and passed on to future generations of Filipinos.

The objectives of this Act shall be as follows:

- a) to acknowledge the importance of traditional folk artist as singular conduit between skills of the past and the future;
- b) to revitalize a community's artistic tradition thereby protecting a valuable facet of Philippine culture;
- c) to provide mechanisms for identifying and assisting qualified traditional folk artists to transfer their skills to the community; and
- d) to create opportunities for popularizing their works locally and internationally.

Sec. 3. Definition of Terms. - For the purpose of this Act, Manlilikha ng Bayan shall mean a citizen or a group of citizens engaged in any traditional art uniquely Filipino, whose distinctive skills have reached such a high level of technical and artistic excellence and have been passed on to and widely practiced by the present generations in his/her community with the same degree of technical and artistic competence.

"Traditional Folk Art" refers to expressions of distinctiveness and artistic quality created to serve a decorative and/or utilitarian or sociocultural functions of traditional folk artists commonly known for such works.

Sec. 4. Criteria and Qualifications. - To become a Manlilikha ng Bayan, the candidate must satisfy the following minimum criteria;

- a) Technical and creative skill - The candidate must possess a mastery of the tools and materials needed by the art, and must have an

established reputation in the art as master and maker of works of extraordinary technical quality;

- b) Artistic quality - The work of the candidate must be outstanding aesthetically, and he/she must have consistently produced over a significant period, works of superior quality;
- c) Community tradition - The candidate must have transferred and/or willing to transfer to other members of the community, skills in the folk art for which the community has become nationally known;
- d) Folk art tradition - The candidate must have engaged in a folk art tradition that has been in existence and documented for at least fifty (50) years; and
- e) Character and integrity. - As a precious treasure of the county, the candidate must command the respect and admiration of the country for his character and integrity.

The implementing agency may require additional criteria and qualifications in pursuance of the purposes of this Act.

Sec. 5. Award and other Incentives. - The award given to the Manlilikha ng Bayan shall be called Gawad sa Manlilikha ng Bayan.

In addition, the following shall be enjoyed: acd

- a) Plaque/Medal - The awardee shall each receive a commemorative plaque and/or medal, a duplicate set of which is to be donated to and permanently displayed in the pertinent provincial museum or largest cultural center in order to broaden community awareness of the significance of our traditional folk arts and to accord them the recognition they richly deserve;
- b) An initial grant of One hundred thousand pesos (P100,000.00) and Ten thousand Pesos (P10,000.00) a month thereafter for life, shall be given, unless the Commission after due hearing finds good reason to discontinue the grant arising from violations of pertinent terms and conditions herein stated. This grant may be increased whenever circumstances so warrant provided that the increase shall not be given retroactive effect;
- c) Documentation - All surviving samples of works by the awardee shall be catalogued and photographed, and his/her work methods and tools shall likewise be documented; cd i
- d) A vocational course using materials, tools, methods, and designs of the awardee may be offered at the nearest arts and trades school through the cooperative efforts of the Department of Trade and Industry, the Department of Education, Culture and Sports, and private foundation

and/or private corporation, to effect the transfer of his/her skills and the preservation of folk art tradition;

- e) A feasibility study of converting the awardee's art into a specialized cottage industry in the awardee's province, preferably in the recipient's barangay or town, may be undertaken by the Department of Trade and Industry in collaboration with private investors; and
- f) The recipient shall be invited to Manila-based and regional cultural events that salute the importance of traditional folk arts in the Filipino cultural heritage;

Sec. 6. Duties and Responsibilities of Awardees. - The Manlilikha ng Bayan is a link between the past, in which his/her traditional folk art found fertile soil for growth, and the future, during which he/she seeks his/her art to be permanently sustained. It becomes his/her responsibility therefore to undertake the following:

- a) to transfer the skills of his/her traditional folk art to the younger generation through apprenticeship and such other training methods as are found to be effective;
- b) to cooperate with the implementing agency, as provided for in Section 7 of this Act, in the promotion and propagation of his/her traditional folk arts; and
- c) to donate to the National Museum a sample or copy of his/her work.

Sec. 7. Implementing Agency. - The Presidential Commission on Culture and Arts, created under Executive Order No. 118, dated January 30, 1987, shall develop and adopt a program to effectuate the provisions of this Act and promulgate such rules, regulations and criteria that will govern the selection of the Manlilikha ng Bayan.

For purposes of this Act, the Commission shall have the following powers and functions;

- a) to constitute and appoint panels of experts including, but not limited to, the nominees of the Office of Muslim Affairs, Office for Southern Cultural Communities and Office for Northern Cultural Communities in each of the traditional folk arts categories to assist the Commission in a thorough search for and fair selection of the awardee; such categories of traditional folk arts shall include but will not be limited to the following: weaving, woodcarving, metal-working, jewelry-making, embroidery, furniture-making using indigenous materials, dance, song, instrumental folk music, folk literature, drama, boat-making, pottery-making and other indigenous technology and architecture such as rice terracing;

- b) to increase the monetary grant whenever circumstances so warrant provided that the increase shall not be given retroactive effect;
- c) to design, monitor and evaluate appropriate programs that shall ensure that the Manlilikha ng Bayan transfers his/her skills to others, and to coordinate with pertinent agencies, public and private, for program implementation;
- d) to undertake measures that shall protect the intellectual/cultural property rights of the awardees; cdt
- e) to promote the widest utilization and improvement of the awardees' design and patterns as well as their materials, tools and techniques in coordination with pertinent agencies, public and private;
- f) to undertake information dissemination programs intended to broaden community awareness of and instill pride in the achievements of the Manlilikha ng Bayan;
- g) to facilitate or undertake activities, public and private in coordination with the Department of Trade and Industry, the Department of Science and Technology, and the Department of Tourism, that shall make the efforts of the awardees not only aesthetically rewarding but also economically profitable; and
- h) to generate funds from the Government and the private sector for the implementation of the provisions of this Act. acd

Sec. 8. Appropriations. - The amount necessary to carry out the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

Sec. 9. Tax Privileges. - Pursuant to the existing provisions under the National Internal Revenue Code (NIRC), as amended, and the Tariff and Customs Code of the Philippines (TCCP), as amended, any gifts or donations which shall be made to or for the use of the Philippine Commission on Culture and Arts, exclusively for the Manlilikha ng Bayan, shall be entitled to the following privileges;

- a) Exemption from donor's tax pursuant to Section 94(a)(3) of the NIRC, as amended;
- b) Deductibility of donations from the donor's gross income for purposes of computing taxable income in accordance with Section 29 (h) of the NIRC, as amended; and
- c) Exemption from taxes and duties of donations from foreign countries subject to the provisions of Section 105 of the TCCP, as amended, and Section 103 of the NIRC, as amended.

Sec. 10. Repealing Clause. - All laws, issuances, decrees, or any part or parts thereof inconsistent with the provisions of this Act are deemed amended or repealed accordingly.

Sec. 11. Effectivity Clause. - This Act shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general circulation.

Approved: April 3, 1992

Senate Bill 2831

AN ACT SAFEGUARDING THE TRADITIONAL PROPERTY RIGHTS
OF INDIGENOUS PEOPLES

SENATE

S.B. No.2831_____

Introduced by Senator LOREN LEGARDA

EXPLANATORY NOTE

Our indigenous peoples have suffered historical injustices in the form of discrimination, deprivation of their ancestral domains and lands, among many other human rights violations. To put salt in their many wounds, there have been reported incidences wherein their indigenous knowledge, dances, designs are being stolen by local and foreign entities, further marginalizing our indigenous communities and depriving them of their cultural property, their identity which has been passed from their ancestors.

The law protecting indigenous peoples' rights, namely the Indigenous Peoples Rights' Act (RA 8371) does not provide for specific provisions for the protection of their cultural properties, both intangible and tangible. Furthermore, the Intellectual Property Office of the Philippines does not have the legal mandate nor the expertise or capability to undertake such protection of our indigenous cultural treasures.

Moreover, our copyright laws provide that fifty (50) years after the death of the author the creation lapses into public domain. Since all cultural heritage, both tangible and intangible, have been created more than fifty years ago, technically, all cultural heritage are in public domain, which then can be exploited by any entity. This results in the ridiculous situation where even our ethnolinguistic groups that practice their culture cannot even claim that they own their culture since this is in the public domain.

It is with the passage of this bill that these issues are sought to be resolved.

With the help of the National Commission for Culture and the Arts, National Museum, National Commission on Indigenous Peoples, and local government

units, this bill shall remove cultural heritage from public domain in perpetuity, making each ethno-linguistic group exclusive owner of its unique cultural heritage, and create a comprehensive cultural archive which shall organize and make an inventory of all cultural properties of the different ethno-linguistic groups of the philippines. this inventory of cultural properties shall then be submitted to the commission thru the national museum and other relevant government cultural agencies, that will ensure the registration of ownership to the proper ethno-linguistic group for protection of their intellectual property, and which inventory will become part of the philippine registry of cultural property as provided for in ra 10066. This bill also mandates the payment of royalties for the use of the cultural property of indigenous groups.

In view of the foregoing considerations, approval of this bill is earnestly sought.

(signed)
LOREN LEGARDA
Senator

AN ACT
SAFEGUARDING THE TRADITIONAL PROPERTY RIGHTS
OF INDIGENOUS PEOPLES

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

SECTION 1. Short Title – This Act shall be known as the “Traditional Property Rights of Indigenous Peoples Act.”

SECTION 2. Declaration of Principles and Policies - It is a declared policy of the state to protect the traditional cultural heritage of the indigenous peoples of the Philippines; and safeguard the intrinsic values, whether tangible or intangible; and to support traditional artists and artisans in their contributions to their respective ethnic cultures and national heritage by ensuring that their rights are safeguarded.

SECTION 3. Definition of Terms – For the purposes of this Act, the following terms shall be defined as follows:

1. “**Commission**” shall refer to the National Commission for Culture and the Arts (NCCA);
2. “**Cultural agencies**” shall refer to the following national government agencies with their specific areas of responsibility: National Museum (cultural property); the National Library (books); National Historical Institute (Philippine history); National Archives (documents); Cultural Center of the Philippines (culture and the arts); and Komisyon sa Wikang Filipino (language).
3. “**Cultural Heritage**” shall refer to the totality of cultural property preserved and developed through time and passed on to posterity;
4. “**Cultural Property**” shall refer to all products of human creativity by which a people and a nation reveal their identity, including churches, mosques and other places of religious worship, schools and natural history specimens and sites, whether public or privately-owned, movable or immovable, and tangible or intangible.
5. “**Intangible Cultural Heritage**” shall refer to the practices, representations, expressions, knowledge, skills—as well as the instruments, objects and artifacts associated therewith, that communities, groups and individuals recognize as part of their cultural heritage, such as: (1) oral traditions, languages, and expressions; (2) performing arts; (3) social practices, rituals, and

- festive events; (4) knowledge and practices concerning nature and the universe; and (5) traditional craftsmanship;
6. **“Intangible Cultural Property”** shall refer to the peoples’ learned processes along with the knowledge, skills and creativity that inform and are developed by them, the products they create and the resources, spaces and other aspects of social and natural context necessary for their sustainability.
 7. **“Registry”** shall refer to the Philippine Registry of Cultural Property which is the registry of all cultural property of the country deemed of significant importance to our cultural heritage as defined in RA 10066;
 8. **“Tangible Cultural Property”** shall refer to a cultural property with historical, archival, anthropological, archaeological, artistic and architectural value, and with exceptional or traditional production, whether of Philippine origin or not, including antiques and natural history specimens with significant value.
 9. **“Tradition”** shall refer to the beliefs, customs, practices, industries, expressions, whether tangible or intangible, maintained and shared differentially by society, and handed down from generation to generation. Tradition in this respect is a continuum that change and may arise in time, shall not therefore be subject to time limitation.
 10. **“Community”** shall refer to the congregation of people with social cohesion and identities organized around common values interacting with intimacy and reciprocity in a shared circumscribed location in units larger than a household; and have more similarities in the types and forms of their material goods.
 11. **“Indigenous People”** shall refer to people, communities, and nations who claim a historical continuity and cultural affinity with societies endemic to their original territories. They have historically formed and still currently form the minority/non-dominant sectors within majority-culture societies and are intentioned towards preserving, reviving, and enhancing the efficacy, cohesion, and uniqueness of their traditional social values and customary ties along with a conscientious effort to transmit this knowledge to future generations.
 12. **“Derivative Work”** shall refer to one that is primarily a new work but incorporates some previously published material. This previously published material makes the work a derivative work under the copyright law. To be copyrightable, a derivative work must be different enough from the original to be regarded as a “new work” or must contain a substantial amount of new material. Making minor changes or additions of little substance to a preexisting work will not

qualify the work as a new version for copyright purposes. The new material must be original and copyrightable in itself. Titles, short phrases, and format, for example, are not copyrightable.

13. **“Communal Ownership”** shall refer to common ownership of property within a community.
14. **“Royalty”** shall refer to payment to the holder of a patent or copyright or resource for the right to use their property
15. **“Ownership”** refers to the legal right of possession or proprietorship; the state, relation, or fact refers to the indigenous concept of ownership which sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.
16. **“Culture”** shall refer to the whole complex of distinctive spiritual, material, intellectual, and emotional features that characterize a society or a social group, as defined in the United Nations Educational, Scientific and Cultural Organization World Conference on Cultural Policies held in Mexico (1982). This includes not only the arts and letters but also modes of life, value systems, traditions, and beliefs.

SECTION 4. The National Commission for Culture and the Arts (NCCA), hereinafter referred to as the Commission, shall implement the provisions of this Act.

SECTION 5. Traditional cultural property, whether tangible or intangible, of all the ethno-linguistic groups that make up the peoples of the Philippines shall not lapse into public domain after 50 years from creation, and shall continue indefinitely to be exclusive property of these ethno-linguistic group that communally own them. Traditional heritage, both tangible and intangible are to be held in perpetuity in ethnic memory and considered valid as ethnic intellectual property;

SECTION 6. Under the guidance of the Commission and National Museum (NM), or any other pertinent national cultural agency, the Local Government Units (LGU) with the assistance of the National Commission for Indigenous Peoples (NCIP) shall organize inventories of cultural properties of the different ethno-linguistic groups of the

Philippines, that are distinctive, characteristic of and or derived from their particular traditional culture, to the exclusion of those of others and shall submit these to the Commission thru the National Museum to establish communal ownership, and to be registered under the group's name for protection within existing copyright law.

Those cultural property that are not distinctive and exclusively owned by particular ethno-linguistic group but are commonly found in other groups shall be considered jointly owned by them and inventoried in a separate category.

Further that these registries of the tangible and intangible cultural properties thus accomplished shall be incorporated in the Philippines Registry of Cultural Property (PRECUP) as established by RA 10066 and administered to by the Commission.

SECTION 7. While recognizing that traditions change through time, the rights of the ethno-linguistic groups to their intellectual property changing in continuum shall retain original rights to these properties;

SECTION 8. The infusion of personal or individual variations on a traditional object would result in a derivative work or craft which is one that is primarily a new work but incorporates some previously published material. A derivative work must be different enough from the original to be regarded as a "new work" or must contain a substantial amount of new material. Making minor changes or additions of little substance to a pre-existing work will not qualify the work as a new version for copyright purposes. The new material must be original and copyrightable in itself;

SECTION 9. However, the rights of an ethno-linguistic group to a traditional item will lapse into public domain in 50 years, if after such period, it is no longer in production or used in cultural context within the society;

SECTION 10. Pursuant to the above, the Commission will create an office within its structure to coordinate all efforts of government and private agencies that have forms of tangible and intangible cultural heritage in making the above-mentioned registry; and to undertake the safeguarding of national cultural heritage stipulated therein that are viable.

SECTION 11. Reorganization. – With the approval of the Board, the Commission shall have the authority to reorganize its structure and staffing pattern in order to carry out its functions. The incumbents in the leadership structure of the existing Commission shall automatically be upgraded to these analogous positions, with respect to the rest of the personnel;

SECTION 12. Deposit and Notice. Moral rights would vest upon creation, hence, authorship would have to be established to avail of moral rights such as right of attribution. Moral rights to ownership of newly created items by members of an ethno-linguistic groups should be registered with the commission for protection under copyright law. Copyright vests from the moment of creation and registration is one of the ways to prove authorship, although this is not exclusive.

- a. The Commission thru the relevant government cultural agency, shall assist in identifying works and attribute authorship, and further shall be responsible for maintaining and populating this registry;
- b. The Commission shall assist claimants and relevant government agencies in resolving conflicts of ownership and attribution. Who will give permission to people who wish to use the work upon discovery of the same in the database.
- c. The Commission shall assist relevant government agencies in the prosecution of unauthorized use of intellectual property of indigenous peoples.

SECTION 13. Free, prior and informed consent for the use of indigenous peoples intellectual property should be articulated by a defined authority that is provided with a circumscribed jurisdiction, associated with the culture of an ethno-linguistic group. The corresponding elected official of government civil structures, specifically, the province and municipality, as the case may be, assisted by cultural experts, shall dispense the required free, prior and informed consent for the item(s) in question for the concerned intellectual property owners. NO SUCH CONSENT SHALL BE GIVEN UNLESS ACCOMPANIED BY A MEMORANDUM AGREEMENT WHERE THE RIGHTS OF THE INDIGNOUS PEOPLES ARE TO BE SPECIFICALLY DETAILED.

SECTION 14. Indigenous communal copyright (intellectual property) owners may designate a society with legal personality to act in their behalf to enforce their economic and moral rights;

SECTION 15. Royalties - Indigenous communal copyright (intellectual property) owners shall be compensated for the use of their work. Royalties shall be collected by the Commission and distributed accordingly to the respective owners of the intellectual property.

SECTION 16. Appropriations -For the initial implementation of this Act, the amount of fifty million pesos (PhP 50,000,000) is hereby appropriated and shall be sourced from the President's Contingency Fund.

SECTION 17. Implementing Rules and Regulations - The Commission, in consultation with other relevant government cultural agencies mentioned in this Act, shall promulgate the implementing rules and regulations within ninety (90) days after the effectivity of this Act.

SECTION 18. Penalties. - In addition to the penalties provided under existing laws, any person found guilty of violating any provision of this Act shall be imprisoned for a term not exceeding ten (10) years or a fine not exceeding one hundred thousand pesos (P100,000.00), or both such imprisonment and fine at the discretion of the court.

SECTION 19. Repealing Clause. - The provisions of the Philippine copyright law and other related laws to the extent that they be inconsistent with this Act, are hereby repealed or amended accordingly.

SECTION 20. Separability Clause. - If, for any reason, any part or provision of this Act is declared invalid or unconstitutional, the parts or provisions not affected thereby shall remain in full force and effect.

SECTION 21. Effectivity Clause. - This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation, whichever comes first.

Approved

Republic Act 8293

**IMPLEMENTING RULES AND REGULATIONS ON ADMINISTRATIVE COMPLAINTS
FOR VIOLATIONS OF LAWS INVOLVING INTELLECTUAL PROPERTY RIGHTS**

**RULES AND REGULATIONS ON ADMINISTRATIVE COMPLAINTS FOR
VIOLATION OF LAWS INVOLVING INTELLECTUAL PROPERTY RIGHTS**

Intellectual Property Office,
Manila

Whereas, the State recognizes that an effective intellectual and industrial property system is vital to the development of domestic creativity, facilitates transfer of technology, attracts foreign investments and ensures market access for our products;

Whereas, the State recognizes that the use of intellectual property bears a social function and to this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good;

Whereas, it is the policy of the State to enhance the enforcement of intellectual property rights in the country and to 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;

Now, therefore, pursuant to the provisions of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, the following rules and regulations on administrative complaints for violation of laws involving intellectual property rights are hereby promulgated:

Rule 1

DEFINITIONS, INTERPRETATION, RULES OF COURT

Sec. 1. Definition of Terms .— Unless otherwise indicated, the following terms shall be understood as follows:

- (a) "Answer" means a pleading in which the adverse party sets forth the negative and affirmative defenses upon which he relies;

- (b) "Bonds" and "Counterbonds" shall refer to cash bonds and cash counterbonds in the form of cash, cashiers check or manager's check, excluding surety bonds and surety counterbonds;
- (c) "Bureau" means the Bureau of Legal Affairs of the Intellectual Property Office;
- (d) "Chief Hearing Officer" means the officer within the Bureau who exercises immediate supervision over any Hearing Officer. His title or official designation may differ from the words "Chief Hearing Officer" depending on the structure of the Office;
- (e) "Complaint" means a concise statement of the ultimate facts constituting the complainant's cause or causes of action. It shall specify the relief sought, but it may add a general prayer for such further or other relief as may be just and equitable.
- (f) "Court" means a court of general jurisdiction such as Regional Trial Court;
- (g) "Director General" means the head of Intellectual Property Office;
- (h) "Director" means the Director of the Bureau of Legal Affairs;
- (i) "False Designation of Origin" means the act of any person who, on or in connection with any goods, or services, or any container for goods, uses in commerce any word, term, name symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which: (i) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or (ii) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services or commercial activities, shall be liable to a civil action for damages and injunction provided in Sections 156 and 157 of the IP Code by any person who believes that he or she is likely to be damaged by such act.
- (j) "False or Fraudulent Declaration" means the act of any person who shall procure registration in the Office of a mark by a false or fraudulent declaration or representation, whether oral or writing, or by any false means;
- (k) "Hearing Officer" means the officer within the Bureau authorized to exercise the functions of "Hearing Officer" in these Regulations. The title or official designation of such officers may differ from the words "Hearing Officer" depending on the structure of the Office;

- (l) "Infringement of Copyright and Related Rights" means any violation of the rights provided under Part IV of the IP Code and/or the applicable IP Law, including the act of any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of: (i) selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article; (ii) distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or (iii) trade exhibit of the article in public.
- (m) "Infringement of Patent" means any violation of any of the rights of patentees and holders of utility model patents and industrial design registrations under Part II of the IP Code and/or the applicable IP Law, including the act of making, using, offering for sale, selling or importing a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without the authorization of the patentee.
- (n) "Infringement of mark" means any violation of any of the rights of the registered owner under Part III of the IP Code and/or the applicable IP Law, including the act of any person who shall, without the consent of the owner of the registered mark, and regardless of whether there is actual sale of goods or services using the infringing material:
- (i) use in commerce any reproduction, counterfeit, copy or colourable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.
- (o) "Intellectual property rights" include:
- (i) Copyright and Related Rights;
 - (ii) Trademarks and Service Marks;
 - (iii) Geographic Indications;
 - (iv) Industrial Designs
 - (v) Patents;
 - (vi) Layout-Designs (Topographies) of Integrated Circuits; and
 - (vii) Undisclosed Information

- (p) "IP Code" means Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines;
- (q) "IP Law" means any law, in addition to the IP Code, involving intellectual property rights;
- (r) "Office" means the Intellectual Property Office;
- (s) "Regulations" means this set of rules and regulations and such Regulations as may be formulated by the Director of Bureau of Legal Affairs and approved by the Director General;
- (t) "Unfair Competition" means the act of any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result.

The following shall likewise constitute unfair competition:

- (i) the act of selling one's goods and giving them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, or the act of clothing the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or the act of reselling the goods by any subsequent vendor with a like purpose.
- (ii) the act of employing any other means, by artifice or device, calculated to induce the false belief that a person is offering the services of another who has identified such services in the mind of the public.
- (iii) the act of making any false statement in the course of trade or any act contrary to good faith of a nature calculated to discredit the goods, business or services of another.
- (u) "Violation of laws involving intellectual property rights mentioned in Rule 2Section 2" means violation of any law relating to the intellectual property rights enumerated under Section 4 of Republic Act No. 8293.

Sec. 2. Interpretation. — These Regulations shall be liberally construed to carry out the objectives of the IP Code and IP Laws and to assist the parties in obtaining just and expeditious settlement or disposition of administrative cases filed before the Office.

Sec. 3. Suppletory Application of the Rules of Court. — These Regulations shall primarily govern in the prosecution of administrative complaints in the Bureau. The provisions of the Rules of Court, however, shall apply in a suppletory character.

Rule 2

COMMENCEMENT OF ACTION

Sec. 1. Complaint, When and to Whom Filed. — All administrative complaints for violation of the IP Code or IP Laws shall be commenced by filing a verified complaint with the Bureau within four (4) years from the date of commission of the violation, or if the date be unknown, from the date of discovery of the violation. A complaint is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief. A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information, and belief" or lacks proper verification, shall be treated as an undersigned pleading.

The complaint shall include a certification that the party commencing the action has not filed any other action or proceeding involving the same issue or issues before any tribunal or agency nor such action or proceeding is pending in other quasi-judicial bodies: Provided, however, that if any such action is pending, the status of the same must be stated, and should knowledge thereof be acquired after the filing of the complaint, the party concerned undertakes to notify the Bureau within five (5) days from such knowledge. Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for dismissal of the case without prejudice. The submission of a false certification or non-compliance with any of the undertaking therein shall constitute indirect contempt, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt.

Sec. 2. Original Jurisdiction. — (a) The Bureau shall have original jurisdiction in administrative actions for violations of laws involving intellectual property rights where the total damages claimed are not less than two hundred thousand pesos (P200,000.00); Provided however, that avancement

of the provisional remedies may be granted in accordance with these Regulations and the provisions of the Rules of Court; The Director shall coordinate with local enforcement agencies for the strict and effective implementation and enforcement of these Regulations.

The commencement of the action under these Rules and Regulations is independent and without prejudice to the filing of any action with the regular courts.

Sec. 3. Venue of Hearings. — All hearings on actions covered by these regulations shall be held within the premises of the Office.

Sec. 4. Formal Requirement. — The Complaint shall be typewritten and addressed to the Bureau, and shall contain the names and residence of the parties and a concise statement of the ultimate facts constituting the complainant's cause or causes of action. It shall specify the relief/s sought, but it may add a general prayer for such further or other relief/s as may be deemed just or equitable. Every pleading filed shall likewise contain a caption forth the name of the Office and the Bureau, the title of the case, the case number, and the designation of the pleading.

No pleading shall be accepted by the Bureau unless it conforms to the formal requirements provided by these Regulations and accompanied by the required filing fee.

Sec. 5. Partners, Named Individually. — When two or more persons associated in any business, transact such business under a common name, the associates may be sued under such common name.

The associates of the business who are sued under a common name may be named individually in the Answer filed by them or on their behalf with their respective postal address.

Sec. 6. Payment of Filing Fee and Docketing. — The complaint shall be filed in triplicate with the Bureau, which shall issue an order for the payment of the required fee.

Upon payment of the required fee, the complainant, his counsel, or representatives shall submit to the Bureau a copy of the receipt and present the original copy thereof for comparison. Immediately after the receipt of proof of payment of the required fee, the Records Officer or any authorized

officer of the Bureau shall acknowledge receipt of the papers by assigning the Administrative Complaint Number, docket the same, and raffle the case to any of the Hearing Officers.

Sec. 7. Representation and Confidentiality of Records. — (a) The complaint may be prosecuted by the complainant by himself or through counsel. The complainant and his counsel are required to conduct their business with politeness, decorum and courtesy.

It is strictly and absolutely forbidden for the Director, and other employees of the Office to discuss the case or any phase thereof with either counsel of record in the absence of the other or with any third person not having any interest or legal standing before the Bureau.

Sec. 8. Summons. — (a) Within three (3) days from receipt of the complaint, the Staff Clerk shall prepare, and the Process Server shall serve, the Summons or Notice to Answer together with a copy of the complaint to the Respondent by mail or by personal service. If the service is done through registered mail, the return card shall be attached to the documents as evidence of receipt. The proof of service of a summons shall be made in writing by the server and shall set forth the manner, place and date of service; shall specify any papers which have been served with the process and the name of the person who received the same; and shall be sworn to when made by a person other than a sheriff or his deputy.

(b) If service cannot be made under the preceding paragraph, the office and place of residence of the party being unknown, service may be made by publication in a newspaper of general circulation, once a week for three (3) consecutive weeks and at the expense of the complainant. When a party summoned by publication failed to appear in the action, final orders or judgments against him shall be served upon him also by publication at the expense of the prevailing party. If the service has been made by publication, service may be proved by the affidavit of the printer, his foreman or principal clerk, or of the editor, business or advertising manager, to which affidavit a copy of the publication shall be attached, and by an affidavit showing deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the party by registered mail to his last known address.

- (c) Any application for leave to effect service by way of publication shall be mademotion in writing, supported by affidavit of the complainant or some person on his behalf, setting forth the grounds for the application.
- (d) When the service has been completed, the server shall within five (5) days therefrom, serve a copy of the return, personally or by registered mail, to the plaintiff's counsel, and shall return the summons to the Hearing Officer who issued it, accompanied by proof of service.

Sec. 9. Answer. — (a) The summons shall require respondent to answer the complaint within ten (10) days from receipt thereof. The respondent shall answer the complaint in writing, by either specifically denying the material allegations of the complaint or alleging any affirmative defense.

If the respondent fails to answer within the time allowed therefor, the Hearing Officer shall, *motu proprio* or upon motion of the complainant with notice to the respondent, and proof of such failure, declare the respondent in default. Thereupon, the Hearing Officer shall proceed to render judgment granting the complainant such relief as his pleading may warrant, unless the Hearing Officer in his discretion requires the complainant to submit evidence. All such decisions or orders shall comply with Rule 11 of these Regulations.

- (b) A party declared in default may, at any time after notice thereof and before judgment, file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such a case, the order of default may be set aside terms and conditions as the Hearing Officer may impose in the interest of justice.
- (c) A party in default shall not be entitled to notice of subsequent proceedings, unless he files a motion to lift or set aside the order of default.

Sec. 10. Answer to Amended Complaint. — If the complaint is amended, the time fixed for the filing and service of the answer shall, unless otherwise ordered, run from the service of such amended complaint. The original answer shall be considered as answer to the amended complaint unless a new answer is filed within ten (10) days from receipt or service of the amended complaint.

Sec. 11. Motion to Dismiss Not Allowed. — No motion to dismiss on any of the grounds mentioned in the Rules of Court and in any other law shall be allowed except on the ground of prescription. Such grounds other than prescription shall instead be pleaded as affirmative defenses, the resolution of which shall be made in the decision on the merits. The Hearing Officer may, for good cause shown, conduct a preliminary hearing on any of the affirmative defenses if this will expedite the resolution of the case.

Sec. 12. Pre-trial. — Upon joinder of issues, the pre-trial conference shall be set immediately by the Hearing Officer. The notice of said pre-trial shall be delivered by the Process Server within three (3) days from receipt of the answer or last pleading. The notice of pre-trial shall require parties to submit a pre-trial containing the following:

- (a) A brief statement of the parties' claims and defenses;
- (b) Suggestions, if any, for simplification of issues;
- (c) A list of documents they intend to produce as evidence, together with appropriate marking as exhibits as well as the identification of witnesses and a statement of the substance and purpose of their testimony during the hearing on the merits. The originals of these documents must be produced for comparison during the pre-trial conference without prejudice to the presentation of additional documents during the trial if the party was prevented from producing the same during the pre-trial on account of fraud, accident, mistake, excusable negligence or such other reason which the Director or Hearing Officer deems justifiable in the interest of justice and fair play;
- (d) A statement whether they can stipulate on facts not covered by admissions in their pleadings. If so, they should come up with drafts of matters they are ready to stipulate on;
- (e) The limitation of the number of witnesses;
- (f) A statement whether they are open to the possibility of an amicable settlement; and
- (g) Such other matter as may aid in the prompt disposition of the action.

- Sec. 13. Effect of Failure to File Pre-Trial or to Appear. — The failure of the complainant to submit the Pre-Trial Brief within the prescribed period or to appear at the pre-trial pursuant to these Regulations shall be cause for dismissal of the action with prejudice *motu proprio* or upon motion. A similar failure on the part of the respondent shall be cause to declare respondent as in default *motu proprio* or upon motion and to allow the complainant to present his evidence *ex-parte* and the office to render judgment on the basis thereof.
- Sec. 14. Appearance of the Parties. — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear on his behalf fully authorized in writing to enter into an amicable settlement and to enter into stipulations or admissions of facts and of documents.
- Sec. 15. Effect of Failure to File Pre-Trial Brief or to Appear in the Pre-trial Conference.— The failure of the complainant to submit the Pre-trial Brief within the prescribed period or to appear at the pre-trial pursuant to these Regulations shall be cause for dismissal of the action with prejudice *motu proprio* or upon motion. A similar failure on the part of the respondent shall be cause to allow the complainant to present his evidence *ex-parte* and the Bureau to render judgment on the basis thereof.
- Sec. 16. Record of Pre-Trial Results. — After the Pre-Trial, the Hearing Officer shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered. Such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel and when entered, controls the subsequent course of the action, unless modified before trial to prevent manifest injustice.
- Sec. 17. Pre-Trial Calendar. — The Hearing Officer shall cause to be prepared a pre-trial calendar of cases for consideration as above provided. After preparing Notice of Pre-Trial, it shall be the duty of the designated clerk of the Bureau to place such case in the pre-trial calendar.

Rule 3
POWERS OF HEARING OFFICERS

Sec. 1. Powers of Hearing Officers. — (a) A Hearing Officer conducting the hearing and investigating shall be empowered to administer oaths and affirmations; issue subpoena and subpoena duces tecum to compel attendance of parties and witnesses and the production of any book, paper, document, correspondence and other records which are material to the case; grant provisional remedies in accordance with these Regulations and the Rules of Court; and make preliminary rulings on questions raised at the hearings, with the ultimate decision on the merits of all the issues involved being left to the Director.

(b) Furthermore, a Hearing Officer as alter ego of the Director, shall have the power to cite a party or counsel or any person in contempt in accordance with these Regulations. The Hearing Officer shall likewise have the power to pass upon and approve bonds and counterbonds that may be posted by the parties; the bond or counterbond shall be in the form of cash, cashier's or manager's check issued in the name of the Intellectual Property Office.

Sec. 2. Service of Subpoena. — Service of Subpoena shall be made at least three (3) calendar days before the scheduled hearing so as to allow the witness reasonable time for preparation and travel to the place of attendance.

Sec. 3. Quashing a Subpoena Duces Tecum. — The Hearing Officer, upon motion made before the time specified in a subpoena duces tecum for compliance therewith, may quash the subpoena if it is unreasonable or the relevance of the books, papers, documents, correspondence and other records does not appear, or if the persons on whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.

Rule 4
PRELIMINARY ATTACHMENT

Sec. 1. Grounds Upon Which Attachment May Issue. — At the commencement of the action or at any time before entry of judgment, a complainant or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

- (a) In an action against a party who has been guilty of fraud in procuring the registration of a mark in the Office by false or fraudulent declaration or representation, whether oral in writing, or by any false means;
- (b) In an action against a party who has employed deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals or his business or services for those of the one having established such goodwill, or who shall commit any act calculated to produce said result whether or not a mark is involved;
- (c) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication;
- (d) In an action for the recovery of a specified amount of money or damages on a cause of action arising from a violation of the IP Code against a party who is about to depart from the Philippines with intent to evade the execution of judgment; or
- (e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud the aggrieved party.

Sec. 2. Issuance and Contents of Order. — An order of attachment may be issued either ex-parte upon motion with notice and hearing conducted by the Hearing Officer. The Hearing Officer shall determine whether the attachment sought is meritorious or not. Should an order of attachment be issued by the Hearing Officer, he shall sign and forward the order to the Director who shall direct without delay, the officer or such other designated employee of the Bureau to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order, which may be amount sufficient to satisfy the applicant's demand or the value of the property to be attached as stated by the applicant, exclusive of costs.

Sec. 3. Affidavit and Bond Required. — An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in Section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by

the action, and that the amount due to the applicant, to the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit and the receipt evidencing payment of the bond must be duly filed with the Hearing Officer and forwarded to the Office of the Director before the order issues.

Sec. 4. Condition of Applicant's Bond. — The party applying for the order must give a bond executed to the adverse party in the amount fixed by the Hearing Officer in his order granting the issuance of the writ conditioned that the applicant will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the Hearing Officer shall finally adjudged that the applicant was not entitled thereto.

Sec. 5. Manner of Attaching Property. — The officer enforcing the writ shall, without delay and with all reasonable diligence, attach, to await judgment and execution in the action, only so much of the property in the Philippines of the party against who, the writ is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless the former files a counterbond, in an amount equal to the bond fixed by the Hearing Officer in the order of attachment or to the value of the property to be attached, exclusive of costs. No levy on attachment pursuant to the writ shall be enforced unless it is preceded, or accompanied by service of summons, together with a copy of the complaint, the application for attachment, the applicant's affidavit and bond, and the order and writ of attachment on the defendant within the Philippines.

The requirement of prior or contemporaneous service of summons shall not apply where the summons could not be served personally or by substituted service despite diligent efforts, or the defendant is a resident of the Philippines temporarily absent therefrom, or the defendant is a non-resident of the Philippines.

Sec. 6. Sheriff's Return. — (a) After enforcing the writ, the sheriff must likewise, without delay, make a return thereon to the Hearing Officer from whom the writ issued, with a full statement of his proceeding under the writ and a complete inventory of the property attached, together with any counterbond given by the party against whom attachment is issued, and serve copies thereof on the applicant.

(b) The sheriff shall submit a report to the Hearing Officer on the action taken on all writs and processes assigned to them within twenty (20) days from receipt of said process or writ. Said report shall form part of the records of the case.

(c) At the end every month, said Hearing Officer shall submit a report to the Director indicating therein the number of writs and processes issued and served, as well as the number of writs and processes unserved during the month and the names of the sheriffs who executed each writ. Unserved writs and processes shall be explained in the report.

Sec. 7. What may be the Subject of Attachment and the Manner of Executing the Same. — The following properties may be the subject of attachment:

(a) Real Properties. — Real properties, or the machineries that may be found inside the premises belonging to the party against whom the writ is issued, or any interest therein, by filing with the Registry of Deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any, or with such other person or his agent of found within the city or province where the property is located. The Registrar of Deeds must index attachments filed under this section in the name of the applicant, the adverse party, or the person by whom the property is held or in whose name it stands in the records. If the attachment is not claimed in the entire area of the land covered by the certificate of title, a description sufficiently accurate for the identification of land or interest to be affected shall be included in the registration of such attachment.

(b) Personal Properties. — Those personal properties capable of manual delivery, by taking such properties after issuing the corresponding receipt therefore. The sheriff shall thereafter deliver the attached properties to the complainant or proper party who shall be responsible for the custody, safekeeping, preservation, and the inventory and return of said properties to the other party or proper party upon termination of the case.

(c) Shares of Stocks. — Shares of stocks or an interest in shares of stocks of any corporation or company, by leaving with the president or managing agent thereof, a copy of the writ, and a stating that the stock or interest

of the party against whom the attachment is issued is attached in pursuance of such writ.

Sec. 8. When Attached Property May Be Sold After Levy on Attachment and Before Entry of Judgment. — Whenever it shall be made to appear to the Hearing Officer, upon hearing with notice to both parties, that the property attached is perishable, or that the interests of all the parties to the action will be subserved by the sale thereof, the Hearing Officer may order such property to be sold at public auction in such manner as he may direct, and the proceeds of such sale to be deposited as the Director may prescribe to await the judgment in the action.

Sec. 9. Discharge of Attachment Upon Giving Counterbond. — After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The Hearing Officer shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counterbond with the Office of the Director in an amount equal to that fixed by the Hearing Officer in the order of attachment, exclusive of costs. But if the attachment sought to be discharged is with respect to a particular property, the counterbond shall be equal to the value of that property as determined by the Hearing Officer. The cash deposit or the counterbond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served in the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or filing the counterbond, or to the person appearing on his behalf, the deposit or counterbond aforesaid standing in place of the property so released. Should such counterbond for any reason be found to be or become, insufficient, and the party furnishing the same fails to file a additional counterbond, the attaching party may apply for a new order of attachment.

Sec. 10. Discharge of Attachment on Other Grounds. — The party whose property has been ordered attached may file a motion with the Hearing Officer before whom the case is pending, before or after levy or even after release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the property being attached is exempt from execution. If the attachment is excessive,

the discharge shall be limited to the excess. If said motion be made on affidavit, the attaching party may oppose the same by counter-affidavit or other evidence in addition to that on which the attachment was made. After due notice and hearing, the Hearing Officer shall order the setting aside or the discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith, or the property being attached is exempt from execution.

Sec. 11. When the Property Attached is Claimed by Third Person. — If the property attached is claimed by a person not a party to the proceeding, as such person makes an affidavit of his title thereto, or right to the possession thereof, and serves such affidavit upon the sheriff and a copy thereof upon attaching party, the sheriff shall not be bound to keep the property under attachment unless the attaching party or his agent, on demand of the sheriff shall file a bond approved by the Hearing Officer to indemnify the third party claimant in a sum not less than the value of the property levied upon. In case of disagreement as to such value, the same shall be decided by the Director. No claim for damages for the taking of keeping the property may be enforced against the bond unless the action therefor is filed within sixty (60) days from the date of the filing of the bond.

The sheriff shall not be liable for damages for taking or keeping of such property, to any such third party claimant, if such bond shall be filed. Nothing therein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the attaching party from claiming damages against a third party claimant who filed a frivolous or plainly spurious claim, in the same or in separate action.

Sec. 12. Satisfaction of Judgment out of Property Attached; Sheriff's Return. — If judgment be recovered by the attaching party and execution issue thereon, the sheriff may cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose in the following manner:

- (a) By paying to the judgment obligee the proceeds of all sales of perishable or other property sold in pursuance of the order of the Bureau, or so much as shall be necessary to satisfy the judgment;

(b) If any balance remains due, be selling so much of the property, real or personal, as may be necessary to satisfy the balance, if enough property remain in the sheriff's hands for that purpose, or in those of the Office of the Director.

The sheriff shall forthwith make a return to the Hearing Officer of his proceedings under this Section and furnish the parties with copies thereof.

Sec. 13. Balance Due Collected Upon an Execution; Excess Delivered to Judgment Obligor. — If after realizing upon all the property attached, applying the proceeds to the satisfaction of the judgment, less the expenses of proceedings upon the judgment, any balance shall remain due, the sheriff must proceed to collect such balance as upon ordinary execution. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must return to the judgment obligor the attached property remaining in his hands, and any proceeds of the sale of the property attached not applied to the judgment.

Sec. 14. Disposition of Money Deposited. — Where the party against whom attachment had been issued has deposited money, it shall be applied under the direction of the Director of the satisfaction of any judgment rendered in favor of attaching party, and after satisfying the judgment balance shall be refunded to the depositor or his assignee. If the judgment is in favor of the party against whom attachment was issued, the whole sum deposited must be refunded to him or his assignee.

Sec. 15. Disposition of Attached Property Where Judgment is of Party Against Whom Attachment was Issued. — If judgment be rendered against the attaching party, all the proceeds of sales and money collected or received by the sheriff, under the order of attachment and all properly attached remaining in such officer's hands, shall be delivered to the party against whom the attachment was issued, and the order of attachment discharged.

Sec. 16. Claim for Damages on Account of Improper, Irregular or Excessive Attachment. — An application for damages on account of improper, irregular or excessive attachment must be filed with the Director before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party, setting forth the facts showing his right to damages and the amount thereof. Such damages

may be awarded only after proper hearing and shall be included in the judgment to the main case.

If, on appeal, the judgment of the Director-General be favorable to the party against whom the attachment was issued, the latter may claim damages sustained during the pendency of the appeal by filing an application in the Office of the Director-General, with notice to the party in whose favor the attachment was issued, before the judgment of the Director-General becomes executory. The Director-General may remand the application to the Bureau for hearing and decision. Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

Rule 5

PRELIMINARY INJUNCTION

Sec. 1. Preliminary injunction defined; who may grant. — preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party to an administrative case or any third person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as preliminary mandatory injunction.

A preliminary injunction may be granted by the Hearing Office who is hearing the case but no such power can be exercised as against a concurrent court of other Office which has already acquired jurisdiction over the subject matter.

Sec. 2. Grounds for Issuance of Preliminary Injunction. — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period of perpetually:

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party or any person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject to the action or proceeding and tending to render the judgment ineffectual.

Sec. 3. Verified Application and Bond for Preliminary Injunction or Temporary Restraining Order. — A preliminary or temporary restraining order may be granted only when:

(a) The application in the action or proceeding is verified and shows facts entitling the applicant to the relief demanded;

(b) Unless exempted, the applicant files with the Bureau a bond executed to the party or person enjoined in an amount to be fixed by the Hearing Officer, to the effect that the applicant will pay to such party or person all damages which the latter may sustain by reason of the injunction or temporary restraining order if the Hearing Officer should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued;

(c) When an applicant for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or accompanied by service of summons, together with a copy of complaint or initiatory pleading and the applicant's affidavit and bond upon the adverse party in the Philippines. However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

(d) The application for a temporary restraining order shall thereafter be acted upon only after all the parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the

Hearing Officer to whom the case was raffled and to whom the records shall be transmitted immediately.

If it shall appear from the facts shown the great or irreparable injury would result to the applicant, the Hearing Office to whom the application for preliminary injunction was made, may issue temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within said twenty day period, the Hearing Officer must order said party or person to show cause at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

Sec. 4. Preliminary Injunction not Granted Without Notice; Exception. — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. Should the petition be granted after compliance with the requirement of due process, the Hearing Officer shall issue an order enjoining the party against whom it is issued from further committing acts detrimental or injurious to the application effective for a period of time not exceeding ninety (90) days as may be determined by the Hearing Officer with the concurrence of the Director without prejudice to the filing of a counterbond as provided in subsequent sections.

Sec. 5. Grounds for Objections to, or for Motion of Dissolution of, Injunction or Restraining Order. — The application for injunction or restraining order may be denied, upon showing of its insufficiency. The injunction or restraining order may also be denied, or if granted, may be dissolved, on other grounds upon affidavit of the party or person enjoined, which may be opposed by the applicant also by affidavit. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files bond in an amount fixed by the Hearing Officer conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified.

Sec. 6. When Final Injunction Granted. — If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the Hearing Officer shall grant a final injunction perpetually restraining the party or person enjoined from further commission of the act or acts or confirming the preliminary mandatory injunction.

Rule 6 CONTEMPT

Sec. 1. Direct Contempt Punished Summarily. — A person guilty of misbehavior in the presence of or so near the Director or Hearing Officer as to obstruct or interrupt the proceedings before him, including disrespect toward the Director or Hearing Officer, offensive personalities toward others, or refusal to be sworn to or answer as a witness, or to subscribe to an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by the Director or Hearing Officer and punished by fine not exceeding Two Thousand Pesos (P2,000.00) or imprisonment not exceeding ten (10) days, or both.

Sec. 2. Indirect Contempt to be Punished After Charge and Hearing. — After a charge in writing has been filed, and an opportunity given to the respondent to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt by the Director:

- (a) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of the Hearing Officer, or injunction granted by him;
- (b) Any abuse or unlawful interference with the process or proceedings of the Bureau, not constituting direct contempt under Section 1 of this Rule;
- (c) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice or the performance of the Bureau's proper function;
- (d) Failure to obey a subpoena duly served;
- (e) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him; or

(f) The submission of a false certification, without prejudice to the filing of the appropriate civil and/or criminal action, or non-compliance with any undertaking regarding commencement of actions.

But nothing in this section shall be so construed as to prevent the Director from issuing process to bring the respondent party into or before the Bureau, or from holding him in custody pending such proceedings.

Sec. 3. Contempt Proceedings. — Proceedings for indirect contempt may be initiated *motu proprio* by the Bureau by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions. If the contempt charges arose out of or are related to principal action pending in the Bureau, the petition shall be docketed, heard, and decided separately, unless the Bureau in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

Sec. 4. Hearing; Release on Bail. — If the hearing is not ordered to be had forthwith, the respondent may be released from custody upon filing a bond, in an amount fixed by the Director or Hearing Officer, for his appearance to answer the charge. On the day set for the hearing, the Director or Hearing Officer shall proceed to investigate the charge and consider such answer or testimony as the respondent may make or offer.

Sec. 5. Punishment for Indirect Contempt. — If the respondent is thereupon adjudged guilty of indirect contempt committed, he may be punished by a fine not exceeding Thirty Thousand Pesos (P30,000.00) or imprisonment of not more than six (6) months, or both, and if the contempt consists in the violation of an injunction, he may also be ordered to make a complete restitution to the party injured by such violation.

Sec. 6. Imprisonment Until Order Obeyed. — When the contempt consists in the omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the Hearing Officer until he performs it.

Sec. 7. Proceedings When Party Released on Bail Fails to Answer. — When a respondent released on bail fails to appear on the date fixed for the hearing, the Hearing Officer may issue another order of arrest may order the bond for his appearance to be prosecuted, or both; and, if the bond be prosecuted, the measure of damages shall be the extent of the loss or injury sustained by the aggrieved party, by reason of misconduct for which the contempt was prosecuted, and the costs of the proceedings, and such recovery shall be for the benefit of the party injured. But if there is no aggrieved party, the bond shall be liable and disposed of as in criminal cases.

Sec. 8. Hearing Officer May Release Respondent. — The Director of the Hearing Officer may discharge from imprisonment a person imprisoned for contempt when it appears that public interest will not suffer thereby.

Sec. 9. Review of Judgment or Order by the Director. — The judgment or order of the Hearing Officer made in a case of direct contempt punished after written charge and hearing may be reviewed by the Director, but execution of the judgment or order shall not be suspended until a bond is filed by the person in contempt, in an amount fixed by the Hearing Officer conditioned until that if the appeal be decided against him he will abide by and perform the judgment or order.

Rule 7

CALENDAR AND ADJOURNMENTS

Sec. 1. Trial Calendar. — The staff clerk shall have a trial calendar for the cases that have passed pre-trial stage. Cases where there is a prayer for preliminary mandatory injunction and/or attachment shall be given preference.

Sec. 2. Notice of Trial. — Upon entry of a case in the trial calendar, the staff clerk shall cause a notice of the date of its trial to be served upon the parties within three(3) days by the process server.

Sec. 3. Continuous Trial. — All hearings shall be continuous until the case is terminated subject to exceptions provided under Section 2 of Rule 9.

Sec. 4. Raffle of Cases. — Actions which are to be conducted before this Bureau shall be raffled to the different Hearing Officers who shall thereafter handle the proceeding from its commencement until its final resolution. However, should Hearing Officer to whom the case was raffled be unavailable during

any scheduled hearing, upon request of either counsel, the Director shall designate an appropriate officer to preside or conduct the proceedings.

Rule 8
DEPOSITIONS AND DISCOVERIES

- Sect. 1. Deposition pending action. — By leave of the Hearing Officer after the Answer has been filed, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon written interrogatories. The attendance of witness through a subpoena may be compelled under Section 2(d) of Rule VI.
- Sec. 2. Effect of Taking Deposition. — A party shall not be deemed to make a person his own witness for any purpose by taking his deposition.
- Sec. 3. Stipulation Regarding Taking of Deposition. — If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at anytime or place, in accordance with the Rules of Court, and when so taken may be used like other depositions.
- Sec. 4. Period Within Which to Submit Answers to Written Interrogatories. — Should a party request to take the deposition of a non-resident in a foreign land, the answer to such written interrogatories must be submitted to the Hearing Officer handling the case within six (6) months from the date of issuance of the Letters Commission, without extension. Failure to submit the same within the period shall result in the striking off of said deposition and the affidavits of such deponent.

Rule 9
HEARING

- Sec. 1. Trial of Cases. — The Hearing Officer shall, as far as practicable, set the case for successive and continuous daily hearing for the reception not only of the evidence in chief but also on any provisional remedy prayed for in the complaint or petition: Provided, however, that the hearing of the case on the merits or the reception of evidence of the parties shall be terminated within ninety (90) days, thirty (30) days to be allotted to complainant's or petitioner's evidence, thirty (30) days for respondent, and thirty (30) days for any rebuttal and sur-rebuttal evidence. In the case of provisional remedies, the hearings or reception of evidence thereof shall be terminated within thirty (30) days.

Sec. 2. Postponement of Hearings. — Postponement of hearings shall be allowed only on extremely meritorious grounds provided, that the reception of evidence of the parties shall not exceed the periods provided under the preceding section.

Sec. 3. Order of Trial. — Unless the Hearing Officer, for special reasons, otherwisedirects, the order of trial shall be as follows:

- (a) The complainant or petitioner must produce evidence in support of his allegations in the complaint or petition. The affiant/witnesses whose affidavits were submitted must be subject to a cross examination by the opposing counsel on the basis of their affidavits.
- (b) The respondent shall then offer evidence in support of his defense, counterclaim, cross-claim, and third-party claim subject to cross-examination by complainant or petitioner or his counsel.
- (c) The third party-respondent, if any, shall introduce evidence of his defense, counterclaim, cross-claim and third party claim.
- (d) The fourth party, and so forth, if any, shall introduce evidence of the material facts pleaded by him.
- (e) The parties against whom any counterclaim or cross-claim has been pleaded shall introduce evidence in support of their defense, in the order to be prescribed by the Hearing Officer.
- (f) The parties may then respectively offer rebutting evidence only, unless the Hearing Officer, for good reasons, in the furtherance of justice, permits them to offer additional evidence pertinent to the original issue.
- (g) When the presentation of evidence is concluded, the parties may submit their respective memoranda within ten (10) days from date of the last hearing. Unless otherwise provided for by special laws, the appropriate final pleading required of the parties to be submitted shall include a draft of the decision/resolution they seek, stating clearly and distinctly the facts and the law upon which it is based. The Hearing Officer may adopt, in whole or in part, either of the

parties' draft decisions/resolutions, or reject both. This requirement shall likewise be applied to orders other than final judgment.

Sec. 4. Agreed Statements of Facts. — (a) The complainant and the respondent may agree in writing upon the facts involved in the action, and ask judgment upon the facts agreed upon, without the introduction of evidence. The Hearing Officer shall immediately prepare the decision and submit it to the Division Chief of the Administrative Complaints Division who shall recommend the same to the Director for his approval, if the agreed statement of facts is sufficient to support a decision.

(b) If the parties can agree only on some of the facts in issue, a hearing shall be held as to the others.

Sec. 5. Period for Resolving Cases. — Unless a different period is fixed by special laws, all contested cases or any incident thereof shall be decided or resolved within thirty (30) calendar days from submission for decision or resolution by the Bureau.

Sec. 6. Consolidation. — When actions involving a common question of law or fact are pending before the Bureau, the Hearing Officer may order a joint hearing or trial on any or all the matters in issue in the actions. It may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Rule 10 EVIDENCE

Sec. 1. Evidence Required. — Substantial evidence shall be sufficient to support decision or order. A fact may be deemed established if it is supported by substantial evidence. It means such relevant evidence which a reasonable mind might accept as adequate to support or justify a conclusion.

Sec. 2. Documentary Evidence. — Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the parties shall be given opportunity to compare the copy with the original. If the original is in the custody of a public officer, a certified copy thereof may be accepted.

Sec. 3. Director or Hearing Officer not Bound by Technical Rules of Evidence. — The Director or Hearing Officer shall receive relevant and material

evidence, rule on offer of evidence and exclude all irrelevant matters, and shall act according to justice and fairness. The Bureau, in the exercise of its power to hear cases within its jurisdiction shall not be strictly bound by the technical rules of evidence. The Bureau shall, however, take judicial cognizance of the official acts of the legislative, executive and the judicial departments of the Philippines, the laws of nature, scientific facts as published in treatises, periodicals, or pamphlets and other facts which are of public knowledge or general knowledge as would enable the Director or Hearing Officer to rule upon the technical issues in the case.

Sec. 4. Burden of Proof in Process Patents. — If the subject matter of a patent is a process for obtaining a product, any identical product shall be presumed to have been obtained through the use of the patented process if the product is new or there is substantial likelihood that the identical product was made by the process and the owner of the patent has been unable despite reasonable efforts, to determine the process actually used. In ordering the defendant to prove that the process to obtain the identical product is different from the patented process, the Director shall adopt measures to protect, as far as practicable, his manufacturing and business secrets.

Sec. 5. Power to Stop Further Evidence. — The Hearing Officer may stop the introduction of further testimony upon any particular point when the evidence is already so full that more witness to the same point cannot be reasonably expected to be additionally persuasive. The Hearing Officer, however, should exercise this power with caution so as not to cause manifest injustice to the parties.

Sec. 6. Equitable Principles to Govern Proceedings. — In all cases involving intellectual property rights, the equitable principles of laches, estoppel, and acquiescence where applicable, may be considered and applied.

Rule 11

DECISIONS AND ORDERS

Sec 1. Rendition of Decision. — (a) The case is deemed submitted for resolution upon termination of the period for reception of evidence provided in Section 1 of Rule 9 and the evidence formally offered. Whether or not the parties submit a final pleading such as memorandum, the case shall be decided by the Bureau within thirty (30) calendar days from submission as provided herein. All decisions determining the merits of cases shall be in

writing, stating clearly and distinctly the facts and law on which they are based and signed by the Director.

(b) Decisions and final orders shall be served by mail, personal service or publication as the case may require.

Rule 12

ADMINISTRATIVE PENALTIES AND SANCTIONS

Sec. 1. Administrative Penalties Imposable. — After formal investigation, the Director, may impose one (1) or more of the following administrative penalties:

(a) Issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the Order;

(b) The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:

(i) An assurance to comply with the provisions of the Intellectual Property Law violated; (ii) An assurance to refrain from engaging in unlawful and unfair acts and practices subject of the formal investigations;

(iii) An assurance to recall, replace, repair or refund the money value of defective goods distributed in commerce;

(iv) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau.

The Director may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking.

(c) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director, such as by sale, donation to distressed local government units or charitable or relief

institutions, exportation recycling into other goods, or any combination thereof, under such guidelines as he may provide;

- (d) The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense.
- (e) The imposition of administrative fines in such amount as deemed reasonable by the Director, which shall in no case be less than Five Thousand Pesos (P5,000.00) nor more than One Hundred Fifty Thousand Pesos (P150,000.00). In addition, an additional fine of not more than One Thousand Pesos (P1,000.00) shall be imposed for each day of continuing violation;
- (f) The cancellation of any permit, license, authority, or registration which may have been granted by the Office, or the suspension of the validity thereof for such period of time as the Director may deem reasonable which shall not exceed one (1) year.
- (g) The withholding of any permit, license, authority or registration which is being secured by the respondent from the Office;
- (h) The assessment and award of damages;
- (i) Censure
- (j) Other analogous penalties or sanctions such as those provided under Section 21 of Republic Act No. 8293.

Rule 13

JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF

- Sec. 1. Rendition of Judgment and Final Orders. — A judgment or final order determining the merits of the case shall be in writing, stating clearly and distinctly the facts and the law on which it is based, signed by the Director, and filed with the appropriate Register of the Office.
- Sec. 2. Entry of judgments and Final Orders. — If no appeal is filed within the time provided in these Regulations, the Director shall forthwith cause the entry of the judgment or final order in the appropriate Register of the Office. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of

the judgment or final order and shall be signed by the Director, with a certificate that such judgment or final order has become final and executory.

Sec. 3. Order and Writ of Execution. — As soon as a decision or order has become final and executory, the Director shall, motu proprio or on motion of the interested party issue an order of execution deputizing and requiring the appropriate officer or personnel of the office, or such other duly authorized government agent, officer, or personnel, to execute and enforce said decision or order.

Sec. 4. Execution Pending Appeal. — On motion of the prevailing party with notice to the adverse party or motu proprio and upon filing of an approved bond, the Director may, in his discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in the order. The execution pending appeal may be stayed by the filing of an approved counterbond in an amount to be fixed by the Director.

Rule 14

APPEAL

Sec. 1. Finality of Decision and Order. — (a) The decision and order of the Director shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party affected unless within the said period an appeal to the Director General has been perfected.

(b) Decisions of the Director-General shall be final and executory unless an appeal to the Court of Appeals or Supreme Court is perfected in accordance with the Rules of Court applicable to appeals from decision of Regional Trial Courts.

(c) Interlocutory orders shall not be appealable.

(d) No motion for reconsideration of the decision of the Director General shall be allowed.

Sec. 2. Appeal, How Perfected. — Appeal may be perfected by filing a Notice of Appeal with the Director General and the Director and a copy thereof served upon the adverse party within fifteen (15) days from receipt of the order or Decision and upon payment of the corresponding docket fee.

FINAL PROVISIONS

Sec. 1. Separability. — If any provision in these Regulations or application of such provision to any circumstances is held invalid, the remainder of these Regulations shall not be affected thereby.

Sec. 2. Furnishing of Certified Copies. — Mr. Eduardo Josen, Records Officer II, is hereby directed to immediately file three (3) certified copies of these Regulations with the University of the Philippines Law Center, and one (1) certified copy each to the Office of the President, the Senate of the Philippines, the House of Representatives, the Supreme Court of the Philippines, and the National Library.

Sec. 3. Effectivity. — These rules and regulations shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Done this 28th day of March 2001.

Approved:

EMMA C. FRANCISCO

Director General

Recommended By:

ESTRELLITA BELTRAN-ABELARDO

Director, Bureau of Legal Affairs

REPUBLIC ACT NO. 8293
AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE
AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE,
PROVIDING FOR ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES

PART I
THE INTELLECTUAL PROPERTY OFFICE

Sec. 1. Title. - This Act shall be known as the "Intellectual Property Code of the Philippines."

Sec. 2. Declaration of State Policy. - The State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It 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 periods as provided in this Act.

The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines. (n)

Sec. 3. International Conventions and Reciprocity. - Any person who is a national or who is domiciled or has a real and effective industrial establishment in a country which is a party to any convention, treaty or agreement relating to intellectual property rights or the repression of unfair competition, to which the Philippines is also a party, or extends reciprocal rights to nationals of the Philippines by law, shall be entitled to benefits to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of an intellectual property right is otherwise entitled by this Act. (n)

Sec. 4. Definitions. -

4.1. The term "intellectual property rights" consists of:

- (a) Copyright and Related Rights;
- (b) Trademarks and Service Marks;
- (c) Geographic Indications;
- (d) Industrial Designs;
- (e) Patents;
- (f) Layout-Designs (Topographies) of Integrated Circuits; and
- (g) Protection of Undisclosed Information (n) [TRIPS].

4.2. The term "technology transfer arrangements" refers to contracts or agreements involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts; and the transfer, assignment or licensing of all forms of intellectual property rights, including licensing of computer software except computer software developed for mass market.

4.3. The term "Office" refers to the Intellectual Property Office created by this Act.

4.4. The term "IPO Gazette" refers to the gazette published by the Office under this Act. (n)

Sec. 5. Functions of the Intellectual Property Office (IPO). -

5.1. To administer and implement the State policies declared in this Act, there is hereby created the Intellectual Property Office (IPO) which shall have the following functions:

- (a) Examine applications for grant of letters patent for inventions and register utility models and industrial designs;

- (b) Examine applications for the registration of marks, geographic indication, integrated circuits;
- (c) Register technology transfer arrangements and settle disputes involving technology transfer payments covered by the provisions of Part II, Chapter IX on Voluntary
- (d) Licensing and develop and implement strategies to promote and facilitate technology transfer;
- (e) Promote the use of patent information as a tool for technology development;
- (f) Publish regularly in its own publication the patents, marks, utility models and industrial designs, issued and approved, and the technology transfer arrangements registered;
- (g) Administratively adjudicate contested proceedings affecting intellectual property rights; and
- (h) Coordinate with other government agencies and the private sector efforts to formulate and implement plans and policies to strengthen the protection of intellectual property rights in the country.

5.2. The Office shall have custody of all records, books, drawings, specifications, documents, and other papers and things relating to intellectual property rights applications filed with the Office. (n)

Sec. 6. The Organizational Structure of the IPO. - 6.1. The Office shall be headed by a Director General who shall be assisted by two (2) Deputies Director General.

6.2. The Office shall be divided into six (6) Bureaus, each of which shall be headed by a Director and assisted by an Assistant Director. These Bureaus are:

- (a) The Bureau of Patents;
- (b) The Bureau of Trademarks;
- (c) The Bureau of Legal Affairs;

- (d) The Documentation, Information and Technology Transfer Bureau;
- (e) The Management Information System and EDP Bureau; and
- (f) The Administrative, Financial and Personnel Services Bureau.

6.3. The Director General, Deputies Director General, Directors and Assistant Directors shall be appointed by the President, and the other officers and employees of the Office by the Secretary of Trade and Industry, conformably with and under the Civil Service Law. (n)

Sec. 7. The Director General and Deputies Director General. -

7.1. Functions. - The Director General shall exercise the following powers and functions:

- (a) Manage and direct all functions and activities of the Office, including the promulgation of rules and regulations to implement the objectives, policies, plans, programs and projects of the Office: Provided, That in the exercise of the authority to propose policies and standards in relation to the following: (1) the effective, efficient, and economical operations of the Office requiring statutory enactment; (2) coordination with other agencies of government in relation to the enforcement of intellectual property rights; (3) the recognition of attorneys, agents, or other persons representing applicants or other parties before the Office; and (4) the establishment of fees for the filing and processing of an application for a patent, utility model or industrial design or mark or a collective mark, geographic indication and other marks of ownership, and for all other services performed and materials furnished by the Office, the Director General shall be subject to the supervision of the Secretary of Trade and Industry;
- (b) Exercise exclusive appellate jurisdiction over all decisions rendered by the Director of Legal Affairs, the Director of Patents, the Director of Trademarks, and the Director of the Documentation, Information and Technology Transfer Bureau. The decisions of the Director General in the exercise of his appellate jurisdiction in respect of the decisions of the Director of Patents, and the Director of Trademarks shall be appealable to the

Court of Appeals in accordance with the Rules of Court; and those in respect of the decisions of the Director of Documentation, Information and Technology Transfer Bureau shall be appealable to the Secretary of Trade and Industry; and

- (c) Exercise original jurisdiction to resolve disputes relating to the terms of a license involving the author's right to public performance or other communication of his work. The decisions of the Director General in these cases shall be appealable to the Secretary of Trade and Industry.

7.2. Qualifications. - The Director General and the Deputies Director General must be natural born citizens of the Philippines, at least thirty-five (35) years of age on the day of their appointment, holders of a college degree, and of proven competence, integrity, probity and independence: Provided, That the Director General and at least one (1) Deputy Director General shall be members of the Philippine Bar who have engaged in the practice of law for at least ten (10) years: Provided further, That in the selection of the Director General and the Deputies Director General, consideration shall be given to such qualifications as would result, as far as practicable, in the balanced representation in the Directorate General of the various fields of intellectual property.

7.3. Term of Office. - The Director General and the Deputies Director General shall be appointed by the President for a term of five (5) years and shall be eligible for reappointment only once: Provided, That the first Director General shall have a first term of seven (7) years. Appointment to any vacancy shall be only for the unexpired term of the predecessor.

7.4. The Office of the Director General. - The Office of the Director General shall consist of the Director General and the Deputies Director General, their immediate staff and such Offices and Services that the Director General will set up to support directly the Office of the Director General. (n)

Sec. 8. The Bureau of Patents. - The Bureau of Patents shall have the following functions:

- 8.1. Search and examination of patent applications and the grant of patents;
- 8.2. Registration of utility models, industrial designs, and integrated circuits; and
- 8.3. Conduct studies and researches in the field of patents in order to assist the Director General in formulating policies on the administration and examination of patents. (n)

Sec. 9. The Bureau of Trademarks. - The Bureau of Trademarks shall have the following functions:

- 9.1. Search and examination of the applications for the registration of marks, geographic indications and other marks of ownership and the issuance of the certificates of registration; and
- 9.2. Conduct studies and researches in the field of trademarks in order to assist the Director General in formulating policies on the administration and examination of trademarks. (n)

Sec. 10. The Bureau of Legal Affairs. - The Bureau of Legal Affairs shall have the following functions:

- 10.1. Hear and decide opposition to the application for registration of marks; cancellation of trademarks; subject to the provisions of Section 64, cancellation of patents, utility models, and industrial designs; and petitions for compulsory licensing of patents;
- 10.2. (a) Exercise original jurisdiction in administrative complaints for violations of laws involving intellectual property rights: Provided, That its jurisdiction is limited to complaints where the total damages claimed are not less than Two hundred thousand pesos (P200,000): Provided, further, That availment of the provisional remedies may be granted in accordance with the Rules of Court. The Director of Legal Affairs shall have the power to hold and punish for contempt all those who disregard orders or writs issued in the course of the proceedings. (n)

(b) After formal investigation, the Director for Legal Affairs may impose one (1) or more of the following administrative penalties:

- (i) The issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the order;
- (ii) The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:
 - (1) An assurance to comply with the provisions of the intellectual property law violated;
 - (2) An assurance to refrain from engaging in unlawful and unfair acts and practices subject of the formal investigation;
 - (3) An assurance to recall, replace, repair, or refund the money value of defective goods distributed in commerce; and
 - (4) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau of Legal Affairs.

The Director of Legal Affairs may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking;

- (iii) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director of Legal Affairs, such as by sale, donation to distressed local governments or to charitable or relief institutions, exportation, recycling into other goods, or any combination thereof, under such guidelines as he may provide;
- (iv) The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense;

- (v) The imposition of administrative fines in such amount as deemed reasonable by the Director of Legal Affairs, which shall in no case be less than Five thousand pesos (P5,000) nor more than One hundred fifty thousand pesos (P150,000). In addition, an additional fine of not more than One thousand pesos (P1,000) shall be imposed for each day of continuing violation;
- (vi) The cancellation of any permit, license, authority, or registration which may have been granted by the Office, or the suspension of the validity thereof for such period of time as the Director of Legal Affairs may deem reasonable which shall not exceed one (1) year;
- (vii) The withholding of any permit, license, authority, or registration which is being secured by the respondent from the Office;
- (viii) The assessment of damages;
- (ix) Censure; and
- (x) Other analogous penalties or sanctions. (Secs. 6, 7, 8, and 9, Executive Order No. 913 [1983]a)

10.3. The Director General may by Regulations establish the procedure to govern the implementation of this Section. (n)

Sec. 11. The Documentation, Information and Technology Transfer Bureau. - The Documentation, Information and Technology Transfer Bureau shall have the following functions:

11.1. Support the search and examination activities of the Office through the following activities:

- (a) Maintain and upkeep classification systems whether they be national or international such as the International Patent Classification (IPC) system;

- (b) Provide advisory services for the determination of search patterns;
- (c) Maintain search files and search rooms and reference libraries; and
- (d) Adapt and package industrial property information.

11.2. Establish networks or intermediaries or regional representatives;

11.3. Educate the public and build awareness on intellectual property through the conduct of seminars and lectures, and other similar activities;

11.4. Establish working relations with research and development institutions as well as with local and international intellectual property professional groups and the like;

11.5. Perform state-of-the-art searches;

11.6. Promote the use of patent information as an effective tool to facilitate the development of technology in the country;

11.7. Provide technical, advisory, and other services relating to the licensing and promotion of technology, and carry out an efficient and effective program for technology transfer; and

11.8. Register technology transfer arrangements, and settle disputes involving technology transfer payments. (n)

Sec. 12. The Management Information Services and EDP Bureau. - The Management Information Services and EDP Bureau shall:

12.1. Conduct automation planning, research and development, testing of systems, contracts with firms, contracting, purchase and maintenance of equipment, design and maintenance of systems, user consultation, and the like; and

12.2. Provide management information support and service to the Office. (n)

Sec. 13. The Administrative, Financial and Human Resource Development Service Bureau. -

13.1. The Administrative Service shall:

- (a) Provide services relative to procurement and allocation of supplies and equipment, transportation, messengerial work, cashiering, payment of salaries and other Office's obligations, office maintenance, proper safety and security, and other utility services; and comply with government regulatory requirements in the areas of performance appraisal, compensation and benefits, employment records and reports;
- (b) Receive all applications filed with the Office and collect fees therefor; and
- (c) Publish patent applications and grants, trademark applications, and registration of marks, industrial designs, utility models, geographic indication, and lay-out designs of integrated circuits registrations.

13.2. The Patent and Trademark Administration Services shall perform the following functions among others:

- (a) Maintain registers of assignments, mergings, licenses, and bibliographic on patents and trademarks;
- (b) Collect maintenance fees, issue certified copies of documents in its custody and perform similar other activities; and
- (c) Hold in custody all the applications filed with the office, and all patent grants, certificate of registrations issued by the office, and the like.

13.3. The Financial Service shall formulate and manage a financial program to ensure availability and proper utilization of funds; provide for an effective monitoring system of the financial operations of the Office; and

13.4. The Human Resource Development Service shall design and implement human resource development plans and programs for

the personnel of the Office; provide for present and future manpower needs of the organization; maintain high morale and favorable employee attitudes towards the organization through the continuing design and implementation of employee development programs. (n)

Sec. 14. Use of Intellectual Property Rights Fees by the IPO. -

14.1. For a more effective and expeditious implementation of this Act, the Director General shall be authorized to retain, without need of a separate approval from any government agency, and subject only to the existing accounting and auditing rules and regulations, all the fees, fines, royalties and other charges, collected by the Office under this Act and the other laws that the Office will be mandated to administer, for use in its operations, like upgrading of its facilities, equipment outlay, human resource development, and the acquisition of the appropriate office space, among others, to improve the delivery of its services to the public. This amount, which shall be in addition to the Office's annual budget, shall be deposited and maintained in a separate account or fund, which may be used or disbursed directly by the Director General.

14.2. After five (5) years from the coming into force of this Act, the Director General shall, subject to the approval of the Secretary of Trade and Industry, determine if the fees and charges mentioned in Subsection 14.1 hereof that the Office shall collect are sufficient to meet its budgetary requirements. If so, it shall retain all the fees and charges it shall collect under the same conditions indicated in said Subsection 14.1 but shall forthwith, cease to receive any funds from the annual budget of the National Government; if not, the provisions of said Subsection 14.1 shall continue to apply until such time when the Director General, subject to the approval of the Secretary of Trade and Industry, certifies that the above-stated fees and charges the Office shall collect are enough to fund its operations. (n)

Sec. 15. Special Technical and Scientific Assistance. - The Director General is empowered to obtain the assistance of technical, scientific or other qualified officers and employees of other departments, bureaus, offices, agencies and instrumentalities of the Government, including corporations owned, controlled or operated by the Government, when deemed

necessary in the consideration of any matter submitted to the Office relative to the enforcement of the provisions of this Act. (Sec. 3, R. A. No. 165a)

Sec. 16. Seal of Office. - The Office shall have a seal, the form and design of which shall be approved by the Director General. (Sec. 4, R. A. No. 165a)

Sec. 17. Publication of Laws and Regulations. - The Director General shall cause to be printed and make available for distribution, pamphlet copies of this Act, other pertinent laws, executive orders and information circulars relating to matters within the jurisdiction of the Office. (Sec. 5, R. A. No. 165a)

Sec. 18. The IPO Gazette. - All matters required to be published under this Act shall be published in the Office's own publication to be known as the IPO Gazette. (n)

Sec. 19. Disqualification of Officers and Employees of the Office. - All officers and employees of the Office shall not apply or act as an attorney or patent agent of an application for a grant of patent, for the registration of a utility model, industrial design or mark nor acquire, except by hereditary succession, any patent or utility model, design registration, or mark or any right, title or interest therein during their employment and for one (1) year thereafter. (Sec. 77, R. A. No. 165a)

PART II THE LAW ON PATENTS

Chapter I GENERAL PROVISIONS

Sec. 20. Definition of Terms Used in Part II, The Law on Patents. -- As used in Part II, the following terms shall have the following meanings:

20.1. Bureau means the Bureau of Patents;

20.2. Director means the Director of Patents;

20.3. Regulations means the Rules of Practice in Patent Cases formulated by the Director of Patents and promulgated by the Director General;

20.4. Examiner means the patent examiner;

20.5. Patent application or application means an application for a patent for an invention except in Chapters XII and XIII, where application means an application for a utility model and an industrial design, respectively; and

20.6. Priority date means the date of filing of the foreign application for the same invention referred to in Section 31 of this Act. (n)

Chapter II PATENTABILITY

Sec. 21. Patentable Inventions. - Any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable shall be patentable. It may be, or may relate to, a product, or process, or an improvement of any of the foregoing. (Sec. 7, R. A. No. 165a)

Sec. 22. Non-Patentable Inventions. - The following shall be excluded from patent protection:

22.1. Discoveries, scientific theories and mathematical methods;

22.2. Schemes, rules and methods of performing mental acts, playing games or doing business, and programs for computers;

22.3 Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body. This provision shall not apply to products and composition for use in any of these methods;

22.4. Plant varieties or animal breeds or essentially biological process for the production of plants or animals. This provision shall not apply to micro-organisms and non-biological and microbiological processes. Provisions under this subsection shall not preclude Congress to consider the enactment of a law providing sui generis protection of plant varieties and animal breeds and a system of community intellectual rights protection:

22.5. Aesthetic creations; and

22.6. Anything which is contrary to public order or morality. (Sec. 8, R. A. No. 165a)

Sec. 23. Novelty. - An invention shall not be considered new if it forms part of a prior art. (Sec. 9, R. A. No. 165a)

Sec. 24. Prior Art. - Prior art shall consist of:

24.1. Everything which has been made available to the public anywhere in the world, before the filing date or the priority date of the application claiming the invention; and

24.2. The whole contents of an application for a patent, utility model, or industrial design registration, published in accordance with this Act, filed or effective in the Philippines, with a filing or priority date that is earlier than the filing or priority date of the application: Provided, That the application which has validly claimed the filing date of an earlier application under Section 31 of this Act, shall be prior art with effect as of the filing date of such earlier application: Provided further, That the applicant or the inventor identified in both applications are not one and the same. (Sec. 9, R. A. No. 165a)

Sec. 25. Non-Prejudicial Disclosure. -

25.1. The disclosure of information contained in the application during the twelve (12) months preceding the filing date or the priority date of the application shall not prejudice the applicant on the ground of lack of novelty if such disclosure was made by:

(a) The inventor;

(b) A patent office and the information was contained (a) in another application filed by the inventor and should not have been disclosed by the office, or (b) in an application filed without the knowledge or consent of the inventor by a third party which obtained the information directly or indirectly from the inventor; or

(c) A third party which obtained the information directly or indirectly from the inventor.

25.2. For the purposes of Subsection 25.1, "inventor" also means any person who, at the filing date of application, had the right to the patent. (n)

Sec. 26. Inventive Step. - An invention involves an inventive step if, having regard to prior art, it is not obvious to a person skilled in the art at the time of the filing date or priority date of the application claiming the invention. (n)

Sec. 27. Industrial Applicability. - An invention that can be produced and used in any industry shall be industrially applicable. (n)

Chapter III RIGHT TO A PATENT

Sec. 28. Right to a Patent. - The right to a patent belongs to the inventor, his heirs, or assigns. When two (2) or more persons have jointly made an invention, the right to a patent shall belong to them jointly. (Sec. 10, R. A. No. 165a)

Sec. 29. First to File Rule. - If two (2) or more persons have made the invention separately and independently of each other, the right to the patent shall belong to the person who filed an application for such invention, or where two or more applications are filed for the same invention, to the applicant who has the earliest filing date or, the earliest priority date.
(3rd Sentence, Sec. 10, R. A. No. 165a.)

Sec. 30. Inventions Created Pursuant to a Commission. -

30.1. The person who commissions the work shall own the patent, unless otherwise provided in the contract.

30.2. In case the employee made the invention in the course of his employment contract, the patent shall belong to:

(a) The employee, if the inventive activity is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.

(b) The employer, if the invention is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary. (n)

Sec. 31. Right of Priority. - An application for patent filed by any person who has previously applied for the same invention in another country which by treaty, convention, or law affords similar privileges to Filipino citizens, shall be considered as filed as of the date of filing the foreign application: Provided, That: (a) the local application expressly claims priority; (b) it is filed within twelve (12) months from the date the earliest foreign application was filed; and (c) a certified copy of the foreign application together with an English translation is filed within six (6) months from the date of filing in the Philippines. (Sec. 15, R. A. No. 165a)

Chapter IV PATENT APPLICATION

Sec. 32. The Application. -

32.1. The patent application shall be in Filipino or English and shall contain the following:

- (a) A request for the grant of a patent;
- (b) A description of the invention;
- (c) Drawings necessary for the understanding of the invention;
- (d) One or more claims; and
- (e) An abstract.

32.2. No patent may be granted unless the application identifies the inventor. If the applicant is not the inventor, the Office may require him to submit said authority. (Sec. 13, R. A. No. 165a)

Sec. 33. Appointment of Agent or Representative. - An applicant who is not a resident of the Philippines must appoint and maintain a resident agent or representative in the Philippines upon whom notice or process for judicial or administrative procedure relating to the application for patent or the patent may be served. (Sec. 11, R. A. No. 165a)

Sec. 34. The Request. - The request shall contain a petition for the grant of the patent, the name and other data of the applicant, the inventor and the agent and the title of the invention. (n)

Sec. 35. Disclosure and Description of the Invention. -

35.1. Disclosure. - The application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. Where the application concerns a microbiological process or the product thereof and involves the use of a micro-organism which cannot be sufficiently disclosed in the application in such a way as to enable the invention to be carried out by a person skilled in the art, and such material is not available to the public, the application shall be supplemented by a deposit of such material with an international depository institution.

35.2. Description. - The Regulations shall prescribe the contents of the description and the order of presentation. (Sec.14, R. A. No. 165a)

Sec. 36. The Claims. -

36.1. The application shall contain one (1) or more claims which shall define the matter for which protection is sought. Each claim shall be clear and concise, and shall be supported by the description.

36.2. The Regulations shall prescribe the manner of the presentation of claims. (n)

Sec. 37. The Abstract. - The abstract shall consist of a concise summary of the disclosure of the invention as contained in the description, claims and drawings in preferably not more than one hundred fifty (150) words. It must be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention, and the principal use or uses of the invention. The abstract shall merely serve for technical information. (n)

Sec. 38. Unity of Invention. -

38.1. The application shall relate to one invention only or to a group of inventions forming a single general inventive concept.

38.2. If several independent inventions which do not form a single general inventive concept are claimed in one application, the Director may require that the application be restricted to a single invention. A later application filed for an invention divided out shall be considered as having been filed on the same day as the first application: Provided, That the later application is filed within four (4) months after the requirement to divide becomes final, or within such additional time, not exceeding four (4) months, as may be granted: Provided further, That each divisional application shall not go beyond the disclosure in the initial application.

38.3. The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention shall not be a ground to cancel the patent. (Sec. 17, R. A. No. 165a)

Sec. 39. Information Concerning Corresponding Foreign Application for Patents. – The applicant shall, at the request of the Director, furnish him with the date and number of any application for a patent filed by him abroad, hereafter referred to as the "foreign application," relating to the same or essentially the same invention as that claimed in the application filed with the Office and other documents relating to the foreign application. (n)

Chapter V

PROCEDURE FOR GRANT OF PATENT

Sec. 40. Filing Date Requirements. -

40.1. The filing date of a patent application shall be the date of receipt by the Office of at least the following elements:

- (a) An express or implicit indication that a Philippine patent is sought;
- (b) Information identifying the applicant; and
- (c) Description of the invention and one (1) or more claims in Filipino or English.

40.2. If any of these elements is not submitted within the period set by the Regulations, the application shall be considered withdrawn. (n)

Sec. 41. According a Filing Date. - The Office shall examine whether the patent application satisfies the requirements for the grant of date of filing as provided in Section 40 hereof. If the date of filing cannot be accorded, the applicant shall be given an opportunity to correct the deficiencies in accordance with the implementing Regulations. If the application does not contain all the elements indicated in Section 40, the filing date should be that date when all the elements are received. If the deficiencies are not remedied within the prescribed time limit, the application shall be considered withdrawn. (n)

Sec. 42. Formality Examination. -

42.1. After the patent application has been accorded a filing date and the required fees have been paid on time in accordance with the Regulations, the applicant shall comply with the formal requirements specified by Section 32 and the Regulations within the prescribed period, otherwise the application shall be considered withdrawn.

42.2. The Regulations shall determine the procedure for the re-examination and revival of an application as well as the appeal to the Director of Patents from any final action by the examiner. (Sec. 16, R. A. No. 165a)

Sec. 43. Classification and Search. - An application that has complied with the formal requirement shall be classified and a search conducted to determine the prior art. (n)

Sec. 44. Publication of Patent Application. -

44.1. The patent application shall be published in the IPO Gazette together with a search document established by or on behalf of the Office citing any documents that reflect prior art, after the expiration of eighteen (18) months from the filing date or priority date.

44.2. After publication of a patent application, any interested party may inspect the application documents filed with the Office.

44.3. The Director General, subject to the approval of the Secretary of Trade and Industry, may prohibit or restrict the publication of an

application, if in his opinion, to do so would be prejudicial to the national security and interests of the Republic of the Philippines. (n)

Sec. 45. Confidentiality Before Publication. - A patent application, which has not yet been published, and all related documents, shall not be made available for inspection without the consent of the applicant. (n)

Sec. 46. Rights Conferred by a Patent Application After Publication. - The applicant shall have all the rights of a patentee under Section 76 against any person who, without his authorization, exercised any of the rights conferred under Section 71 of this Act in relation to the invention claimed in the published patent application, as if a patent had been granted for that invention: Provided, That the said person had:

46.1. Actual knowledge that the invention that he was using was the subject matter of a published application; or

46.2. Received written notice that the invention that he was using was the subject matter of a published application being identified in the said notice by its serial number: Provided, That the action may not be filed until after the grant of a patent on the published application and within four (4) years from the commission of the acts complained of. (n)

Sec. 47. Observation by Third Parties. - Following the publication of the patent application, any person may present observations in writing concerning the patentability of the invention. Such observations shall be communicated to the applicant who may comment on them. The Office shall acknowledge and put such observations and comment in the file of the application to which it relates. (n)

Sec. 48. Request for Substantive Examination. -

48.1. The application shall be deemed withdrawn unless within six (6) months from the date of publication under Section 41, a written request to determine whether a patent application meets the requirements of Sections 21 to 27 and Sections 32 to 39 and the fees have been paid on time.

48.2. Withdrawal of the request for examination shall be irrevocable and shall not authorize the refund of any fee. (n)

Sec. 49. Amendment of Application. - An applicant may amend the patent application during examination: Provided, That such amendment shall not include new matter outside the scope of the disclosure contained in the application as filed. (n)

Sec. 50. Grant of Patent. -

50.1. If the application meets the requirements of this Act, the Office shall grant the patent: Provided, That all the fees are paid on time.

50.2. If the required fees for grant and printing are not paid in due time, the application shall be deemed to be withdrawn.

50.3. A patent shall take effect on the date of the publication of the grant of the patent in the IPO Gazette. (Sec. 18, R. A. No.165a)

Sec. 51. Refusal of the Application. -

51.1. The final order of refusal of the examiner to grant the patent shall be appealable to the Director in accordance with this Act.

51.2. The Regulations shall provide for the procedure by which an appeal from the order of refusal from the Director shall be undertaken. (n)

Sec. 52. Publication Upon Grant of Patent. -

52.1. The grant of the patent together with other related information shall be published in the IPO Gazette within the time prescribed by the Regulations.

52.2. Any interested party may inspect the complete description, claims, and drawings of the patent on file with the Office. (Sec. 18, R. A. No. 165a)

Sec. 53. Contents of Patent. - The patent shall be issued in the name of the Republic of the Philippines under the seal of the Office and shall be signed by the Director, and registered together with the description, claims, and drawings, if any, in books and records of the Office. (Secs. 19 and 20, R. A. No. 165a)

Sec. 54. Term of Patent. - The term of a patent shall be twenty (20) years from the filing date of the application. (Sec. 21, R. A. No.165a)

Sec. 55. Annual Fees. -

- 55.1. To maintain the patent application or patent, an annual fee shall be paid upon the expiration of four (4) years from the date the application was published pursuant to Section 44 hereof, and on each subsequent anniversary of such date. Payment may be made within three (3) months before the due date. The obligation to pay the annual fees shall terminate should the application be withdrawn, refused, or cancelled.
- 55.2. If the annual fee is not paid, the patent application shall be deemed withdrawn or the patent considered as lapsed from the day following the expiration of the period within which the annual fees were due. A notice that the application is deemed withdrawn or the lapse of a patent for non-payment of any annual fee shall be published in the IPO Gazette and the lapse shall be recorded in the Register of the Office.
- 55.3. A grace period of six (6) months shall be granted for the payment of the annual fee, upon payment of the prescribed surcharge for delayed payment. (Sec. 22, R. A. No. 165a)

Sec. 56. Surrender of Patent. -

- 56.1. The owner of the patent, with the consent of all persons having grants or licenses or other right, title or interest in and to the patent and the invention covered thereby, which have been recorded in the Office, may surrender his patent or any claim or claims forming part thereof to the Office for cancellation.
- 56.2. A person may give notice to the Office of his opposition to the surrender of a patent under this section, and if he does so, the Bureau shall notify the proprietor of the patent and determine the question.
- 56.3. If the Office is satisfied that the patent may properly be surrendered, he may accept the offer and, as from the day when notice of his acceptance is published in the IPO Gazette, the patent shall cease to have effect, but no action for infringement shall lie and no right compensation shall accrue for any use of the patented invention before that day for the services of the government. (Sec. 24, R. A. No. 165a)

Sec. 57. Correction of Mistakes of the Office. - The Director shall have the power to correct, without fee, any mistake in a patent incurred through the fault of the Office when clearly disclosed in the records thereof, to make the patent conform to the records. (Sec. 25, R. A. No. 165)

Sec. 58. Correction of Mistake in the Application. - On request of any interested person and payment of the prescribed fee, the Director is authorized to correct any mistake in a patent of a formal and clerical nature, not incurred through the fault of the Office. (Sec. 26, R. A. No. 165a)

Sec. 59. Changes in Patents. -

59.1. The owner of a patent shall have the right to request the Bureau to make the changes in the patent in order to:

(a) Limit the extent of the protection conferred by it;

(b) Correct obvious mistakes or to correct clerical errors; and

(c) Correct mistakes or errors, other than those referred to in letter (b), made in good faith: Provided, That where the change would result in a broadening of the extent of protection conferred by the patent, no request may be made after the expiration of two (2) years from the grant of a patent and the change shall not affect the rights of any third party which has relied on the patent, as published.

59.2. No change in the patent shall be permitted under this section, where the change would result in the disclosure contained in the patent going beyond the disclosure contained in the application filed.

59.3. If, and to the extent to which the Office changes the patent according to this section, it shall publish the same.(n)

Sec. 60. Form and Publication of Amendment. - An amendment or correction of a patent shall be accomplished by a certificate of such amendment or correction, authenticated by the seal of the Office and signed by the Director, which certificate shall be attached to the patent. Notice of such amendment or correction shall be published in the IPO Gazette and copies of the patent kept or furnished by the Office shall include a copy of the certificate of amendment or correction.
(Sec. 27, R. A. No. 165)

Chapter VI
CANCELLATION OF PATENTS
AND SUBSTITUTION OF PATENTEE

Sec. 61. Cancellation of Patents. -

61.1. Any interested person may, upon payment of the required fee, petition to cancel the patent or any claim thereof, or parts of the claim, on any of the following grounds:

- (a) That what is claimed as the invention is not new or patentable;
- (b) That the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by any person skilled in the art; or
- (c) That the patent is contrary to public order or morality.

61.2. Where the grounds for cancellation relate to some of the claims or parts of the claim, cancellation may be effected to such extent only. (Secs. 28 and 29, R. A. No. 165a)

Sec. 62. Requirement of the Petition. - The petition for cancellation shall be in writing, verified by the petitioner or by any person in his behalf who knows the facts, specify the grounds upon which it is based, include a statement of the facts to be relied upon, and filed with the Office. Copies of printed publications or of patents of other countries, and other supporting documents mentioned in the petition shall be attached thereto, together with the translation thereof in English, if not in English language. (Sec. 30, R. A. No. 165)

Sec. 63. Notice of Hearing. - Upon filing of a petition for cancellation, the Director of Legal Affairs shall forthwith serve notice of the filing thereof upon the patentee and all persons having grants or licenses, or any other right, title or interest in and to the patent and the invention covered thereby, as appears of record in the Office, and of notice of the date of hearing thereon on such persons and the petitioner. Notice of the filing of the petition shall be published in the IPO Gazette. (Sec. 31, R. A. No. 165a)

Sec. 64. Committee of Three. - In cases involving highly technical issues, on motion of any party, the Director of Legal Affairs may order that the

petition be heard and decided by a committee composed of the Director of Legal Affairs as chairman and two (2) members who have the experience or expertise in the field of technology to which the patent sought to be cancelled relates. The decision of the committee shall be appealable to the Director General. (n)

Sec. 65. Cancellation of the Patent. -

65.1. If the Committee finds that a case for cancellation has been proved, it shall order the patent or any specific time, the patent should be revoked.

65.4. If the patent is amended under Subsection 65.2 hereof, the Bureau shall, at the same time as it publishes the mention of the cancellation decision, publish the abstract, representative claims and drawings indicating clearly what the amendments consist of. (n)

Sec. 66. Effect of Cancellation of Patent or Claim. - The rights conferred by the patent or any specified claim or claims cancelled shall terminate. Notice of the cancellation shall be published in the IPO Gazette. Unless restrained by the Director General, the decision or order to cancel by Director of Legal Affairs shall be immediately executory even pending appeal. (Sec. 32, R. A. No. 165a)

Chapter VII

REMEDIES OF A PERSON WITH A RIGHT TO A PATENT

Sec. 67. Patent Application by Persons Not Having the Right to a Patent. -

67.1. If a person referred to in Section 29 other than the applicant, is declared by final court order or decision as having the right to the patent, such person may, within three (3) months after the decision has become final:

- (a) Prosecute the application as his own application in place of the applicant;
- (b) File a new patent application in respect of the same invention;
- (c) Request that the application be refused; or

(d) Seek cancellation of the patent, if one has already been issued.

67.2. The provisions of Subsection 38.2 shall apply mutatis mutandis to a new application filed under Subsection 67.1(b). (n)

Sec. 68. Remedies of the True and Actual Inventor. - If a person, who was deprived of the patent without his consent or through fraud is declared by final court order or decision to be the true and actual inventor, the court shall order for his substitution as patentee, or at the option of the true inventor, cancel the patent, and award actual and other damages in his favor if warranted by the circumstances. (Sec. 33, R. A. No. 165a)

Sec. 69. Publication of the Court Order. - The court shall furnish the Office a copy of the order or decision referred to in Sections 67 and 68, which shall be published in the IPO Gazette within three (3) months from the date such order or decision became final and executory, and shall be recorded in the register of the Office. (n)

Sec. 70. Time to File Action in Court. - The actions indicated in Sections 67 and 68 shall be filed within one (1) year from the date of publication made in accordance with Sections 44 and 51, respectively. (n)

Chapter VIII

RIGHTS OF PATENTEES AND INFRINGEMENT OF PATENTS

Sec. 71. Rights Conferred by Patent. -

71.1. A patent shall confer on its owner the following exclusive rights:

- (a) Where the subject matter of a patent is a product, to restrain, prohibit and prevent any unauthorized person or entity from making, using, offering for sale, selling or importing that product;
- (b) Where the subject matter of a patent is a process, to restrain, prevent or prohibit any unauthorized person or entity from using the process, and from manufacturing, dealing in, using, selling or offering for sale, or importing any product obtained directly or indirectly from such process.

71.2. Patent owners shall also have the right to assign, or transfer by succession the patent, and to conclude licensing contracts for the same. (Sec. 37, R. A. No. 165a)

Sec. 72. Limitations of Patent Rights. - The owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in Section 71 hereof in the following circumstances:

72.1 Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed after that product has been so put on the said market;

72.2. Where the act is done privately and on a non-commercial scale or for a non-commercial purpose: Provided, That it does not significantly prejudice the economic interests of the owner of the patent;

72.3. Where the act consists of making or using exclusively for the purpose of experiments that relate to the subject matter of the patented invention;

72.4. Where the act consists of the preparation for individual cases, in a pharmacy or by a medical professional, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared;

72.5. Where the invention is used in any ship, vessel, aircraft, or land vehicle of any other country entering the territory of the Philippines temporarily or accidentally: Provided, That such invention is used exclusively for the needs of the ship, vessel, aircraft, or land vehicle and not used for the manufacturing of anything to be sold within the Philippines. (Secs. 38 and 39, R. A. No. 165a)

Sec. 73. Prior User. -

73.1. Notwithstanding Section 72 hereof, any prior user, who, in good faith was using the invention or has undertaken serious preparations to use the invention in his enterprise or business, before the filing date or priority date of the application on which a

patent is granted, shall have the right to continue the use thereof as envisaged in such preparations within the territory where the patent produces its effect.

73.2. The right of the prior user may only be transferred or assigned together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made. (Sec. 40, R. A. No. 165a)

Sec. 74. Use of Invention by Government. -

74.1. A Government agency or third person authorized by the Government may exploit the invention even without agreement of the patent owner where:

(a) the public interest, in particular, national security, nutrition, health or the development of other sectors, as determined by the appropriate agency of the government, so requires; or

(b) A judicial or administrative body has determined that the manner of exploitation, by the owner of the patent or his licensee, is anti-competitive.

74.2. The use by the Government, or third person authorized by the Government shall be subject, mutatis mutandis, to the conditions set forth in Sections 95 to 97 and 100 to 102. (Sec. 41, R. A. No. 165a)

Sec. 75. Extent of Protection and Interpretation of Claims. -

75.1. The extent of protection conferred by the patent shall be determined by the claims, which are to be interpreted in the light of the description and drawings.

75.2. For the purpose of determining the extent of protection conferred by the patent, due account shall be taken of elements which are equivalent to the elements expressed in the claims, so that a claim shall be considered to cover not only all the elements as expressed therein, but also equivalents. (n)

Sec. 76. Civil Action for Infringement. -

- 76.1. The making, using, offering for sale, selling, or importing a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without the authorization of the patentee constitutes patent infringement.
- 76.2. Any patentee, or anyone possessing any right, title or interest in and to the patented invention, whose rights have been infringed, may bring a civil action before a court of competent jurisdiction, to recover from the infringer such damages sustained thereby, plus attorney's fees and other expenses of litigation, and to secure an injunction for the protection of his rights.
- 76.3. If the damages are inadequate or cannot be readily ascertained with reasonable certainty, the court may award by way of damages a sum equivalent to reasonable royalty.
- 76.4. The court may, according to the circumstances of the case, award damages in a sum above the amount found as actual damages sustained: Provided, That the award does not exceed three (3) times the amount of such actual damages.
- 76.5. The court may, in its discretion, order that the infringing goods, materials and implements predominantly used in the infringement be disposed of outside the channels of commerce or destroyed, without compensation.
- 76.6. Anyone who actively induces the infringement of a patent or provides the infringer with a component of a patented product or of a product produced because of a patented process knowing it to be especially adopted for infringing the patented invention and not suitable for substantial non-infringing use shall be liable as a contributory infringer and shall be jointly and severally liable with the infringer. (Sec. 42, R. A. No. 165a)

Sec. 77. Infringement Action by a Foreign National. - Any foreign national or juridical entity who meets the requirements of Section 3 and not engaged in business in the Philippines, to which a patent has been granted or assigned under this Act, may bring an action for infringement of patent, whether or not it is licensed to do business in the Philippines under existing law. (Sec. 41-A, R. A. No. 165a)

Sec. 78. Process Patents; Burden of Proof. - If the subject matter of a patent is a process for obtaining a product, any identical product shall be presumed to have been obtained through the use of the patented process if the product is new or there is substantial likelihood that the identical product was made by the process and the owner of the patent has been unable despite reasonable efforts, to determine the process actually used. In ordering the defendant to prove that the process to obtain the identical product is different from the patented process, the court shall adopt measures to protect, as far as practicable, his manufacturing and business secrets. (n)

Sec. 79. Limitation of Action for Damages. - No damages can be recovered for acts of infringement committed more than four (4) years before the institution of the action for infringement. (Sec. 43, R. A. No. 165)

Sec. 80. Damages; Requirement of Notice. - Damages cannot be recovered for acts of infringement committed before the infringer had known; or had reasonable grounds to know of the patent. It is presumed that the infringer had known of the patent if on the patented product, or on the container or package in which the article is supplied to the public, or on the advertising material relating to the patented product or process, are placed the words "Philippine Patent" with the number of the patent. (Sec. 44, R. A. No. 165a)

Sec. 81. Defenses in Action for Infringement. - In an action for infringement, the defendant, in addition to other defenses available to him, may show the invalidity of the patent, or any claim thereof, on any of the grounds on which a petition of cancellation can be brought under Section 61 hereof. (Sec. 45, R. A. No. 165)

Sec. 82. Patent Found Invalid May be Cancelled. - In an action for infringement, if the court shall find the patent or any claim to be invalid, it shall cancel the same, and the Director of Legal Affairs upon receipt of the final judgment of cancellation by the court, shall record that fact in the register of the Office and shall publish a notice to that effect in the IPO Gazette. (Sec. 46, R. A. No. 165a)

Sec. 83. Assessor in Infringement Action. -

83.1. Two (2) or more assessors may be appointed by the court. The assessors shall be possessed of the necessary scientific and

technical knowledge required by the subject matter in litigation. Either party may challenge the fitness of any assessor proposed for appointment.

83.2. Each assessor shall receive a compensation in an amount to be fixed by the court and advanced by the complaining party, which shall be awarded as part of his costs should he prevail in the action. (Sec. 47, R. A. No. 165a)

Sec. 84. Criminal Action for Repetition of Infringement. - If infringement is repeated by the infringer or by anyone in connivance with him after finality of the judgment of the court against the infringer, the offenders shall, without prejudice to the institution of a civil action for damages, be criminally liable therefor and, upon conviction, shall suffer imprisonment for the period of not less than six (6) months but not more than three (3) years and/or a fine of not less than One hundred thousand pesos (P100,000) but not more than Three hundred thousand pesos (P300,000), at the discretion of the court. The criminal action herein provided shall prescribed in three (3) years from date of the commission of the crime. (Sec. 48, R. A. No. 165a)

Chapter IX

Voluntary Licensing

Sec. 85. Voluntary License Contract. - To encourage the transfer and dissemination of technology, prevent or control practices and conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition and trade, all technology transfer arrangements shall comply with the provisions of this Chapter. (n)

Sec. 86. Jurisdiction to Settle Disputes on Royalties. - The Director of the Documentation, Information and Technology Transfer Bureau shall exercise quasi-judicial jurisdiction in the settlement of disputes between parties to a technology transfer arrangement arising from technology transfer payments, including the fixing of appropriate amount or rate of royalty. (n)

Sec. 87. Prohibited Clauses. - Except in cases under Section 91, the following provisions shall be deemed prima facie to have an adverse on competition and trade:

- 87.1. Those which impose upon the licensee the obligation to acquire from a specific source capital goods, intermediate products, raw materials, and other technologies, or of permanently employing personnel indicated by the licensor;
- 87.2. Those pursuant to which the licensor reserves the right to fix the sale or resale prices of the products manufactured on the basis of the license;
- 87.3. Those that contain restrictions regarding the volume and structure of production;
- 87.4. Those that prohibit the use of competitive technologies in a non-exclusive technology transfer agreement;
- 87.5. Those that establish a full or partial purchase option in favor of the licensor;
- 87.6. Those that obligate the licensee to transfer for free to the licensor the inventions or improvements that may be obtained through the use of the licensed technology;
- 87.7. Those that require payment of royalties to the owners of patents for patents which are not used;
- 87.8. Those that prohibit the licensee to export the licensed product unless justified for the protection of the legitimate interest of the licensor such as exports to countries where exclusive licenses to manufacture and/or distribute the licensed product(s) have already been granted;
- 87.9. Those which restrict the use of the technology supplied after the expiration of the technology transfer arrangement, except in cases of early termination of the technology transfer arrangement due to reason(s) attributable to the licensee;
- 87.10. Those which require payments for patents and other industrial property rights after their expiration, termination arrangement;
- 87.11. Those which require that the technology recipient shall not contest the validity of any of the patents of the technology supplier;

87.12. Those which restrict the research and development activities of the licensee designed to absorb and adapt the transferred technology to local conditions or to initiate research and development programs in connection with new products, processes or equipment;

87.13. Those which prevent the licensee from adapting the imported technology to local conditions, or introducing innovation to it, as long as it does not impair the quality standards prescribed by the licensor;

87.14. Those which exempt the licensor for liability for non-fulfillment of his responsibilities under the technology transfer arrangement and/or liability arising from third party suits brought about by the use of the licensed product or the licensed technology; and

87.15. Other clauses with equivalent effects. (Sec. 33-C[2], R. A. 165a)

Sec. 88. Mandatory Provisions. - The following provisions shall be included in voluntary license contracts:

88.1. That the laws of the Philippines shall govern the interpretation of the same and in the event of litigation, the venue shall be the proper court in the place where the licensee has its principal office;

88.2. Continued access to improvements in techniques and processes related to the technology shall be made available during the period of the technology transfer arrangement;

88.3. In the event the technology transfer arrangement shall provide for arbitration, the Procedure of Arbitration of the Arbitration Law of the Philippines or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) shall apply and the venue of arbitration shall be the Philippines or any neutral country; and

88.4. The Philippine taxes on all payments relating to the technology transfer arrangement shall be borne by the licensor. (n)

Sec. 89. Rights of Licensor. - In the absence of any provision to the contrary in the technology transfer arrangement, the grant of a license shall not prevent

the licensor from granting further licenses to third person nor from exploiting the subject matter of the technology transfer arrangement himself. (Sec. 33-B, R. A. 165a)

Sec. 90. Rights of Licensee. - The licensee shall be entitled to exploit the subject matter of the technology transfer arrangement during the whole term of the technology transfer arrangement. (Sec. 33-C (1), R. A. 165a)

Sec. 91. Exceptional Cases. - In exceptional or meritorious cases where substantial benefits will accrue to the economy, such as high technology content, increase in foreign exchange earnings, employment generation, regional dispersal of industries and/or substitution with or use of local raw materials, or in the case of Board of Investments, registered companies with pioneer status, exemption from any of the above requirements may be allowed by the Documentation, Information and Technology Transfer Bureau after evaluation thereof on a case by case basis. (n)

Sec. 92. Non-Registration with the Documentation, Information and Technology Transfer Bureau. - Technology transfer arrangements that conform with the provisions of Sections 86 and 87 need not be registered with the Documentation, Information and Technology Transfer Bureau. Non-conformance with any of the provisions of Sections 87 and 88, however, shall automatically render the technology transfer arrangement unenforceable, unless said technology transfer arrangement is approved and registered with the Documentation, Information and Technology Transfer Bureau under the provisions of Section 91 on exceptional cases. (n)

Chapter X

COMPULSORY LICENSING

Sec. 93. Grounds for Compulsory Licensing. - The Director of Legal Affairs may grant a license to exploit a patented invention, even without the agreement of the patent owner, in favor of any person who has shown his capability to exploit the invention, under any of the following circumstances:

93.1. National emergency or other circumstances of extreme urgency;

93.2. Where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national

economy as determined by the appropriate agency of the Government, so requires; or

93.3. Where a judicial or administrative body has determined that the manner of exploitation by the owner of the patent or his licensee is anti-competitive; or

93.4. In case of public non-commercial use of the patent by the patentee, without satisfactory reason;

93.5. If the patented invention is not being worked in the Philippines on a commercial scale, although capable of being worked, without satisfactory reason: Provided, That the importation of the patented article shall constitute working or using the patent. (Secs. 34, 34-A, and 34-B, R. A. No. 165a)

Sec. 94. Period for Filing a Petition for a Compulsory License. -

94.1. A compulsory license may not be applied for on the ground stated in Subsection 93.5 before the expiration of a period of four (4) years from the date of filing of the application or three (3) years from the date of the patent whichever period expires last.

94.2. A compulsory license which is applied for on any of the grounds stated in Subsections 93.2, 93.3, and 93.4 and Section 97 may be applied for at any time after the grant of the patent. (Sec. 34[1], R. A. No. 165)

Sec. 95. Requirement to Obtain a License on Reasonable Commercial Terms. -

95.1. The license will only be granted after the petitioner has made efforts to obtain authorization from the patent owner on reasonable commercial terms and conditions but such efforts have not been successful within a reasonable period of time.

95.2. The requirement under Subsection 95.1 shall not apply in the following cases:

(a) Where the petition for compulsory license seeks to remedy a practice determined after judicial or administrative process to be anti-competitive;

(b) In situations of national emergency or other circumstances of extreme urgency;

(c) In cases of public non-commercial use.

95.3. In situations of national emergency or other circumstances of extreme urgency, the right holder shall be notified as soon as reasonably practicable.

95.4. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly. (n)

Sec. 96. Compulsory Licensing of Patents Involving Semi-Conductor Technology. - In the case of compulsory licensing of patents involving semi-conductor technology, the license may only be granted in case of public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive. (n)

Sec. 97. Compulsory License Based on Interdependence of Patents. - If the invention protected by a patent, hereafter referred to as the "second patent," within the country cannot be worked without infringing another patent, hereafter referred to as the "first patent," granted on a prior application or benefiting from an earlier priority, a compulsory license may be granted to the owner of the second patent to the extent necessary for the working of his invention, subject to the following conditions:

97.1. The invention claimed in the second patent involves an important technical advance of considerable economic significance in relation to the first patent;

97.2. The owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent;

97.3. The use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent; and

97.4. The terms and conditions of Sections 95, 96 and 98 to 100 of this Act. (Sec. 34-C, R. A. No. 165a)

Sec. 98. Form and Contents of Petition. - The petition for compulsory licensing must be in writing, verified by the petitioner and accompanied by payment of the required filing fee. It shall contain the name and address of the petitioner as well as those of the respondents, the number and date of issue of the patent in connection with which compulsory license is sought, the name of the patentee, the title of the invention, the statutory grounds upon which compulsory license is sought, the ultimate facts constituting the petitioner's cause of action, and the relief prayed for. (Sec. 34-D, R. A. No. 165)

Sec. 99. Notice of Hearing. -

99.1. Upon filing of a petition, the Director of Legal Affairs shall forthwith serve notice of the filing thereof upon the patent owner and all persons having grants or licenses, or any other right, title or interest in and to the patent and invention covered thereby as appears of record in the Office, and of notice of the date of hearing thereon, on such persons and petitioner. The resident agent or representative appointed in accordance with Section 33 hereof, shall be bound to accept service of notice of the filing of the petition within the meaning of this Section.

99.2. In every case, the notice shall be published by the said Office in a newspaper of general circulation, once a week for three (3) consecutive weeks and once in the IPO Gazette at applicant's expense. (Sec. 34-E, R. A. No. 165)

100.1. The scope and duration of such license shall be limited to the purpose for which it was authorized;

100.2. The license shall be non-exclusive;

100.3. The license shall be non-assignable, except with that part of the enterprise or business with which the invention is being exploited;

100.4. Use of the subject matter of the license shall be devoted predominantly for the supply of the Philippine market: Provided, That this limitation shall not apply where the grant of the license is based on the ground that the patentee's manner of exploiting the patent is determined by judicial or administrative process, to be anti-competitive.

100.5. The license may be terminated upon proper showing that circumstances which led to its grant have ceased to exist and are unlikely to recur: Provided, That adequate protection shall be afforded to the legitimate interest of the licensee; and

100.6. The patentee shall be paid adequate remuneration taking into account the economic value of the grant or authorization, except that in cases where the license was granted to remedy a practice which was determined after judicial or administrative process, to be anti-competitive, the need to correct the anti-competitive practice may be taken into account in fixing the amount of remuneration. (Sec. 35-B, R. A. No. 165a)

Sec. 100. Terms and Conditions of Compulsory License. - The basic terms and conditions including the rate of royalties of a compulsory license shall be fixed by the Director of Legal Affairs subject to the following conditions:

Sec. 101. Amendment, Cancellation, Surrender of Compulsory License.

101.1. Upon the request of the patentee or the licensee, the Director of Legal Affairs may amend the decision granting the compulsory license, upon proper showing of new facts or circumstances justifying such amendment.

101.2. Upon the request of the patentee, the said Director may cancel the compulsory license:

(a) If the ground for the grant of the compulsory license no longer exists and is unlikely to recur;

(b) If the licensee has neither begun to supply the domestic market nor made serious preparation therefor;

(c) If the licensee has not complied with the prescribed terms of the license;

101.3. The licensee may surrender the license by a written declaration submitted to the Office.

101.4. The said Director shall cause the amendment, surrender, or cancellation in the Register, notify the patentee, and/or the licensee, and cause notice thereof to be published in the IPO Gazette. (Sec. 35-D, R. A. No. 165a)

Sec. 102. Licensee's Exemption from Liability. - Any person who works a patented product, substance and/or process under a license granted under this Chapter, shall be free from any liability for infringement: Provided however, That in the case of voluntary licensing, no collusion with the licensor is proven. This is without prejudice to the right of the rightfulowner of the patent to recover from the licensor whatever he may have received as royalties under the license. (Sec. 35-E, R. A. No.165a)

Chapter XI

ASSIGNMENT AND TRANSMISSION OF RIGHTS

Sec. 103. Transmission of Rights. -

103.1 Patents or applications for patents and invention to which they relate, shall be protected in the same way as the rights of other property under the Civil Code.

103.2. Inventions and any right, title or interest in and to patents and inventions covered thereby, may be assigned or transmitted by inheritance or bequest or may be the subject of a license contract. (Sec. 50, R. A. No. 165a)

Sec. 104. Assignment of Inventions. - An assignment may be of the entire right, title or interest in and to the patent and the invention covered thereby, or of an undivided share of the entire patent and invention, in which event the parties become joint owners thereof. An assignment may be limited to a specified territory. (Sec. 51, R. A. No. 165)

Sec. 105. Form of Assignment. - The assignment must be in writing, acknowledged before a notary public or other officer authorized to administer oath or perform notarial acts, and certified under the hand and official seal of the notary or such other officer. (Sec. 52, R. A. No. 165)

Sec. 106. Recording. -

106.1. The Office shall record assignments, licenses and other instruments relating to the transmission of any right, title or interest in and to inventions, and patents or application for patents or inventions to which they relate, which are presented in due form to the Office for registration, in books and records kept for the purpose. The original documents together with a signed duplicate thereof shall be filed, and the contents thereof should be kept confidential. If the original is not available, an authenticated copy thereof in duplicate may be filed. Upon recording, the Office shall retain the duplicate, return the original or the authenticated copy to the party who filed the same and notice of the recording shall be published in the IPO Gazette.

106.2. Such instruments shall be void as against any subsequent purchaser or mortgagee for valuable consideration and without notice, unless, it is so recorded in the Office, within three (3) months from the date of said instrument, or prior to the subsequent purchase or mortgage. (Sec. 53, R. A. No. 165a)

Sec. 107. Rights of Joint Owners. - If two (2) or more persons jointly own a patent and the invention covered thereby, either by the issuance of the patent in their joint favor or by reason of the assignment of an undivided share in the patent and invention or by reason of the succession in title to such share, each of the joint owners shall be entitled to personally make, use, sell, or import the invention for his own profit: Provided, however, That neither of the joint owners shall be entitled to grant licenses or to assign his right, title or interest or part thereof without the consent of the other owner or owners, or without proportionally dividing the proceeds with such other owner or owners. (Sec. 54, R. A. No. 165)

Chapter XII

REGISTRATION OF UTILITY MODELS

Sec. 108. Applicability of Provisions Relating to Patents. -

108.1. Subject to Section 109, the provisions governing patents shall apply, mutatis mutandis, to the registration of utility models.

108.2. Where the right to a patent conflicts with the right to a utility model registration in the case referred to in Section 29, the said provision shall apply as if the word patent were replaced by the words "patent or utility model registration." (Sec. 55, R. A. No. 165a)

Sec. 109. Special Provisions Relating to Utility Models. -

109.1 (a) An invention qualifies for registration as a utility model if it is new and industrially applicable.

(b) Section 21, "Patentable Inventions", shall apply except the reference to inventive step as a condition of protection.

109.2. Sections 43 to 49 shall not apply in the case of applications for registration of a utility model.

109.3. A utility model registration shall expire, without any possibility of renewal, at the end of the seventh year after the date of the filing of the application.

109.4. In proceedings under Sections 61 to 64, the utility model registration shall be canceled on the following grounds:

(a) That the claimed invention does not qualify for registration as a utility model and does not meet the requirements of registrability, in particular having regard to Subsection 109.1 and Sections 22, 23, 24 and 27;

(b) That the description and the claims do not comply with the prescribed requirements;

(c) That any drawing which is necessary for the understanding of the invention has not been furnished;

(d) That the owner of the utility model registration is not the inventor or his successor in title. (Secs. 55, 56, and 57, R.A. No. 165a)

Sec. 110. Conversion of Patent Applications or Applications for Utility Model Registration. -

110.1. At any time before the grant or refusal of a patent, an applicant for a patent may, upon payment of the prescribed fee, convert his application into an application for registration of a utility model, which shall be accorded the filing date of the initial application. An application may be converted only once.

110.2. At any time before the grant or refusal of a utility model registration, an applicant for a utility model registration may, upon payment of the prescribed fee, convert his application into a patent application, which shall be accorded the filing date of the initial application. (Sec. 58, R. A. No. 165a)

Sec. 111. Prohibition against Filing of Parallel Applications. - An applicant may not file two (2) applications for the same subject, one for utility model registration and the other for the grant of a patent whether simultaneously or consecutively. (Sec. 59, R. A. No. 165a)

Chapter XIII **Industrial Design**

Sec. 112. Definition of Industrial Design. - An industrial design is any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors; Provided, That such composition or form gives a special appearance to and can serve as pattern for an industrial product or handicraft. (Sec. 55, R. A. No. 165a)

Sec. 113. Substantive Conditions for Protection. -

113.1. Only industrial designs that are new or original shall benefit from protection under this Act.

113.2. Industrial designs dictated essentially by technical or functional considerations to obtain a technical result or those that are contrary to public order, health or morals shall not be protected.
(n)

Sec. 114. Contents of the Application. -

114.1. Every application for registration of an industrial design shall contain:

- (a) A request for registration of the industrial design;
- (b) Information identifying the applicant;
- (c) An indication of the kind of article of manufacture or handicraft to which the design shall be applied;
- (d) A representation of the article of manufacture or handicraft by way of drawings, photographs or other adequate graphic representation of the design as applied to the article of manufacture or handicraft which clearly and fully discloses those features for which design protection is claimed; and
- (e) The name and address of the creator, or where the applicant is not the creator, a statement indicating the origin of the right to the industrial design registration.

114.2. The application may be accompanied by a specimen of the article embodying the industrial design and shall be subject to the payment of the prescribed fee. (n)

Sec. 115. Several Industrial Designs in One Application. - Two (2) or more industrial designs may be the subject of the same application: Provided, That they relate to the same sub-class of the International Classification or to the same set or composition of articles. (n)

Sec. 116. Examination. -

116.1. The Office shall accord as the filing date the date of receipt of the application containing indications allowing the identity of the applicant to be established and a representation of the article embodying the industrial design or a pictorial representation thereof.

116.2. If the application does not meet these requirements the filing date should be that date when all the elements specified in Section 105 are filed or the mistakes corrected. Otherwise if the requirements are not complied within the prescribed period, the application shall be considered withdrawn.

116.3. After the application has been accorded a filing date and the required fees paid on time, the applicant shall comply with the requirements of Section 114 within the prescribed period, otherwise the application shall be considered withdrawn.

116.4. The Office shall examine whether the industrial design complies with requirements of Section 112 and Subsections 113.2 and 113.3. (n)

Sec. 117. Registration. -

117.1. Where the Office finds that the conditions referred to in Section 113 are fulfilled, it shall order that registration be effected in the industrial design register and cause the issuance of an industrial design certificate of registration; otherwise, it shall refuse the application.

117.2. The form and contents of an industrial design certificate shall be established by the Regulations: Provided, That the name and address of the creator shall be mentioned in every case.

117.3. Registration shall be published in the form and within the period fixed by the Regulations.

117.4. The Office shall record in the register any change in the identity of the proprietor of the industrial design or his representative, if proof thereof is furnished to it. A fee shall be paid, with the request to record the change in the identity of the proprietor. If the fee is not paid, the request shall be deemed not to have been filed. In such case, the former proprietor and the former representative shall remain subject to the rights and obligations as provided in this Act.

117.5. Anyone may inspect the Register and the files of registered industrial designs including the files of cancellation proceedings. (n)

Sec. 118. The Term of Industrial Design Registration. -

118.1. The registration of an industrial design shall be for a period of five (5) years from the filing date of the application.

118.2. The registration of an industrial design may be renewed for not more than two (2) consecutive periods of five (5) years each, by paying the renewal fee.

118.3. The renewal fee shall be paid within twelve (12) months preceding the expiration of the period of registration. However, a grace period of six (6) months shall be granted for payment of the fees after such expiration, upon payment of a surcharge.

118.4. The Regulations shall fix the amount of renewal fee, the surcharge and other requirements regarding the recording of renewals of registration.

Sec. 119. Application of Other Sections and Chapters. -

119.1. The following provisions relating to patents shall apply mutatis mutandis to an industrial design registration:

Section 21 - Novelty;

Section 24 - Prior art; Provided, That the disclosure is contained in printed documents or in any tangible form;

Section 25 - Non-prejudicial Disclosure;

Section 28 - Right to a Patent;

Section 29 - First to File Rule;

Section 31 - Right of Priority: Provided, That the application for industrial design shall be filed within six (6) months from the earliest filing date of the corresponding foreign application;

Section 33 - Appointment of Agent or Representative;

Section 51 - Refusal of the Application;

Sections 56 to 60 - Surrender, Correction of and Changes in Patent;

Chapter VII - Remedies of a Person with a Right to Patent;
Chapter VIII - Rights of Patentees and Infringement of Patents;
and

Chapter XI - Assignment and Transmission of Rights.

119.2. If the essential elements of an industrial design which is the subject of an application have been obtained from the creation of another person without his consent, protection under this Chapter cannot be invoked against the injured party. (n)

Sec. 120. Cancellation of Design Registration. -

120.1. At any time during the term of the industrial design registration, any person upon payment of the required fee, may petition the Director of Legal Affairs to cancel the industrial design on any of the following grounds:

(a) If the subject matter of the industrial design is not registrable within the terms of Sections 112 and 113;

(b) If the subject matter is not new; or

(c) If the subject matter of the industrial design extends beyond the content of the application as originally filed.

120.2. Where the grounds for cancellation relate to a part of the industrial design, cancellation may be effected to such extent only. The restriction may be effected in the form of an alteration of the effected features of the design. (n)

PART III
THE LAW ON TRADEMARKS, SERVICE MARKS
AND TRADE NAMES

Sec. 121. Definitions. - As used in Part III, the following terms have the following meanings:

121.1. "Mark" means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods; (Sec. 38, R. A. No. 166a)

121.2. "Collective mark" means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark; (Sec. 40, R. A. No. 166a)

121.3. "Trade name" means the name or designation identifying or distinguishing an enterprise; (Sec. 38, R. A. No. 166a)

121.4. "Bureau" means the Bureau of Trademarks;

121.5. "Director" means the Director of Trademarks;

121.6. "Regulations" means the Rules of Practice in Trademarks and Service Marks formulated by the Director of Trademarks and approved by the Director General; and

121.7. "Examiner" means the trademark examiner. (Sec. 38, R. A. No. 166a)

Sec. 122. How Marks are Acquired. - The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law. (Sec. 2-A, R. A. No. 166a)

Sec. 123. Registrability. -

123.1. A mark cannot be registered if it:

(a) Consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

(b) Consists of the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;

- (c) Consists of a name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by written consent of the widow;
- (d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:
 - (i) The same goods or services, or
 - (ii) Closely related goods or services, or
 - (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;
- (e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;
- (f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use;

- (g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;
- (h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;
- (i) Consists exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in bona fide and established trade practice;
- (j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services;
- (k) Consists of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value;
- (l) Consists of color alone, unless defined by a given form; or
- (m) Is contrary to public order or morality.

123.2. As regards signs or devices mentioned in paragraphs (j), (k), and (l), nothing shall prevent the registration of any such sign or device which has become distinctive in relation to the goods for which registration is requested as a result of the use that have been made of it in commerce in the Philippines. The Office may accept as prima facie evidence that the mark has become distinctive, as used in connection with the applicant's goods or services in commerce, proof of substantially exclusive and continuous use thereof by the applicant in commerce in the Philippines for five (5) years before the date on which the claim of distinctiveness is made.

123.3. The nature of the goods to which the mark is applied will not constitute an obstacle to registration. (Sec. 4, R. A. No.166a)

Sec. 124. Requirements of Application. -

124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

- (a) A request for registration;
- (b) The name and address of the applicant;
- (c) The name of a State of which the applicant is a national or where he has domicile; and the name of a State in which the applicant has a real and effective industrial or commercial establishment, if any;
- (d) Where the applicant is a juridical entity, the law under which it is organized and existing;
- (e) The appointment of an agent or representative, if the applicant is not domiciled in the Philippines;
- (f) Where the applicant claims the priority of an earlier application, an indication of:
 - (i) The name of the State with whose national office the earlier application was filed or it filed with an office other than a national office, the name of that office,
 - (ii) The date on which the earlier application was filed, and
 - (iii) Where available, the application number of the earlier application;
- (g) Where the applicant claims color as a distinctive feature of the mark, a statement to that effect as well as the name or names of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color;
- (h) Where the mark is a three-dimensional mark, a statement to that effect;

- (i) One or more reproductions of the mark, as prescribed in the Regulations;
- (j) A transliteration or translation of the mark or of some parts of the mark, as prescribed in the Regulations;
- (k) The names of the goods or services for which the registration is sought, grouped according to the classes of the Nice Classification, together with the number of the class of the said Classification to which each group of goods or services belongs; and
- (l) A signature by, or other self-identification of, the applicant or his representative.

124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

124.3. One (1) application may relate to several goods and/or services, whether they belong to one (1) class or to several classes of the Nice Classification.

124.4. If during the examination of the application, the Office finds factual basis to reasonably doubt the veracity of any indication or element in the application, it may require the applicant to submit sufficient evidence to remove the doubt. (Sec. 5, R. A. No. 166a)

Sec. 125. Representation; Address for Service. - If the applicant is not domiciled or has no real and effective commercial establishment in the Philippines, he shall designate by a written document filed in the office, the name and address of a Philippine resident who may be served notices or process in proceedings affecting the mark. Such notices or services maybe served upon the person so designated by leaving a copy thereof at the address specified in the last designation filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director. (Sec. 3, R. A. No. 166a)

Sec. 126. Disclaimers. - The Office may allow or require the applicant to disclaim an unregistrable component of an otherwise registrable mark but such disclaimer shall not prejudice or affect the applicant's or owner's rights then existing or thereafter arising in the disclaimed matter, nor shall disclaimer prejudice or affect the applicant's or owner's right on another application of later date if the disclaimed matter became distinctive of the applicant's or owner's goods, business or services. (Sec. 13, R. A. No. 166a)

Sec. 127. Filing Date. -

127.1. Requirements. - The filing date of an application shall be the date on which the Office received the following indications and elements in English or Filipino:

- (a) An express or implicit indication that the registration of a mark is sought;
- (b) The identity of the applicant;
- (c) Indications sufficient to contact the applicant or his representative, if any;
- (d) A reproduction of the mark whose registration is sought; and
- (e) The list of the goods or services for which the registration is sought.

127.2 No filing date shall be accorded until the required fee is paid. (n)

Sec. 128. Single Registration for Goods and/or Services. - Where goods and/or services belonging to several classes of the Nice Classification have been included in one (1) application, such an application shall result in one registration. (n)

Sec. 129. Division of Application. - Any application referring to several goods or services, hereafter referred to as the "initial application," may be divided by the applicant into two (2) or more applications, hereafter referred to as the "divisional applications," by distributing among the latter the goods or services referred to in the initial application. The divisional applications shall preserve the filing date of the initial application or the benefit of the right of priority. (n)

Sec. 130. Signature and Other Means of Self-Identification. -

130.1. Where a signature is required, the Office shall accept:

(a) A hand-written signature; or

(b) The use of other forms of signature, such as a printed or stamped signature, or the use of a seal, instead of a hand-written signature: Provided, That where a seal is used, it should be accompanied by an indication in letters of the name of the signatory.

130.2. The Office shall accept communications to it by telecopier, or by electronic means subject to the conditions or requirements that will be prescribed by the Regulations. When communications are made by telefacsimile, the reproduction of the signature, or the reproduction of the seal together with, where required, the indication in letters of the name of the natural person whose seal is used, appears. The original communications must be received by the Office within thirty (30) days from date of receipt of the telefacsimile.

130.3. No attestation, notarization, authentication, legalization or other certification of any signature or other means of self-identification referred to in the preceding paragraphs, will be required, except, where the signature concerns the surrender of a registration. (n)

Sec. 131. Priority Right. -

131.1. An application for registration of a mark filed in the Philippines by a person referred to in Section 3, and who previously duly filed an application for registration of the same mark in one of those countries, shall be considered as filed as of the day the application was first filed in the foreign country.

131.2. No registration of a mark in the Philippines by a person described in this section shall be granted until such mark has been registered in the country of origin of the applicant.

131.3. Nothing in this section shall entitle the owner of a registration granted under this section to sue for acts committed prior to the

date on which his mark was registered in this country: Provided, That, notwithstanding the foregoing, the owner of a well-known mark as defined in Section 123.1(e) of this Act, that is not registered in the Philippines, may, against an identical or confusingly similar mark, oppose its registration, or petition the cancellation of its registration or sue for unfair competition, without prejudice to availing himself of other remedies provided for under the law.

131.4. In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country: Provided, That any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority. (Sec. 37, R. A. No. 166a)

Sec. 132. Application Number and Filing Date. -

132.1. The Office shall examine whether the application satisfies the requirements for the grant of a filing date as provided in Section 127 and Regulations relating thereto. If the application does not satisfy the filing requirements, the Office shall notify the applicant who shall within a period fixed by the Regulations complete or correct the application as required, otherwise, the application shall be considered withdrawn.

132.2 Once an application meets the filing requirements of Section 127, it shall be numbered in the sequential order, and the applicant shall be informed of the application number and the filing date of the application will be deemed to have been abandoned. (n)

Sec. 133. Examination and Publication. -

133.1. Once the application meets the filing requirements of Section 127, the Office shall examine whether the application meets the requirements of Section 124 and the mark as defined in Section 121 is registrable under Section 123.

133.2. Where the Office finds that the conditions referred to in Subsection 133.1 are fulfilled, it shall, upon payment of the prescribed fee. Forthwith cause the application, as filed, to be published in the prescribed manner.

133.3. If after the examination, the applicant is not entitled to registration for any reason, the Office shall advise the applicant thereof and the reasons therefor. The applicant shall have a period of four (4) months in which to reply or amend his application, which shall then be re-examined. The Regulations shall determine the procedure for the re-examination or revival of an application as well as the appeal to the Director of Trademarks from any final action by the Examiner.

133.4. An abandoned application may be revived as a pending application within three (3) months from the date of abandonment, upon good cause shown and the payment of the required fee.

133.5. The final decision of refusal of the Director of Trademarks shall be appealable to the Director General in accordance with the procedure fixed by the Regulations. (Sec. 7, R. A. No. 166a)

Sec. 134. Opposition. - Any person who believes that he would be damaged by the registration of a mark may, upon payment of the required fee and within thirty (30) days after the publication referred to in Subsection 133.2, file with the Office an opposition to the application. Such opposition shall be in writing and verified by the oppositor or by any person on his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon. Copies of certificates of registration of marks registered in other countries or other supporting documents mentioned in the opposition shall be filed therewith, together with the translation in English, if not in the English language. For good cause shown and upon payment of the required surcharge, the time for filing an opposition may be extended by the Director of Legal Affairs, who shall notify the applicant of such extension. The Regulations shall fix the maximum period of time within which to file the opposition. (Sec. 8, R. A. No. 165a)

Sec. 135. Notice and Hearing. - Upon the filing of an opposition, the Office shall serve notice of the filing on the applicant, and of the date of the hearing thereof upon the applicant and the oppositor and all other persons having

any right, title or interest in the mark covered by the application, as appear of record in the Office. (Sec. 9 R. A. No. 165)

Sec. 136. Issuance and Publication of Certificate. - When the period for filing the opposition has expired, or when the Director of Legal Affairs shall have denied the opposition, the Office upon payment of the required fee, shall issue the certificate of registration. Upon issuance of a certificate of registration, notice thereof making reference to the publication of the application shall be published in the IPO Gazette. (Sec. 10, R. A. No. 165)

Sec. 137. Registration of Mark and Issuance of a Certificate to the Owner or his Assignee. -

137.1. The Office shall maintain a Register in which shall be registered marks, numbered in the order of their registration, and all transactions in respect of each mark, required to be recorded by virtue of this law.

137.2. The registration of a mark shall include a reproduction of the mark and shall mention: its number; the name and address of the registered owner and, if the registered owner's address is outside the country, his address for service within the country; the dates of application and registration; if priority is claimed, an indication of this fact, and the number, date and country of the application, basis of the priority claims; the list of goods or services in respect of which registration has been granted, with the indication of the corresponding class or classes; and such other data as the Regulations may prescribe from time to time.

137.3. A certificate of registration of a mark may be issued to the assignee of the applicant: Provided, That the assignment is recorded in the Office. In case of a change of ownership, the Office shall at the written request signed by the owner, or his representative, or by the new owner, or his representative and upon a proper showing and the payment of the prescribed fee, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

137.4. The Office shall record any change of address, or address for service, which shall be notified to it by the registered owner.

137.5. In the absence of any provision to the contrary in this Act, communications to be made to the registered owner by virtue of this Act shall be sent to him at his last recorded address and, at the same, at his last recorded address for service. (Sec. 19, R. A. No. 166a)

Sec. 138. Certificates of Registration. - A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. (Sec. 20, R. A. No. 165)

Sec. 139. Publication of Registered Marks; Inspection of Register. -

139.1. The Office shall publish, in the form and within the period fixed by the Regulations, the mark registered, in the order of their registration, reproducing all the particulars referred to in Subsection 137.2.

139.2. Marks registered at the Office may be inspected free of charge and any person may obtain copies thereof at his own expense. This provision shall also be applicable to transactions recorded in respect of any registered mark.(n)

Sec. 140. Cancellation upon Application by Registrant; Amendment or Disclaimer of Registration. - Upon application of the registrant, the Office may permit any registration to be surrendered for cancellation, and upon cancellation the appropriate entry shall be made in the records of the Office. Upon application of the registrant and payment of the prescribed fee, the Office for good cause may permit any registration to be amended or to be disclaimed in part: Provided, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Office upon the certificate of registration or, if said certificates is lost or destroyed, upon a certified copy thereof. (Sec. 14, R. A. No. 166)

Sec. 141. Sealed and Certified Copies as Evidence. - Copies of any records, books, papers, or drawings belonging to the Office relating to marks, and copies of registrations, when authenticated by the seal of the Office and certified by the Director of the Administrative, Financial and Human Resource Development Service Bureau or in his name by an employeef of the Office

duly authorized by said Director, shall be evidence in all cases wherein the originals would be evidence; and any person who applies and pays the prescribed fee shall secure such copies. (n)

Sec. 142. Correction of Mistakes Made by the Office. - Whenever a material mistake in a registration incurred through the fault of the Office is clearly disclosed by the records of the Office, a certificate stating the fact and nature of such mistake shall be issued without charge, recorded and a printed copy thereof shall be attached to each printed copy of the registration. Such corrected registration shall thereafter have the same effect as the original certificate; or in the discretion of the Director of the Administrative, Financial and Human Resource Development Service Bureau a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the Regulations and the registration to which they are attached shall have the same force and effect as if such certificates and their issuance had been authorized by this Act. (n)

Sec. 143. Correction of Mistakes Made by Applicant. - Whenever a mistake is made in a registration and such mistake occurred in good faith through the fault of the applicant, the Office may issue a certificate upon the payment of the prescribed fee: Provided, That the correction does not involve any change in the registration that requires republication of the mark. (n)

Sec. 144. Classification of Goods and Services. -

144.1. Each registration, and any publication of the Office which concerns an application or registration effected by the Office shall indicate the goods or services by their names, grouped according to the classes of the Nice Classification, and each group shall be preceded by the number of the class of that Classification to which that group of goods or services belongs, presented in the order of the classes of the said Classification.

144.2. Goods or services may not be considered as being similar or dissimilar to each other on the ground that, in any registration or publication by the Office, they appear in different classes of the Nice Classification. (Sec. 6, R. A. No.166a)

Sec. 145. Duration. - A certificate of registration shall remain in force for ten (10) years: Provided, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Office. (Sec. 12, R. A. No. 166a)

Sec. 146. Renewal. -

146.1. A certificate of registration may be renewed for periods of ten (10) years at its expiration upon payment of the prescribed fee and upon filing of a request. The request shall contain the following indications:

- (a) An indication that renewal is sought;
- (b) The name and address of the registrant or his successor-in-interest, hereafter referred to as the "right holder";
- (c) The registration number of the registration concerned;
- (d) The filing date of the application which resulted in the registration concerned to be renewed;
- (e) Where the right holder has a representative, the name and address of that representative;
- (f) The names of the recorded goods or services for which the renewal is requested or the names of the recorded goods or services for which the renewal is not requested, grouped according to the classes of the Nice Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification; and
- (g) A signature by the right holder or his representative.

146.2. Such request shall be in Filipino or English and may be made at any time within six (6) months before the expiration of the period for which the registration was issued or renewed, or it may be made within six (6) months after such expiration on payment of the additional fee herein prescribed.

146.3. If the Office refuses to renew the registration, it shall notify the registrant of his refusal and the reasons therefor.

146.4. An applicant for renewal not domiciled in the Philippines shall be subject to and comply with the requirements of this Act. (Sec. 15, R. A. No. 166a)

Sec. 147. Rights Conferred. -

147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use, of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

147.2. The exclusive right of the owner of a well-known mark defined in Subsection 123.1(e) which is registered in the Philippines, shall extend to goods and services which are not similar to those in respect of which the mark is registered: Provided, That use of that mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered mark: Provided, further, That the interests of the owner of the registered mark are likely to be damaged by such use. (n)

Sec. 148. Use of Indications by Third Parties for Purposes Other than those for which the Mark is Used. - Registration of the mark shall not confer on the registered owner the right to preclude third parties from using bona fide their names, addresses, pseudonyms, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin, or time of production or of supply, of their goods or services: Provided, That such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services. (n)

Sec. 149. Assignment and Transfer of Application and Registration. -

- 149.1. An application for registration of a mark, or its registration, may be assigned or transferred with or without the transfer of the business using the mark. (n)
- 149.2. Such assignment or transfer shall, however, be null and void if it is liable to mislead the public, particularly as regards the nature, source, manufacturing process, characteristics, or suitability for their purpose, of the goods or services to which the mark is applied.
- 149.3. The assignment of the application for registration of a mark, or of its registration, shall be in writing and require the signatures of the contracting parties. Transfers by mergers or other forms of succession may be made by any document supporting such transfer.
- 149.4. Assignments and transfers of registration of marks shall be recorded at the Office on payment of the prescribed fee; assignment and transfers of applications for registration shall, on payment of the same fee, be provisionally recorded, and the mark, when registered, shall be in the name of the assignee or transferee.
- 149.5. Assignments and transfers shall have no effect against third parties until they are recorded at the Office. (Sec. 31, R. A. No. 166a)

Sec. 150. License Contracts. -

- 150.1. Any license contract concerning the registration of a mark, or an application therefor, shall provide for effective control by the licensor of the quality of the goods or services of the licensee in connection with which the mark is used. If the license contract does not provide for such quality control, or if such quality control is not effectively carried out, the license contract shall not be valid.
- 150.2. A license contract shall be submitted to the Office which shall keep its contents confidential but shall record it and publish a reference thereto. A license contract shall have no effect against third parties until such recording is effected. The Regulations shall fix the procedure for the recording of the license contract. (n)

Sec. 151. Cancellation. -

151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

- (a) Within five (5) years from the date of the registration of the mark under this Act.
- (b) At any time, if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used. (n)
- (c) At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years or longer.

151.2. Notwithstanding the foregoing provisions, the court or the administrative agency vested with jurisdiction to hear and adjudicate any action to enforce the rights to a registered mark shall likewise exercise jurisdiction to determine whether the registration of said mark may be cancelled in accordance with this Act. The filing of a suit to enforce the registered mark with the proper court or agency shall exclude any other court or agency from assuming jurisdiction over a subsequently filed petition to cancel the same mark. On the other hand, the earlier filing of

petition to cancel the mark with the Bureau of Legal Affairs shall not constitute a prejudicial question that must be resolved before an action to enforce the rights to same registered mark may be decided. (Sec. 17, R. A. No. 166a)

Sec. 152. Non-use of a Mark When Excused. -

152.1. Non-use of a mark may be excused if caused by circumstances arising independently of the will of the trademark owner. Lack of funds shall not excuse non-use of a mark.

152.2. The use of the mark in a form different from the form in which it is registered, which does not alter its distinctive character, shall not be ground for cancellation or removal of the mark and shall not diminish the protection granted to the mark.

152.3. The use of a mark in connection with one or more of the goods or services belonging to the class in respect of which the mark is registered shall prevent its cancellation or removal in respect of all other goods or services of the same class.

152.4. The use of a mark by a company related with the registrant or applicant shall inure to the latter's benefit, and such use shall not affect the validity of such mark or of its registration: Provided, That such mark is not used in such manner as to deceive the public. If use of a mark by a person is controlled by the registrant or applicant with respect to the nature and quality of the goods or services, such use shall inure to the benefit of the registrant or applicant. (n)

Sec. 153. Requirements of Petition; Notice and Hearing. - Insofar as applicable, the petition for cancellation shall be in the same form as that provided in Section 134 hereof, and notice and hearing shall be as provided in Section 135 hereof.

Sec. 154. Cancellation of Registration. - If the Bureau of Legal Affairs finds that a case for cancellation has been made out, it shall order the cancellation of the registration. When the order or judgment becomes final, any right conferred by such registration upon the registrant or any person in interest of record shall terminate. Notice of cancellation shall be published in the IPO Gazette. (Sec. 19, R. A. No. 166a)

Sec. 155. Remedies; Infringement. - Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection

155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material. (Sec. 22, R. A. No 166a)

Sec. 156. Actions, and Damages and Injunction for Infringement. -

156.1. The owner of a registered mark may recover damages from any person who infringes his rights, and the measure of the damages suffered shall be either the reasonable profit which the complaining party would have made, had the defendant not infringed his rights, or the profit which the defendant actually made out of the infringement, or in the event such measure of damages cannot be readily ascertained with reasonable certainty, then the court may award as damages a reasonable percentage based upon the amount of gross sales of the defendant or the value of the services in connection with which the mark or trade name was used in the infringement of the rights of the complaining party. (Sec. 23, First Par., R. A. No. 166a)

156.2. On application of the complainant, the court may impound during the pendency of the action, sales invoices and other documents evidencing sales. (n)

156.3. In cases where actual intent to mislead the public or to defraud the complainant is shown, in the discretion of the court, the damages may be doubled. (Sec. 23, First Par., R. A. No. 166)

156.4. The complainant, upon proper showing, may also be granted injunction. (Sec. 23, Second Par., R. A. No. 166a)

Sec. 157. Power of Court to Order Infringing Material Destroyed. -

157.1. In any action arising under this Act, in which a violation of any right of the owner of the registered mark is established, the court may order that goods found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or destroyed; and all labels, signs, prints, packages, wrappers, receptacles and advertisements in the possession of the defendant, bearing the registered mark or trade name or any reproduction, counterfeit, copy or colorable imitation thereof, all plates, molds, matrices and other means of making the same, shall be delivered up and destroyed.

157.2. In regard to counterfeit goods, the simple removal of the trademark affixed shall not be sufficient other than in exceptional cases which shall be determined by the Regulations, to permit the release of the goods into the channels of commerce. (Sec. 24, R. A. No. 166a).

Sec. 158. Damages; Requirement of Notice. - In any suit for infringement, the owner of the registered mark shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is likely to cause confusion, or to cause mistake, or to deceive. Such knowledge is presumed if the registrant gives notice that his mark is registered by displaying with the mark the words "Registered Mark" or the letter R within a circle or if the defendant had otherwise actual notice of the registration. (Sec. 21, R. A. No. 166a)

Sec. 159. Limitations to Actions for Infringement. - Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act shall be limited as follows:

159.1 Notwithstanding the provisions of Section 155 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise: Provided, That his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used.

159.2 Where an infringer who is engaged solely in the business of printing the mark or other infringing materials for others is an innocent infringer, the owner of the right infringed shall be entitled as against such infringer only to an injunction against future printing.

159.3. Where the infringement complained of is contained in or is part of paid advertisement in a newspaper, magazine, or other similar periodical or in an electronic communication, the remedies of the owner of the right infringed as against the publisher or distributor of such newspaper, magazine, or other similar periodical or electronic communication shall be limited to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodicals or in future transmissions of such electronic communications. The limitations of this subparagraph shall apply only to innocent infringers: Provided, That such injunctive relief shall not be available to the owner of the right infringed with respect to an issue of a newspaper, magazine, or other similar periodical or an electronic communication containing infringing matter where restraining the dissemination of such infringing matter in any particular issue of such periodical or in an electronic communication would delay the delivery of such issue or transmission of such electronic communication is customarily conducted in accordance with the sound business practice, and not due to any method or device adopted to evade this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter. (n)

- Sec. 160. Right of Foreign Corporation to Sue in Trademark or Service Mark Enforcement Action. - Any foreign national or juridical person who meets the requirements of Section 3 of this Act and does not engage in business in the Philippines may bring a civil or administrative action hereunder for opposition, cancellation, infringement, unfair competition, or false designation of origin and false description, whether or not it is licensed to do business in the Philippines under existing laws. (Sec. 21-A, R. A. No. 166a)
- Sec. 161. Authority to Determine Right to Registration. - In any action involving a registered mark, the court may determine the right to registration, order the cancellation of a registration, in whole or in part, and otherwise rectify the register with respect to the registration of any party to the action in the exercise of this. Judgment and orders shall be certified by the court to the Director, who shall make appropriate entry upon the records of the Bureau, and shall be controlled thereby. (Sec. 25, R. A. No. 166a)
- Sec. 162. Action for False or Fraudulent Declaration. - Any person who shall procure registration in the Office of a mark by a false or fraudulent declaration or representation, whether oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof. (Sec. 26, R. A. No. 166)
- Sec. 163. Jurisdiction of Court. - All actions under Sections 150, 155, 164, and 166 to 169 shall be brought before the proper courts with appropriate jurisdiction under existing laws. (Sec. 27, R. A. No. 166)
- Sec. 164. Notice of Filing Suit Given to the Director. - It shall be the duty of the clerks of such courts within one (1) month after the filing of any action, suit, or proceeding involving a mark registered under the provisions of this Act, to notify the Director in writing setting forth: the names and addresses of the litigants and designating the number of the registration or
registrations and within one (1) month after the judgment is entered or an appeal is taken, the clerk of court shall give notice thereof to the Office, and the latter shall endorse the same upon the filewrapper of the said registration or registrations and incorporate the same as a part of the contents of said filewrapper. (n)

Sec. 165. Trade Names or Business Names. -

165.1. A name or designation may not be used as a trade name if by its nature or the use to which such name or designation may be put, it is contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

165.2. (a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

165.3. The remedies provided for in Sections 153 to 156 and Sections 166 and 167 shall apply *mutatis mutandis*.

165.4. Any change in the ownership of a trade name shall be made with the transfer of the enterprise or part thereof identified by that name. The provisions of Subsections 149.2 to 149.4 shall apply *mutatis mutandis*.

Sec. 166. Goods Bearing Infringing Marks or Trade Names. - No article of imported merchandise which shall copy or simulate the name of any domestic product, or manufacturer, or dealer, or which shall copy or simulate a mark registered in accordance with the provisions of this Act, or shall bear a mark or trade name calculated to induce the public to believe that the article is manufactured in the Philippines, or that it is manufactured in any foreign country or locality other than the country or locality where it is in fact manufactured, shall be admitted to entry at any customhouse of the Philippines. In order to aid the officers of the customs service in enforcing this prohibition, any person who is entitled to the benefits of this Act, may require that his name and residence, and the name of the locality in which his goods are manufactured, a copy of the certificate of registration of his mark or trade name, to be recorded in books which shall be kept for this purpose in the Bureau of Customs, under such regulations as the Collector of Customs with the approval of

the Secretary of Finance shall prescribe, and may furnish to the said Bureau facsimiles of his name, the name of the locality in which his goods are manufactured, or his registered mark or trade name, and thereupon the Collector of Customs shall cause one (1) or more copies of the same to be transmitted to each collector or to other proper officer of the Bureau of Customs. (Sec. 35, R.A. No. 166)

Sec. 167. Collective Marks. -

167.1. Subject to Subsections 167.2 and 167.3, Sections 122 to 164 and 166 shall apply to collective marks, except that references therein to "mark" shall be read as "collective mark."

167.2 (a) An application for registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the agreement, if any, governing the use of the collective mark.

(b) The registered owner of a collective mark shall notify the Director of any changes made in respect of the agreement referred to in paragraph (a).

167.3. In addition to the grounds provided in Section 149, the Court shall cancel the registration of a collective mark if the person requesting the cancellation proves that only the registered owner uses the mark, or that he uses or permits its use in contravention of the agreements referred to in Subsection 166.2 or that he uses or permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

167.4. The registration of a collective mark, or an application therefor shall not be the subject of a license contract. (Sec. 40, R. A. No. 166a)

Sec. 168. Unfair Competition, Rights, Regulation and Remedies. -

168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or

services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

(b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Sections 156, 157 and 161 shall apply mutatis mutandis. (Sec. 29, R. A. No. 166a)

Sec. 169. False Designations of Origin; False Description or Representation. -

169.1. Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

(a) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or

(b) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable to a civil action for damages and injunction provided in Sections 156 and 157 of this Act by any person who believes that he or she is or likely to be damaged by such act.

169.2. Any goods marked or labeled in contravention of the provisions of this Section shall not be imported into the Philippines or admitted entry at any customhouse of the Philippines. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized. (Sec. 30, R. A. No. 166a)

Sec. 170. Penalties. - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P50,000) to Two hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1. (Arts. 188 and 189, Revised Penal Code)

PART IV
THE LAW ON COPYRIGHT

Chapter I
PRELIMINARY PROVISIONS

Sec. 171. Definitions. - For the purpose of this Act, the following terms have the following meaning:

171.1. "Author" is the natural person who has created the work;

171.2. A "collective work" is a work which has been created by two (2) or more natural persons at the initiative and under the direction of another with the understanding that it will be disclosed by the latter under his own name and that contributing natural persons will not be identified;

171.3. "Communication to the public" or "communicate to the public" means the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them;

171.4. A "computer" is an electronic or similar device having information-processing capabilities, and a "computer program" is a set of instructions expressed in words, codes, schemes or in any other form, which is capable when incorporated in a medium that the computer can read, or causing the computer to perform or achieve a particular task or result;

171.5. "Public lending" is the transfer of possession of the original or a copy of a work or sound recording for a limited period, for non-profit purposes, by an institution the services of which are available to the public, such as public library or archive;

171.6. "Public performance," in the case of a work other than an audiovisual work, is the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process; in the case of an audiovisual work, the showing of its images in sequence and the making of the sounds accompanying it audible; and, in the case of a sound recording,

making the recorded sounds audible at a place or at places where persons outside the normal circle of a family and that family's closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and/or at different times, and where the performance can be perceived without the need for communication within the meaning of Subsection 171.3;

171.7. "Published works" means works, which, with the consent of the authors, are made available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them: Provided, That availability of such copies has been such, as to satisfy the reasonable requirements of the public, having regard to the nature of the work;

171.8. "Rental" is the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time, for profit-making purposes;

171.9. "Reproduction" is the making of one (1) or more copies of a work or a sound recording in any manner or form (Sec. 41 [E], P.D. No. 49a);

171.10. A "work of applied art" is an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

171.11. A "work of the Government of the Philippines" is a work created by an officer or employee of the Philippine Government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations as part of his regularly prescribed official duties.

CHAPTER II ORIGINAL WORKS

Sec. 172. Literary and Artistic Works. -

172.1 Literary and artistic works, hereinafter referred to as "works", are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

- (a) Books, pamphlets, articles and other writings;
- (b) Periodicals and newspapers;
- (c) Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
- (d) Letters;
- (e) Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
- (f) Musical compositions, with or without words;
- (g) Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
- (h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
- (i) Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- (j) Drawings or plastic works of a scientific or technical character;
- (k) Photographic works including works produced by a process analogous to photography; lantern slides;

- (l) Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
- (m) Pictorial illustrations and advertisements;
- (n) Computer programs; and
- (o) Other literary, scholarly, scientific and artistic works.

172.2. Works are protected by the sole fact of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose. (Sec. 2, P. D. No. 49a)

Chapter III DERIVATIVE WORKS

Sec. 173. Derivative Works. -

173.1. The following derivative works shall also be protected by copyright:

- (a) Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and
- (b) Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents. (Sec. 2, [P] and [Q], P. D. No. 49)

173.2. The works referred to in paragraphs (a) and (b) of Subsection 173.1 shall be protected as a new works: Provided however, That such new work shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply any right to such use of the original works, or to secure or extend copyright in such original works. (Sec. 8, P. D. 49; Art. 10, TRIPS)

Sec. 174. Published Edition of Work. - In addition to the right to publish granted by the author, his heirs or assigns, the publisher shall have a copy right consisting merely of the right of reproduction of the typographical arrangement of the published edition of the work. (n)

Chapter IV

WORKS NOT PROTECTED

Sec. 175. Unprotected Subject Matter. - Notwithstanding the provisions of Sections 172 and 173, no protection shall extend, under this law, to any idea, procedure, system method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof. (n)

Sec. 176. Works of the Government. -

176.1. No copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties. No prior approval or conditions shall be required for the use of any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character. (Sec. 9, First Par., P. D. No. 49)

176.2. The Author of speeches, lectures, sermons, addresses, and dissertations mentioned in the preceding paragraphs shall have the exclusive right of making a collection of his works. (n)

176.3. Notwithstanding the foregoing provisions, the Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest or otherwise; nor shall publication or republication by the government in a public document of any work in which copy right is subsisting be taken to cause any

abridgment or annulment of the copyright or to authorize any use or appropriation of such work without the consent of the copyright owners. (Sec. 9, Third Par., P. D. No. 49)

CHAPTER V COPYRIGHT OR ECONOMIC RIGHTS

Sec. 177. Copy or Economic Rights. - Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

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

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n)

177.5. Public display of the original or a copy of the work;

177.6. Public performance of the work; and

177.7. Other communication to the public of the work (Sec. 5, P. D. No. 49a)

CHAPTER VI OWNERSHIP OF COPYRIGHT

Sec. 178. Rules on Copyright Ownership. - Copyright ownership shall be governed by the following rules:

178.1. Subject to the provisions of this section, in the case of original literary and artistic works, copyright shall belong to the author of the work;

178.2. In the case of works of joint authorship, the co-authors shall be the original owners of the copyright and in the absence of agreement, their rights shall be governed by the rules on co-ownership. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the copyright in the part that he has created;

178.3. In the case of work created by an author during and in the course of his employment, the copyright shall belong to:

(a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.

(b) The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.

178.4. In the case of a work-commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;

178.5. In the case of audiovisual work, the copyright shall belong to the producer, the author of the scenario, the composer of the music, the film director, and the author of the work so adapted. However, subject to contrary or other stipulations among the creators, the producers shall exercise the copyright to an extent required for the exhibition of the work in any manner, except for the right to collect performing license fees for the performance of musical compositions, with or without words, which are incorporated into the work; and

178.6. In respect of letters, the copyright shall belong to the writer subject to the provisions of Article 723 of the Civil Code. (Sec. 6, P. D. No. 49a)

Sec. 179. Anonymous and Pseudonymous Works. - For purposes of this Act, the publishers shall be deemed to represent the authors of articles and other writings published without the names of the authors or under pseudonyms, unless the contrary appears, or the pseudonyms or adopted name leaves no doubts as to the author's identity, or if the author of the anonymous works discloses his identity. (Sec. 7, P. D. 49)

CHAPTER VII TRANSFER OR ASSIGNMENT OF COPYRIGHT

Sec. 180. Rights of Assignee. -

180.1. The copyright may be assigned in whole or in part. Within the scope of the assignment, the assignee is entitled to all the rights and remedies which the assignor had with respect to the copyright.

180.2. The copyright is not deemed assigned inter vivos in whole or in part unless there is a written indication of such intention.

180.3. The submission of a literary, photographic or artistic work to a newspaper, magazine or periodical for publication shall constitute only a license to make a single publication unless a greater right is expressly granted. If two (2) or more persons jointly own a copyright or any part thereof, neither of the owners shall be entitled to grant licenses without the prior written consent of the other owner or owners. (Sec. 15, P. D. No. 49a)

Sec. 181. Copyright and Material Object. - The copyright is distinct from the property in the material object subject to it. Consequently, the transfer or assignment of the copyright shall not itself constitute a transfer of the material object. Nor shall a transfer or assignment of the sole copy or of one or several copies of the work imply transfer or assignment of the copyright. (Sec. 16, P. D. No. 49)

Sec. 182. Filing of Assignment of License. - An assignment or exclusive license may be filed in duplicate with the National Library upon payment of the prescribed fee for registration in books and records kept for the purpose. Upon recording, a copy of the instrument shall be returned to the sender with a notation of the fact of record. Notice of the record shall be published in the IPO Gazette. (Sec. 19, P. D. No. 49a)

Sec. 183. Designation of Society. - The copyright owners or their heirs may designate a society of artists, writers or composers to enforce their economic rights and moral rights on their behalf. (Sec. 32, P. D. No. 49a)

CHAPTER VIII LIMITATIONS ON COPYRIGHT

Sec. 184. Limitations on Copyright. -

184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

- (a) the recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society; (Sec. 10(1), P. D. No. 49)
- (b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: Provided, That the source and the name of the author, if appearing on the work, are mentioned; (Sec. 11, Third Par., P. D. No. 49)
- (c) The reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topic, lectures, addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved: Provided, That the source is clearly indicated; (Sec. 11, P. D. No. 49)

- (d) The reproduction and communication to the public of literary, scientific or artistic works as part of reports of current events by means of photography, cinematography or broadcasting to the extent necessary for the purpose; (Sec. 12, P. D. No. 49)
- (e) The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: Provided, That the source and of the name of the author, if appearing in the work, are mentioned;
- (f) The recording made in schools, universities, or educational institutions of a work included in a broadcast for the use of such schools, universities or educational institutions: Provided, That such recording must be deleted within a reasonable period after they were first broadcast: Provided, further, That such recording may not be made from audiovisual works which are part of the general cinema repertoire of feature films except for brief excerpts of the work;
- (g) The making of ephemeral recordings by a broadcasting organization by means of its own facilities and for use in its own broadcast;
- (h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use;
- (i) The public performance or the communication to the public of a work, in a place where no admission fee is charged in respect of such public performance or communication, by a club or institution for charitable or educational purpose only, whose aim is not profit making, subject to such other limitations as may be provided in the Regulations; (n)
- (j) Public display of the original or a copy of the work not made by means of a film, slide, television image or otherwise on screen or by means of any other device or process: Provided, That

either the work has been published, or, that original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title; and

(k) Any use made of a work for the purpose of any judicial proceedings or for the giving of professional advice by a legal practitioner.

184.2. The provisions of this section shall be interpreted in such a way as to allow the work to be used in a manner which does not conflict with the normal exploitation of the work and does not unreasonably prejudice the right holder's legitimate interest.

Sec. 185. Fair Use of a Copyrighted Work. -

185.1. The fair use of a copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs may also constitute fair use. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:

(a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit education purposes;

(b) The nature of the copyrighted work;

(c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(d) The effect of the use upon the potential market for or value of the copyrighted work.

185.2 The fact that a work is unpublished shall not by itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Sec. 186. Work of Architecture. - Copyright in a work of architecture shall include the right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original; Provided, That the copyright in any such work shall not include the right to control the reconstruction or rehabilitation in the same style as the original of a building to which the copyright relates. (n) Sec. 187. Reproduction of Published Work. -

187.1. Notwithstanding the provision of Section 177, and subject to the provisions of Subsection 187.2, the private reproduction of a published work in a single copy, where the reproduction is made by a natural person exclusively for research and private study, shall be permitted, without the authorization of the owner of copyright in the work.

187.2. The permission granted under Subsection 187.1 shall not extend to the reproduction of:

- (a) A work of architecture in form of building or other construction;
- (b) An entire book, or a substantial part thereof, or of a musical work in which graphics form by reprographic means;
- (c) A compilation of data and other materials;
- (d) A computer program except as provided in Section 189; and
- (e) Any work in cases where reproduction would unreasonably conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author. (n)

Sec. 188. Reprographic Reproduction by Libraries. -

188.1. Notwithstanding the provisions of Subsection 177.6, any library or archive whose activities are not for profit may, without the authorization of the author of copyright owner, make a single copy of the work by reprographic reproduction:

- (a) Where the work by reason of its fragile character or rarity cannot be lent to user in its original form;
- (b) Where the works are isolated articles contained in composite works or brief portions of other published works and the reproduction is necessary to supply them; when this is considered expedient, to person requesting their loan for purposes of research or study instead of lending the volumes or booklets which contain them; and
- (c) Where the making of such a copy is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable and copies are not available with the publisher.

188.2. Notwithstanding the above provisions, it shall not be permissible to produce a volume of a work published in several volumes or to produce missing tomes or pages of magazines or similar works, unless the volume, tome or part is out of stock; Provided, That every library which, by law, is entitled to receive copies of a printed work, shall be entitled, when special reasons so require, to reproduce a copy of a published work which is considered necessary for the collection of the library but which is out of stock. (Sec. 13, P. D. 49a)

Sec. 189. Reproduction of Computer Program. -

189.1. Notwithstanding the provisions of Section 177, the reproduction in one (1) back-up copy or adaptation of a computer program shall be permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful

owner of that computer program: Provided, That the copy or adaptation is necessary for:

- (a) The use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has been obtained; and
- (b) Archival purposes, and, for the replacement of the lawfully owned copy of the computer program in the event that the lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

189.2. No copy or adaptation mentioned in this Section shall be used for any purpose other than the ones determined in this Section, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

189.3. This provision shall be without prejudice to the application of Section 185 whenever appropriate. (n)

Sec. 190. Importation for Personal Purposes. -

190.1. Notwithstanding the provision of Subsection 177.6, but subject to the limitation under the Subsection 185.2, the importation of a copy of a work by an individual for his personal purposes shall be permitted without the authorization of the author of, or other owner of copyright in, the work under the following circumstances:

- (a) When copies of the work are not available in the Philippines and:
 - (i) Not more than one (1) copy at one time is imported for strictly individual use only; or
 - (ii) The importation is by authority of and for the use of the Philippine Government; or
 - (iii) The importation, consisting of not more than three (3) such copies or likenesses in any one invoice, is not for sale but for the use only of any religious, charitable, or educational society or institution duly incorporated or registered, or is for the encouragement of the fine arts, or

for any state school, college, university, or free public library in the Philippines.

(b) When such copies form parts of libraries and personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: Provided, That such copies do not exceed three (3).

190.2. Copies imported as allowed by this Section may not lawfully be used in any way to violate the rights of owner the copyright or annul or limit the protection secured by this Act, and such unlawful use shall be deemed an infringement and shall be punishable as such without prejudice to the proprietor's right of action.

190.3. Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulations for preventing the importation of articles the importation of which is prohibited under this Section and under treaties and conventions to which the Philippines may be a party and for seizing and condemning and disposing of the same in case they are discovered after they have been imported. (Sec. 30, P. D. No. 49)

CHAPTER IX DEPOSIT AND NOTICE

Sec. 191. Registration and Deposit with National Library and the Supreme Court Library.- After the first public dissemination of performance by authority of the copyright owner of a work falling under Subsections 172.1, 172.2 and 172.3 of this Act, there shall, for the purpose of completing the records of the National Library and the Supreme Court Library, within three (3) weeks, be registered and deposited with it, by personal delivery or by registered mail, two (2) complete copies or reproductions of the work in such form as the directors of said libraries may prescribe. A certificate of deposit shall be issued for which the prescribed fee shall be collected and the copyright owner shall be exempt from making additional deposit of the works with the National Library and the Supreme Court Library under other laws. If, within three (3) weeks after receipt by the copyright owner of a written

demand from the directors for such deposit, the required copies or reproductions are not delivered and the fee is not paid, the copyright owner shall be liable to pay a fine equivalent to the required fee per month of delay and to pay to the National Library and the Supreme Court Library the amount of the retail price of the best edition of the work. Only the above mentioned classes of work shall be accepted for deposit by the National Library and the Supreme Court Library. (Sec. 26, P. D. No. 49a)

Sec. 192. Notice of Copyright. - Each copy of a work published or offered for sale may contain a notice bearing the name of the copyright owner, and the year of its first publication, and, in copies produced after the creator's death, the year of such death. (Sec. 27, P. D. No. 49a)

Chapter X

MORAL RIGHTS

Sec. 193. Scope of Moral Rights. - The author of a work shall, independently of the economic rights in Section 177 or the grant of an assignment or license with respect to such right, have the right:

193.1. To require that the authorship of the works be attributed to him, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work;

193.2. To make any alterations of his work prior to, or to withhold it from publication;

193.3. To object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation; and

193.4. To restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work. (Sec. 34, P. D. No. 49)

Sec. 194. Breach of Contract. - An author cannot be compelled to perform his contract to create a work or for the publication of his work already in existence. However, he may be held liable for damages for breach of such contract. (Sec. 35, P. D. No. 49)

Sec. 195. Waiver of Moral Rights. - An author may waive his rights mentioned in Section 193 by a written instrument, but no such waiver shall be valid where its effects is to permit another:

195.1. To use the name of the author, or the title of his work, or otherwise to make use of his reputation with respect to any version or adaptation of his work which, because of alterations therein, would substantially tend to injure the literary or artistic reputation of another author; or

195.2. To use the name of the author with respect to a work he did not create. (Sec. 36, P. D. No. 49)

Sec. 196. Contribution to Collective Work. - When an author contributes to a collective work, his right to have his contribution attributed to him is deemed waived unless he expressly reserves it. (Sec. 37. P. D. No. 49)

Sec. 197. Editing, Arranging and Adaptation of Work. - In the absence of a contrary stipulation at the time an author licenses or permits another to use his work, the necessary editing, arranging or adaptation of such work, for publication, broadcast, use in a motion picture, dramatization, or mechanical or electrical reproduction in accordance with the reasonable and customary standards or requirements of the medium in which the work is to be used, shall not be deemed to contravene the author's rights secured by this chapter. Nor shall complete destruction of a work unconditionally transferred by the author be deemed to violate such rights. (Sec. 38, P. D. No. 49)

Sec. 198. Term of Moral Rights. -

198.1. The rights of an author under this chapter shall last during the lifetime of the author and for fifty (50) years after his death and shall not be assignable or subject to license. The person or persons to be charged with the posthumous enforcement of these rights shall be named in writing to be filed with the National Library. In default of such person or persons, such enforcement shall devolve upon either the author's heirs, and in default of the heirs, the Director of the National Library.

198.2. For purposes of this Section, "Person" shall mean any individual, partnership, corporation, association, or society. The Director of

the National Library may prescribe reasonable fees to be charged for his services in the application of provisions of this Section. (Sec. 39, P. D. No. 49)

Sec. 199. Enforcement Remedies. - Violation of any of the rights conferred by this Chapter shall entitle those charged with their enforcement to the same rights and remedies available to a copyright owner. In addition, damages which may be availed of under the Civil Code may also be recovered. Any damage recovered after the creator's death shall be held in trust for and remitted to his heirs, and in default of the heirs, shall belong to the government. (Sec. 40, P. D. No. 49)

Chapter XI RIGHTS TO PROCEEDS IN SUBSEQUENT TRANSFERS

Sec. 200. Sale or Lease of Work. - In every sale or lease of an original work of painting or sculpture or of the original manuscript of a writer or composer, subsequent to the first disposition thereof by the author, the author or his heirs shall have an inalienable right to participate in the gross proceeds of the sale or lease to the extent of five percent (5%). This right shall exist during the lifetime of the author and for fifty (50) years after his death. (Sec. 31, P. D. No. 49)

Sec. 201. Works Not Covered. - The provisions of this Chapter shall not apply to prints, etchings, engravings, works of applied art, or works of similar kind wherein the author primarily derives gain from the proceeds of reproductions. (Sec. 33, P. D. No. 49)

Chapter XII RIGHTS OF PERFORMERS, PRODUCERS OF SOUNDS RECORDINGS AND BROADCASTING ORGANIZATIONS

Sec. 202. Definitions. - For the purpose of this Act, the following terms shall have the following meanings:

202.1. "Performers" are actors, singers, musicians, dancers, and other persons who act, sing, declaim, play in, interpret, or otherwise perform literary and artistic work;

- 202.2. "Sound recording" means the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;
- 202.3. An "audiovisual work or fixation" is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible and, where accompanied by sounds, susceptible of being made audible;
- 202.4. "Fixation" means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;
- 202.5. "Producer of a sound recording" means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;
- 202.6. "Publication of a fixed performance or a sound recording" means the offering of copies of the fixed performance or the sound recording to the public, with the consent of the right holder: Provided, That copies are offered to the public in reasonable quality;
- 202.7. "Broadcasting" means the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is also "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent;
- 202.8. "Broadcasting organization" shall include a natural person or a juridical entity duly authorized to engage in broadcasting; and
- 202.9. "Communication to the public of a performance or a sound recording" means the transmission to the public, by any medium, otherwise than by broadcasting, of sounds of a performance or the representations of sounds fixed in a sound recording. For purposes of Section 209, "communication to the public" includes

making the sounds or representations of sounds fixed in a sound recording audible to the public.

Sec. 203. Scope of Performers' Rights. - Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

203.1. As regards their performances, the right of authorizing:

(a) The broadcasting and other communication to the public of their performance; and

(b) The fixation of their unfixed performance.

203.2. The right of authorizing the direct or indirect reproduction of their performances fixed in sound recordings, in any manner or form;

203.3. Subject to the provisions of Section 206, the right of authorizing the first public distribution of the original and copies of their performance fixed in the sound recording through sale or rental or other forms of transfer of ownership;

203.4. The right of authorizing the commercial rental to the public of the original and copies of their performances fixed in sound recordings, even after distribution of them by, or pursuant to the authorization by the performer; and

203.5. The right of authorizing the making available to the public of their performances fixed in sound recordings, by wire or wireless means, in such a way that members of the public may access them from a place and time individually chosen by them. (Sec. 42, P. D. No. 49a)

Sec. 204. Moral Rights of Performers. -

204.1. Independently of a performer's economic rights, the performer, shall, as regards his live aural performances or performances fixed in sound recordings, have the right to claim to be identified as the performer of his performances, except where the omission is dictated by the manner of the use of the performance,

and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

204.2. The rights granted to a performer in accordance with Subsection 203.1 shall be maintained and exercised fifty (50) years after his death, by his heirs, and in default of heirs, the government, where protection is claimed. (Sec. 43, P. D. no. 49)

Sec. 205. Limitation on Right. -

205.1. Subject to the provisions of Section 206, once the performer has authorized the broadcasting or fixation of his performance, the provisions of Sections 203 shall have no further application.

205.2. The provisions of Section 184 and Section 185 shall apply mutatis mutandis to performers. (n)

Sec. 206. Additional Remuneration for Subsequent Communications or Broadcasts. - Unless otherwise provided in the contract, in every communication to the public or broadcast of a performance subsequent to the first communication or broadcast thereof by the broadcasting organization, the performer shall be entitled to an additional remuneration equivalent to at least five percent(5%) of the original compensation he or she received for the first communication or broadcast. (n)

Sec. 207. Contract Terms. - Nothing in this Chapter shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favorable for them in respect of any use of their performance. (n)

Chapter XIII PRODUCERS OF SOUND RECORDINGS

Sec. 208. Scope of Right. - Subject to the provisions of Section 212, producers of sound recordings shall enjoy the following exclusive rights:

208.1. The right to authorize the direct or indirect reproduction of their sound recordings, in any manner or form; the placing of these reproductions in the market and the right of rental or lending;

208.2. The right to authorize the first public distribution of the original and copies of their sound recordings through sale or rental or other forms of transferring ownership; and

208.3. The right to authorize the commercial rental to the public of the original and copies of their sound recordings, even after distribution by them by or pursuant to authorization by the producer. (Sec. 46, P. D. No. 49a)

Sec. 209. Communication to the Public. - If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or for other communication to the public, or is publicly performed with the intention of making and enhancing profit, a single equitable remuneration for the performer or performers, and the producer of the sound recording shall be paid by the user to both the performers and the producer, who, in the absence of any agreement shall share equally. (Sec. 47, P. D. No. 49a)

Sec. 210. Limitation of Right. - Sections 184 and 185 shall apply mutatis mutandis to the producer of sound recordings. (Sec. 48, P. D. No. 49a)

Chapter XIV

BROADCASTING ORGANIZATIONS

Sec. 211. Scope of Right. - Subject to the provisions of Section 212, broadcasting organizations shall enjoy the exclusive right to carry out, authorize or prevent any of the following acts:

211.1. The rebroadcasting of their broadcasts;

211.2. The recording in any manner, including the making of films or the use of video tape, of their broadcasts for the purpose of communication to the public of television broadcasts of the same; and

211.3. The use of such records for fresh transmissions or for fresh recording. (Sec. 52, P. D. No. 49)

Chapter XV
LIMITATIONS ON PROTECTION

Sec. 212. Limitations on Rights. - Sections 203, 208 and 209 shall not apply where the acts referred to in those Sections are related to:

212.1. The use by a natural person exclusively for his own personal purposes;

212.2. Using short excerpts for reporting current events;

212.3. Use solely for the purpose of teaching or for scientific research; and

212.4. Fair use of the broadcast subject to the conditions under section 185. (Sec. 44, P. D. No. 49a)

Chapter XVI
TERM OF PROTECTION

Sec. 213. Term of Protection. - 213.1. Subject to the provisions of Subsections 213.2 to 213.5, the copyright in works under Sections 172 and 173 shall be protected during the life of the author and for fifty (50) years after his death. This rule also applies to posthumous works. (Sec. 21, First Sentence, P. D. No. 49a)

213.2. In case of works of joint authorship, the economic rights shall be protected during the life of the last surviving author and for fifty (50) years after his death. (Sec. 21, Second Sentence, P.D. No. 49)

213.3. In case of anonymous or pseudonymous works, the copyright shall be protected for fifty (50) years from the date on which the work was first lawfully published: Provided, That where, before the expiration of the said period, the author's identity is revealed or is no longer in doubt, the provisions of Subsections 213.1 and 213.2 shall apply, as the case may be: Provided, further, That such works if not published before shall be protected for fifty (50) years counted from the making of the work. (Sec. 23, P. D. No. 49)

213.4. In case of works of applied art the protection shall be for a period of twenty-five (25) years from the date of making. (Sec. 24(B), P. D. No. 49a)

213.5. In case of photographic works, the protection shall be for fifty (50) years from publication of the work and, if unpublished, fifty (50) years from the making. (Sec. 24(C), P. D. 49a)

213.6. In case of audio-visual works including those produced by process analogous to photography or any process for making audio-visual recordings, the term shall be fifty (50) years from date of publication and, if unpublished, from the date of making. (Sec. 24(C), P. D. No. 49a)

Sec. 214. Calculation of Term. - The term of protection subsequent to the death of the author provided in the preceding Section shall run from the date of his death or of publication, but such terms shall always be deemed to begin on the first day of January of the year following the event which gave rise to them. (Sec. 25, P. D. No. 49)

Sec. 215. Term of Protection for Performers, Producers and Broadcasting Organizations. -

215.1. The rights granted to performers and producers of sound recordings under this law shall expire:

(a) For performances not incorporated in recordings, fifty (50) years from the end of the year in which the performance took place; and

(b) For sound or image and sound recordings and for performances incorporated therein, fifty (50) years from the end of the year in which the recording took place.

215.2. In case of broadcasts, the term shall be twenty (20) years from the date the broadcast took place. The extended term shall be applied only to old works with subsisting protection under the prior law. (Sec. 55, P. D. No. 49a)

Chapter XVII
INFRINGEMENT

Sec. 216. Remedies for Infringement. -

216.1. Any person infringing a right protected under this law shall be liable:

- (a) To an injunction restraining such infringement. The court may also order the defendant to desist from an infringement, among others, to prevent the entry into the channels of commerce of imported goods that involve an infringement, immediately after customs clearance of such goods.
- (b) Pay to the copyright proprietor or his assigns or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the infringement as well as the profits the infringer may have made due to such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty.
- (c) Deliver under oath, for impounding during the pendency of the action, upon such terms and conditions as the court may prescribe, sales invoices and other documents evidencing sales, all articles and their packaging alleged to infringe a copyright and implements for making them.
- (d) Deliver under oath for destruction without any compensation all infringing copies or devices, as well as all plates, molds, or other means for making such infringing copies as the court may order.
- (e) Such other terms and conditions, including the payment of moral and exemplary damages, which the court may deem proper, wise and equitable and the destruction of infringing copies of the work even in the event of acquittal in a criminal case.

216. 2. In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings. (Sec. 28, P. D. No. 49a)

Sec. 217. Criminal Penalties. -

217.1. Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:

(a) Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (P50,000) to One hundred fifty thousand pesos (P150,000) for the first offense.

(b) Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (P150,000) to Five hundred thousand pesos (P500,000) for the second offense.

(c) Imprisonment of six (6) years and one (1) day to nine (9) years plus a fine ranging from Five hundred thousand pesos (P500,000) to One million five hundred thousand pesos (P1,500,000) for the third and subsequent offenses.

(d) In all cases, subsidiary imprisonment in cases of insolvency.

217.2. In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of the infringement.

217.3. Any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of:

(a) Selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article;

- (b) Distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or
- (c) Trade exhibit of the article in public, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned. (Sec. 29, P. D. No. 49a)

Sec. 218. Affidavit Evidence. -

218.1. In an action under this Chapter, an affidavit made before a notary public by or on behalf of the owner of the copyright in any work or other subject matter and stating that:

- (a) At the time specified therein, copyright subsisted in the work or other subject matter;
- (b) He or the person named therein is the owner of the copyright; and
- (c) The copy of the work or other subject matter annexed thereto is a true copy thereof, shall be admitted in evidence in any proceedings for an offense under this Chapter and shall be prima facie proof of the matters therein stated until the contrary is proved, and the court before which such affidavit is produced shall assume that the affidavit was made by or on behalf of the owner of the copyright.

218.2. In an action under this Chapter.

- (a) Copyright shall be presumed to subsist in the work or other subject matter to which the action relates if the defendant does not put in issue the question whether copyright subsists in the work or other subject matter; and
- (b) Where the subsistence of the copyright is established, the plaintiff shall be presumed to be the owner of the copyright if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership.

(c) Where the defendant, without good faith, puts in issue the questions of whether copyright subsists in a work or other subject matter to which the action relates, or the ownership of copyright in such work or subject matter, thereby occasioning unnecessary costs or delay in the proceedings, the court may direct that any costs to the defendant in respect of the action shall not be allowed by him and that any costs occasioned by the defendant to other parties shall be paid by him to such other parties. (n)

Sec. 219. Presumption of Authorship. -

219.1. The natural person whose name is indicated on a work in the usual manner as the author shall, in the absence of proof to the contrary, be presumed to be the author of the work. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

219.2. The person or body, corporate whose name appears on an audio-visual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of said work. (n)

Sec. 220. International Registration of Works. - A statement concerning a work, recorded in an international register in accordance with an international treaty to which the Philippines is or may become a party, shall be construed as true until the contrary is proved except:

220.1. Where the statement cannot be valid under this Act or any other law concerning intellectual property.

220.2. Where the statement is contradicted by another statement recorded in the international register. (n)

Chapter XVIII
SCOPE OF APPLICATION

Sec. 221. Points of Attachment for Works under Sections 172 and 173. -

221.1. The protection afforded by this Act to copyrightable works under Sections 172 and 173 shall apply to:

- (a) Works of authors who are nationals of, or have their habitual residence in the Philippines;
- (b) Audio-visual works the producer of which has his headquarters or habitual residence in the Philippines;
- (c) Works of architecture erected in the Philippines or other artistic works incorporated in a building or other structure located in the Philippines;
- (d) Works first published in the Philippines; and
- (e) Works first published in another country but also published in the Philippines within thirty days, irrespective of the nationality or residence of the authors.

221.2. The provisions of this Act shall also apply to works that are to be protected by virtue of and in accordance with any international convention or other international agreement to which the Philippines is a party. (n)

Sec. 222. Points of Attachment for Performers. - The provisions of this Act on the protection of performers shall apply to:

222.1. Performers who are nationals of the Philippines;

222.2. Performers who are not nationals of the Philippines but whose performances:

- (a) Take place in the Philippines; or
- (b) Are incorporated in sound recordings that are protected under this Act; or

(c) Which has not been fixed in sound recording but are carried by broadcast qualifying for protection under this Act. (n)

Sec. 223. Points of Attachment for Sound Recordings. - The provisions of this Act on the protection of sound recordings shall apply to:

223.1. sound recordings the producers of which are nationals of the Philippines; and

223.2. Sound recordings that were first published in the Philippines. (n)

Sec. 224. Points of Attachment for Broadcasts. -

224.1. The provisions of this Act on the protection of broadcasts shall apply to:

(a) Broadcasts of broadcasting organizations the headquarters of which are situated in the Philippines; and

(b) Broadcasts transmitted from transmitters situated in the Philippines.

224.2. The provisions of this Act shall also apply to performers who, and to producers of sound recordings and broadcasting organizations which, are to be protected by virtue of and in accordance with any international convention or other international agreement to which the Philippines is a party. (n)

Chapter XIX

INSTITUTION OF ACTIONS

Sec. 225. Jurisdiction. - Without prejudice to the provisions of Subsection 7.1(c), actions under this Act shall be cognizable by the courts with appropriate jurisdiction under existing law. (Sec. 57, P. D. No. 49a)

Sec. 226. Damages. - No damages may be recovered under this Act after four (4) years from the time the cause of action arose. (Sec. 58, P. D. No. 49)

Chapter XX
MISCELLANEOUS PROVISIONS

- Sec. 227. Ownership of Deposit and Instruments. - All copies deposited and instruments in writing filed with the National Library and the Supreme Court Library in accordance with the provisions of this Act shall become the property of the Government. (Sec. 60, P. D. No. 49)
- Sec. 228. Public Records. - The section or division of the National Library and the Supreme Court Library charged with receiving copies and instruments deposited and with keeping records required under this Act and everything in it shall be opened public inspection. The Director of the National Library is empowered to issues such safeguards and regulations as may be necessary to implement this Section and other provisions of this Act. (Sec. 61, P. D. No. 49)
- Sec. 229. Copyright Division Fees. - The Copyright Section of the National Library shall be classified as a Division upon the effectivity of this Act. The National Library shall have the power to collect, for the discharge of its services under this Act, such fees as may be promulgated by it from time to time subject to the approval of the Department Head. (Sec. 62, P. D. 49a)

PART V
Final Provisions

- Sec. 230. Equitable Principles to Govern Proceedings. - In all inter parted proceedings in the Office under this Act, the equitable principles of laches, estoppel, and acquiescence where applicable, may be considered and applied. (Sec. 9-A, R. A. No. 165)
- Sec. 231. Reverse Reciprocity of Foreign Laws. - Any condition, restriction, limitation, diminution, requirement, penalty or any similar burden imposed by the law of a foreign country on a Philippine national seeking protection of intellectual property right in that country, shall reciprocally be enforceable upon nationals of said country, within Philippine jurisdiction. (n)
- Sec. 232. Appeals. -

232. 1 Appeals from decision of regular courts shall be governed by the Rules of Court. Unless restrained by a higher court, the judgment of the trial court shall be executor even pending appeal under such terms and conditions as the court any prescribe.

232.2 Unless expressly provided in this Act or other statutes, appeals from decisions of administrative officials shall be provided in the regulations. (n)

Sec. 233. Organization of the Office; Exemption from the Salary Standardization Law and the Attrition Law. -

233.1. The Office shall be organized within one (1) year after the approval of this Act. It shall not be subject to the provisions of Republic Act. No. 7430.

233.2. The Office shall institute its own compensation structure: Provided, That the Office shall make its own system conform as closely as possible with the principles provided for under Republic Act No. 6758. (n)

Sec. 234. Abolition of the Bureau of Patents, Trademarks, and Technology Transfer. - The Bureau of Patents, Trademarks, and Technology Transfer under the Department of Trade and Industry is hereby abolished. All unexpended funds and fees, fines, royalties and other charges collected for the calendar year, properties, equipment and records of the Bureau of Patents, Trademarks and Technology Transfer, and such personnel as may be necessary are hereby transferred to the Office. Personnel not absorbed or transferred to the Office shall enjoy the retirement benefits granted under existing law, otherwise, they shall be paid the equivalent of one month basic salary for every year of service, or the equivalent nearest fractions thereof favorable to them on the basis of the highest salary received. (n)

Sec. 235. Applications Pending on Effective Date of Act. -

235.1. All applications for patents pending in the Bureau of Patents, Trademarks and Technology Transfer shall be proceeded with and patents thereon granted in accordance with the Acts under which said applications were filed, and said Acts are hereby

continued to be enforced, to this extent and for this purpose only, notwithstanding the foregoing general repeal thereof: Provided, That applications for utility models or industrial designs pending at the effective date of this Act, shall be proceeded with in accordance with the provisions of this Act, unless the applicants elect to prosecute said applications in accordance with the Acts under which they were filed.

235.2. All applications for registration of marks or trade names pending in the Bureau of Patents, Trademarks and Technology Transfer at the effective date of this Act may be amended, if practicable to bring them under the provisions of this Act. The prosecution of such applications so amended and the grant of registrations thereon shall be proceeded with in accordance with the provisions of this Act. If such amendments are not made, the prosecution of said applications shall be proceeded with and registrations thereon granted in accordance with the Acts under which said applications were filed, and said Acts hereby continued in force to this extent for this purpose only, notwithstanding the foregoing general repeal thereof. (n)

Sec. 236. Preservation of Existing Rights. - Nothing herein shall adversely affect the rights on the enforcement of rights in patents, utility models, industrial designs, marks and works, acquired in good faith prior to the effective date of this Act. (n)

Sec. 237. Notification on Berne Appendix. - The Philippines shall by proper compliance with the requirements set forth under the Appendix of the Berne Convention (Paris Act, 1971) avail itself of the special provisions regarding developing countries, including provisions for licenses grantable by competent authority under the Appendix. (n)

Sec. 238. Appropriations. - The funds needed to carry out the provisions of this Act shall be charged to the appropriations of the Bureau of Patents, Trademarks, and Technology Transfer under the current General Appropriations Act and the fees, fines, royalties and other charges collected by the Bureau for the calendar year pursuant to Sections 14.1 and 234 of this Act. Thereafter such sums as may be necessary for its continued implementations shall be included in the annual General Appropriations Act. (n)

Sec. 239. Repeals. -

239.1. All Acts and parts of Acts inconsistent herewith, more particularly Republic Act No. 165, as amended; Republic Act no. 166, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended, are hereby repealed.

239.2. Marks registered under Republic Act No. 166 shall remain in force but shall be deemed to have been granted under this Act and shall be due for renewal within the period provided for under this Act and, upon renewal, shall be reclassified in accordance with the International Classification. Trade names and marks registered in the Supplemental Register under Republic Act No. 166 shall remain in force but shall no longer be subject to renewal.

239.3. The provisions of this Act shall apply to works in which copyright protection obtained prior to the effectivity of this Act is subsisting: Provided, That the application of this Act shall not result in the diminution of such protection.(n)

Sec. 240. Separability. - If any provision of this Act or the application of such provision to any circumstances is held invalid, the remainder of the Act shall not be affected thereby. (n)

Sec. 241. Effectivity. - This Act shall take effect on 1 January 1998. (n)

This Act, which is a consolidation of S. No. 1719 and H. No. 8098, was finally passed by the Senate and the House of Representatives on June 4, 1997 and June 5, 1997, respectively.

Approved: 06 June 1997

REPUBLIC ACT NO. 8792

IMPLEMENTING RULES AND REGULATIONS OF THE ELECTRONIC COMMERCE ACT

Pursuant to the provisions of Section 34 of Republic Act No. 8792, otherwise known as the Electronic Commerce Act (the “Act”), the following implementing rules and regulations (the “Rules”) are hereby promulgated:

PART I
DECLARATION OF POLICY AND
PRINCIPLES FOR ELECTRONIC COMMERCE PROMOTION

Chapter I
Declaration of Policy

Section 1. Declaration of Policy. – The State recognizes the vital role of information and communications technology (ICT) in nation-building; the need to create an information-friendly environment which supports and ensures the availability, diversity and affordability of ICT products and services; the primary responsibility of the private sector in contributing investments and services in ICT; the need to develop, with appropriate training programs and institutional policy changes, human resources for the information age, a labor force skilled in the use of ICT and a population capable of operating and utilizing electronic appliances and computers; its obligation to facilitate the transfer and promotion of technology; to ensure network security, connectivity and neutrality of technology for the national benefit; and the need to marshal, organize and deploy national information infrastructures, comprising in both communications network and strategic information services, including their interconnection to the global information networks, with the necessary and appropriate legal, financial, diplomatic and technical framework, systems and facilities.

Sec. 2. Authority of the Department of Trade and Industry and Participating Entities. – The Department of Trade and Industry (DTI) shall direct and supervise the promotion and development of electronic commerce in the country with relevant government agencies, without prejudice to the provisions of Republic Act. 7653 (Charter of Bangko Sentral ng Pilipinas) and Republic Act No. 8791 (General Banking Act)

Chapter II

Declaration of Principles for Electronic Commerce Promotion

Sec 3. Principles. – Pursuant to the mandate under Section 29 of the Act to direct and supervise the promotion and development of electronic commerce in the country, the following principles are hereby adopted as Government policy on electronic commerce:

- (a) **Role of the Government.** – Government intervention, when required, shall promote a stable legal environment, allow a fair allocation of scarce resources and protect public interest. Such intervention shall be no more than is essential and should be clear, transparent, objective, non-discriminatory, proportional, flexible, and technologically neutral. Mechanisms for private sector input and involvement in policy making shall be promoted and widely used.
- (b) **Role of the Private Sector.** – The development of electronic commerce shall be led primarily by the private sector in response to market forces. Participation in electronic commerce shall be pursued through an open and fair competitive market.
- (c) **International Coordination and Harmonization.** – Electronic commerce is global by nature. Government policies that affect electronic commerce will be internationally coordinated and compatible and will facilitate interoperability within an international, voluntary and consensus-based environment for standards setting.
- (d) **Neutral Tax Treatment.** – Transactions conducted using electronic commerce should receive neutral tax treatment in comparison to transactions using non-electronic means and taxation of electronic commerce shall be administered in the least burdensome manner.
- (e) **Protection of Users.** – The protection of users, in particular with regard to privacy, confidentiality, anonymity and content control shall be pursued through policies driven by choice, individual empowerment, and industry-led solutions. It shall be in accordance with applicable laws. Subject to such laws, business should make available to consumers and, where appropriate, business users the means to exercise choice with respect to privacy, confidentiality, content control and, under appropriate circumstances, anonymity.

- (f) **Electronic Commerce Awareness.** – Government and the private sector will inform society, both individual consumers and businesses, about the potentials of electronic commerce and its impact on social and economic structures.
- (g) **Small and Medium-Sized Enterprises.** – Government will provide small and medium-sized enterprises (SMEs) with information and education relevant to opportunities provided by global electronic commerce. Government will create an environment that is conducive to private sector investment in information technologies and encourage capital access for SMEs.
- (h) **Skills Development.** – Government shall enable workers to share in the new and different employment generated by electronic commerce. In this regard, the Government shall continue to promote both formal and non-formal skills-development programs.
- (i) **Government as a Model User.** – Government shall utilize new electronic means to deliver core public services in order to demonstrate the benefits derived therefrom and to promote the use of such means. In this regard, the Government will be a pioneer in using new technologies. In particular, the Government Information System Plan (GISP), which is expected to include, but not be limited to, online public information and cultural resources, databases for health services, web sites at local, regional and national levels and public libraries and databases, where appropriate, will be implemented in accordance with the provisions of the Act and RPWEB.
- (j) **Convergence.** – Convergence of technologies is crucial to electronic commerce and will be supported by appropriate government policies. Government will work closely with business in preparing for and reacting to changes caused by convergence.
- (k) **Domain Name System.** – The Government supports initiatives to ensure that Internet users will have a sufficient voice in the governance of the domain name system.
- (l) **Access to Public Records.** – Government shall provide equal and transparent access to public domain information.

- (m) **Dispute Mechanisms.** – Government encourages the use of self-regulatory extra-judicial dispute settlement mechanisms such as arbitration and mediation as an effective way of resolving electronic commerce disputes.

Chapter III

Objective and Sphere of Application

- Sec. 4. **Objective of the Act.** – The Act aims to facilitate domestic and international dealings, transactions, arrangements, agreements, contracts and exchanges and storage of information through the utilization of electronic, optical and similar medium, mode, instrumentality and technology to recognize the authenticity and reliability of electronic documents related to such activities and to promote the universal use of electronic transactions in the government and by the general public.
- Sec. 5. **Sphere of Application.** – The Act shall apply to any kind of electronic data message and electronic document used in the context of commercial and non-commercial activities to include domestic and international dealings, transactions, arrangements, agreements, contracts and exchanges and storage of information.

PART II

ELECTRONIC COMMERCE IN GENERAL

Chapter I

General Provisions

- Sec. 6. **Definition of Terms.** – For the purposes of the Act and these Rules, the following terms are defined, as follows:
- (a) “Addressee” refers to a person who is intended by the originator to receive the electronic data message or electronic document, but does not include a person acting as an intermediary with respect to that electronic data message or electronic document.
- (b) “Commercial Activities” shall be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. The term shall likewise refer to acts, events, transactions, or dealings occurring between or among parties including, but not limited to, factoring, investments, leasing,

consulting, insurance, and all other services, as well as the manufacture, processing, purchase, sale, supply, distribution or transacting in any manner, of tangible and intangible property of all kinds such as commodities, goods, merchandise, financial and banking products, patents, participations, shares of stock, software, books, works of art and other intellectual property.

- (c) "Computer" refers to any device or apparatus singly or interconnected which, by electronic, electro-mechanical, optical and/or magnetic impulse, or other means with the same function, can receive, record, transmit, store, process, correlate, analyze, project, retrieve and/or produce information, data, text, graphics, figures, voice, video, symbols or other modes of expression or perform any one or more of these functions.
- (d) "Convergence" refers to technologies moving together towards a common point and elimination of differences between the provisioning of video, voice and data, using digital and other emerging technologies; the coming together of two or more disparate disciplines or technologies; the ability of different network platforms to carry any kind of service; and the coming together of consumer devices such as, but not limited to, the telephone, television and personal computer.
- (e) "Electronic data message" refers to information generated, sent, received or stored by electronic, optical or similar means, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy. Throughout these Rules, the term "electronic data message" shall be equivalent to and be used interchangeably with "electronic document."
- (f) "Information and Communications System" refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar device by or in which data is recorded or stored and any procedures related to the recording or storage of electronic data message or electronic document.
- (g) "Electronic signature" refers to any distinctive mark, characteristic and/or sound in electronic form, representing the identity of a person and attached to or logically associated with the electronic

data message or electronic document or any methodology or procedures employed or adopted by a person and executed or adopted by such person with the intention of authenticating or approving an electronic data message or electronic document.

- (h) “Electronic document” refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. Throughout these Rules, the term “electronic document” shall be equivalent to and be used interchangeably with “electronic data message.”
- (i) “Electronic key” refers to a secret code, which secures and defends sensitive information that crosses over public channels into a form decipherable only by itself or with a matching electronic key. This term shall include, but not be limited to, keys produced by single key cryptosystems, public key cryptosystems or any other similar method or process, which may hereafter, be developed.
- (j) “Intermediary” refers to a person who in behalf of another person and with respect to a particular electronic data message or electronic document sends, receives and/or stores or provides other services in respect of that electronic data message or electronic document.
- (k) “Non-Commercial Activities” are those not falling under commercial activities.
- (l) “Originator” refers to a person by whom, or on whose behalf, the electronic data message or electronic document purports to have been created, generated and/or sent. The term does not include a person acting as an intermediary with respect to that electronic data message or electronic document.
- (m) “Person” means any natural or juridical person including, but not limited to, an individual, corporation, partnership, joint venture, unincorporated association, trust or other juridical entity, or any governmental authority.
- (n) “Service provider” refers to a provider of –
 - i. Online services or network access, or the operator of facilities therefor, including entities offering the transmission, routing, or providing of connections for online communications, digital or otherwise, between or among points specified by a user, of

electronic data message or electronic documents of the user's choosing; or

ii. The necessary technical means by which electronic data message or electronic documents of an originator may be stored and made accessible to a designated or undesignated third party.

Such service providers shall have no authority to modify or alter the content of the electronic data message or electronic document received or to make any entry therein on behalf of the originator, addressee or any third party unless specifically authorized to do so, and shall retain the electronic data message or electronic document in accordance with the specific request or as necessary for the purpose of performing the services it was engaged to perform.

Chapter II

Legal Recognition of Electronic Data Messages And Electronic Documents

Sec. 7. Legal Recognition of Electronic Data Messages and Electronic Documents.

– Information shall not be denied validity or enforceability solely on the ground that it is in the form of an electronic data message or electronic document, purporting to give rise to such legal effect. Electronic data messages or electronic documents shall have the legal effect, validity or enforceability as any other document or legal writing. In particular, subject to the provisions of the Act and these Rules:

- (a) A requirement under law that information is in writing is satisfied if the information is in the form of an electronic data message or electronic document.
- (b) A requirement under law for a person to provide information in writing to another person is satisfied by the provision of the information in an electronic data message or electronic document.
- (c) A requirement under law for a person to provide information to another person in a specified non-electronic form is satisfied by the provision of the information in an electronic data message or electronic document if the information is provided in the same or substantially the same form.
- (d) Nothing limits the operation of any requirement under law for information to be posted or displayed in specified manner, time or location; or for any information or document to be communicated by

a specified method unless and until a functional equivalent shall have been developed, installed, and implemented.

Sec. 8. Incorporation by Reference. – Information shall not be denied validity or enforceability solely on the ground that it is not contained in an electronic data message or electronic document but is merely incorporated by reference therein.

Sec. 9. Use Not Mandatory. – Without prejudice to the application of Section 27 of the Act and Section 37 of these Rules, nothing in the Act or these Rules requires a person to use or accept information contained in electronic data messages, electronic documents, or electronic signatures, but a person's consent to do so may be inferred from the person's conduct.

Sec. 10. Writing. – Where the law requires a document to be in writing, or obliges the parties to conform to a writing, or provides consequences in the event information is not presented or retained in its original form, an electronic document or electronic data message will be sufficient if the latter:

(a) maintains its integrity and reliability; and

(b) can be authenticated so as to be usable for subsequent reference, in that:

(i) It has remained complete and unaltered, apart from the addition of any endorsement and any authorized change, or any change which arises in the normal course of communication, storage and display; and

(ii) It is reliable in the light of the purpose for which it was generated and in the light of all relevant circumstances.

Sec. 11. Original. – Where the law requires that a document be presented or retained in its original form, that requirement is met by an electronic document or electronic data message if –

(a) There exists a reliable assurance as to the integrity of the electronic document or electronic data message from the time when it was first generated in its final form and such integrity is shown by evidence

aliunde (that is, evidence other than the electronic data message itself) or otherwise; and

(b) The electronic document or electronic data message is capable of being displayed to the person to whom it is to be presented.

(c) For the purposes of paragraph (a) above:

(i) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and

(ii) The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all relevant circumstances. An electronic data message or electronic document meeting and complying with the requirements of Sections 6 or 7 of the Act shall be the best evidence of the agreement and transaction contained therein.

Sec. 12. Solemn Contracts. – No provision of the Act shall apply to vary any and all requirements of existing laws and relevant judicial pronouncements respecting formalities required in the execution of documents for their validity. Hence, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract is proved in a certain way, that requirement is absolute and indispensable.

Legal Recognition of Electronic Signatures

Sec. 13. Legal Recognition of Electronic Signatures. An electronic signature relating to an electronic document or electronic data message shall be equivalent to the signature of a person on a written document if the signature:

(a) is an electronic signature as defined in Section 6(g) of these Rules; and

(b) is proved by showing that a prescribed procedure, not alterable by the parties interested in the electronic document or electronic data message, existed under which:

- (i) A method is used to identify the party sought to be bound and to indicate said party's access to the electronic document or electronic data message necessary for his consent or approval through the electronic signature;
- (ii) Said method is reliable and appropriate for the purpose for which the electronic document or electronic data message was generated or communicated, in the light of all circumstances, including any relevant agreement;
- (iii) It is necessary for the party sought to be bound, in order to proceed further with the transaction, to have executed or provided the electronic signature; and,
- (iv) The other party is authorized and enabled to verify the electronic signature and to make the decision to proceed with the transaction authenticated by the same.

The parties may agree to adopt supplementary or alternative procedures provided that the requirements of paragraph (b) are complied with.

For purposes of subparagraphs (i) and (ii) of paragraph (b), the factors referred to in Annex "2" may be taken into account.

Sec. 14. Presumption Relating to Electronic Signatures. – In any proceeding involving an electronic signature, the proof of the electronic signature shall give rise to the rebuttable presumption that:

- (a) The electronic signature is the signature of the person to whom it correlates; and
- (b) The electronic signature was affixed by that person with the intention of signing or approving the electronic data message or electronic document unless the person relying on the electronically signed electronic data message or electronic document knows or has notice of defects in or unreliability of the signature or reliance on the electronic signature is not reasonable under the circumstances.

Modes of Authentication

Sec. 15. Method of Authenticating Electronic Documents, Electronic Data Messages, and Electronic Signatures. – Electronic documents, electronic data messages and electronic signatures, shall be authenticated by demonstrating, substantiating and validating a claimed identity of a user, device, or another entity in an information or communication system.

Until the Supreme Court, by appropriate rules, shall have so provided, electronic documents, electronic data messages and electronic signatures, shall be authenticated, among other ways, in the following manner:

(a) The electronic signature shall be authenticated by proof that a letter, character, number or other symbol in electronic form representing the persons named in and attached to or logically associated with an electronic data message, electronic document, or that the appropriate methodology or security procedures, when applicable, were employed or adopted by a person and executed or adopted by such person, with the intention of authenticating or approving an electronic data message or electronic document;

(b) The electronic data message or electronic document shall be authenticated by proof that an appropriate security procedure, when applicable was adopted and employed for the purpose of verifying the originator of an electronic data message or electronic document, or detecting error or alteration in the communication, content or storage of an electronic document or electronic data message from a specific point, which, using algorithm or codes, identifying words or numbers, encryptions, answers back or acknowledgement procedures, or similar security devices.

Sec. 16. Burden of Authenticating Electronic Documents or Electronic Data Messages. – The person seeking to introduce an electronic document or electronic data message in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic data message or electronic document is what the person claims it to be.

Modes for Establishing Integrity

Sec. 17. Method of Establishing the Integrity of an Electronic Document or Electronic Data Message. In the absence of evidence to the contrary, the integrity of the information and communication system in which an electronic data message or electronic document is recorded or stored may be established in any legal proceeding, among other methods

- (a) By evidence that at all material times the information and communication system or other similar device was operating in a manner that did not affect the integrity of the electronic document or electronic data message, and there are no other reasonable grounds to doubt the integrity of the information and communication system;
- (b) By showing that the electronic document or electronic data message was recorded or stored by a party to the proceedings who is adverse in interest to the party using it; or
- (c) By showing that the electronic document or electronic data message was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not act under the control of the party using the record.

Admissibility and Evidential Weight

Sec. 18. Admissibility and Evidential Weight of Electronic Data Messages and Electronic Documents. – For evidentiary purposes, an electronic document or electronic data message shall be the functional equivalent of a written document under existing laws. In any legal proceeding, nothing in the application of the rules on evidence shall deny the admissibility of an electronic data message or electronic document in evidence:

- (a) On the sole ground that it is in electronic form; or
- (b) On the ground that it is not in the standard written form.

The Act does not modify any statutory rule relating to the admissibility of electronic data messages or electronic documents, except the rules relating to authentication and best evidence.

In assessing the evidential weight of an electronic data message or electronic document, the reliability of the manner in which it was generated, stored or communicated, the reliability of the manner in which its originator was identified, and other relevant factors shall be given due regard.

Sec. 19. Proof by Affidavit and Cross-Examination. – The matters referred to in Sec. 12 of the Act on admissibility and evidentiary weight, and Section 9 of the Act on the presumption of integrity of electronic signatures, may be presumed to have been established by an affidavit given to the best of the deponent’s or affiant’s personal knowledge subject to the rights of parties in interest to cross-examine such deponent or affiant as a matter of right. Such right of cross-examination may likewise be enjoyed by a party to the proceedings who is adverse in interest to the party who has introduced the affidavit or has caused the affidavit to be introduced.

Any party to the proceedings has the right to cross-examine a person referred to in Sec. 11, paragraph 4, and sub-paragraph (c) of the Act.

Retention of Electronic Data Message and Electronic Document

Sec. 20. Retention of Electronic Data Message and Electronic Document. – Notwithstanding any provision of law, rule or regulation to the contrary:

- (a) The requirement in any provision of law that certain documents be retained in their original form is satisfied by retaining them in the form of an electronic data message or electronic document which:
 - (i) Remains accessible so as to be usable for subsequent reference;
 - (ii) Is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to accurately represent the electronic data message or electronic document generated, sent or received; and,
 - (iii) Where applicable, enables the identification of its originator and addressee, as well as the determination of the date and the time it was sent or received.

(b) The requirement referred to in paragraph (a) is satisfied by using the services of a third party, provided that the conditions set forth in subparagraphs (i), (ii) and (iii) of paragraph (a) are met.

(c) Relevant government agencies tasked with enforcing or implementing applicable laws relating to the retention of certain documents may, by appropriate issuances, impose regulations to ensure the integrity, reliability of such documents and the proper implementation of Section 13 of the Act.

Chapter III

Communication of Electronic Data Messages And Electronic Documents

Sec. 21. Formation and Validity of Electronic Contracts. – Except as otherwise agreed by the parties, an offer, the acceptance of an offer and such other elements required under existing laws for the formation and perfection of contracts may be expressed in, demonstrated and proved by means of electronic data message or electronic documents and no contract shall be denied validity or enforceability on the sole ground that it is in the form of an electronic data message or electronic document, or that any or all of the elements required under existing laws for the formation of the contracts is expressed, demonstrated and proved by means of electronic documents.

Sec. 22. Consummation of Electronic Transactions with Banks. – Electronic transactions made through networking among banks, or linkages thereof with other entities or networks, and vice versa, shall be deemed consummated under rules and regulations issued by the Bangko Sentral under the succeeding paragraph hereunder, upon the actual dispensing of cash or the debit of one account and the corresponding credit to another, whether such transaction is initiated by the depositor or by an authorized collecting party; Provided, that the obligation of one bank, entity, or person similarly situated to another arising therefrom shall be considered absolute and shall not be subjected to the process of preference of credits; Provided, however, that the foregoing shall apply only to transactions utilizing the Automated Teller Machine switching network.

Without prejudice to the foregoing, all electronic transactions involving banks, quasi-banks, trust entities, and other institutions which under special laws are subject to the supervision of the Bangko Sentral ng Pilipinas shall be covered by the rules and regulations issued by the same pursuant to its authority under Section 59 of Republic Act No. 8791 (The

General Banking Act), Republic Act No. 7653 (the Charter of the Bangko Sentral ng Pilipinas) and Section 20, Article XII of the Constitution.

Sec. 23. Recognition by Parties of Electronic Data Message. – As between the originator and the addressee of an electronic data message or electronic document, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic data message or electronic document.

Attribution of Electronic Data Message and Electronic Document

Sec. 24. Origin of Electronic Data Message. – An electronic data message or electronic document is that of the originator if it was sent by the originator himself.

Sec. 25. Origin of Electronic Data Message Not Personally Sent by an Originator. – As between the originator and the addressee, an electronic data message or electronic document is deemed to be that of the originator if it was sent:

- (a) by a person who had the authority to act on behalf of the originator with respect to that electronic data message or electronic document; or
- (b) by an information and communications system programmed by, or on behalf of the originator to operate automatically.

Sec. 26. When an Originator May Be Bound By an Electronic Data Message. – As between the originator and the addressee, an addressee is entitled to regard an electronic data message or electronic document as being that of the originator, and to act on that assumption, if:

- (a) in order to ascertain whether the electronic data message was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or
- (b) the electronic data message or electronic document as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify electronic data messages or electronic documents as his own.

The provisions of this Section do not exclude other instances or circumstances when an originator may be bound by the reliance and consequent action of an addressee respecting an electronic data message, which purports to have been that of the originator.

Sec. 27. When an Originator May Not Be Bound By an Electronic Data Message. – As between the originator and the addressee, an addressee is not entitled to regard an electronic data message as being that of the originator, and to act on that assumption.

(a) as of the time when the addressee has both received notice from the originator that the electronic data message or electronic document is not that of the originator, and has reasonable time to act accordingly; or

(b) in a case within paragraph (b) Section 26 of these Rules, at any time when the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the electronic data message or electronic document was not that of the originator.

The provisions of this Section do not exclude other instances or circumstances when an originator may not be liable for the reliance and consequent action of an addressee respecting an electronic data message, which purports to have been that of the originator.

Separate Receipt of and Error on Electronic Data Message and Electronic Document

Sec. 28. Assumption Regarding Receipt of Separate Electronic Data Messages. – The addressee is entitled to regard each electronic data message or electronic document received as a separate electronic data message or electronic document and to act on that assumption, except to the extent that it duplicates another electronic data message or electronic document and the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the electronic data message or electronic document was a duplicate.

Sec. 29. Error on Electronic Data Message or Electronic Document. – The addressee is entitled to regard the electronic data message or electronic document received as that which the originator intended to send, and to act on that assumption, unless the addressee knew or should have known,

had the addressee exercised reasonable care, used the appropriate procedure or applied an agreed procedure:

- (a) That the transmission resulted in any error therein or in the electronic data message or electronic document when the latter enters the designated information and communications system; or
- (b) That electronic data message or electronic document is sent to an information and communications system which is not so designated by the addressee for the purpose.

Dispatch and Receipt of Electronic Data Message and Electronic Document

Sec. 30. Agreement on Acknowledgment of Receipt of Electronic Data Messages or Electronic Documents. – The following rules shall apply where, on or before sending an electronic data message or electronic document, the originator and the addressee have agreed, or in that electronic document or electronic data message, the originator has requested, that receipt of the electronic document or electronic data message be acknowledged:

- (a) Where the originator has not agreed with the addressee that the acknowledgment be given in a particular form or by a particular method, an acknowledgment may be given by or through any communication by the addressee, automated or otherwise, or any conduct of the addressee, sufficient to indicate to the originator that the electronic data message or electronic document has been received.
- (b) Where the originator has stated that the effect or significance of the electronic data message or electronic document is conditional on receipt of the acknowledgment thereof, the electronic data message or electronic document is treated as though it has never been sent, until the acknowledgment is received.
- (c) Where the originator has not stated that the effect or significance of the electronic data message or electronic document is conditional on receipt of the acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time, the originator may give notice to the addressee stating that no acknowledgment has been received and specifying a reasonable time

by which the acknowledgment must be received; and if the acknowledgment is not received within the time specified, the originator may, upon notice to the addressee, treat the electronic document or electronic data message as though it had never been sent, or exercise any other rights it may have.

Sec. 31. Time of Dispatch of Electronic Data Message or Electronic Document. –

Unless otherwise agreed between the originator and the addressee, the dispatch of an electronic data message or electronic document occurs when it enters an information and communications system outside the control of the originator or of the person who sent the electronic data message or electronic document on behalf of the originator.

Sec. 32. Time of Receipt of Electronic Data Message or Electronic Document. –

Unless otherwise agreed between the originator and the addressee, the time of receipt of an electronic data message or electronic document is as follows:

- (a) If the addressee has designated an information and communications system for the purpose of receiving electronic data message or electronic document, receipt occurs at the time when the electronic data message or electronic document enters the designated information and communications system; Provided, however, that if the originator and the addressee are both participants in the designated information and communications system, receipt occurs at the time when the electronic data message or electronic document is retrieved by the addressee.
- (b) If the electronic data message or electronic document is sent to an information and communications system of the addressee that is not the designated information and communications system, receipt occurs at the time when the electronic data message or electronic document is retrieved by the addressee.
- (c) If the addressee has not designated an information and communications system, receipt occurs when the electronic data message or electronic document enters an information and communications system of the addressee.

These rules apply notwithstanding that the place where the information and communications system is located may be different from the place

where the electronic data message or electronic document is deemed to be received.

Sec. 33. Place of Dispatch and Receipt of Electronic Data Message or Electronic Document. – Unless otherwise agreed between the originator and the addressee, an electronic data message or electronic document is deemed to be dispatched at the place where the originator has its place of business and received at the place where the addressee has its place of business. This rule shall apply even if the originator or addressee had used a laptop or other portable device to transmit or receive his electronic data message or electronic document. This rule shall also apply to determine the tax situs of such transaction to the extent not inconsistent with Philippine situs rules and the regulations which may be promulgated by the Bureau of Internal Revenue (BIR) relating to the tax treatment of electronic commerce transactions.

For the purpose hereof –

- (a) If the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business.
- (b) If the originator or the addressee does not have a place of business, reference is to be made to its habitual residence; or
- (c) The “usual place of residence” in relation to a body corporate, which does not have a place of business, means the place where it is incorporated or otherwise legally constituted.

Nothing in this Section shall be deemed to amend the rules of private international law.

Security Methods

Sec. 34. Choice of Security Methods. – Subject to applicable laws and/or rules and guidelines promulgated by the Department of Trade and Industry and other appropriate government agencies, parties to any electronic transaction shall be free to determine the type and level of electronic data message or electronic document security needed, and to select and use or implement appropriate technological methods that suit their needs.

PART III
ELECTRONIC COMMERCE IN CARRIAGE OF GOODS

Sec. 35. Actions Related to Contracts of Carriage of Goods. – Without derogating from the provisions of Part Two of the Act, this Part of the Rules applies to any action in connection with, or in pursuance of, a contract of carriage of goods, including but not limited to:

- (a) (i) furnishing the marks, number, quantity or weight of goods;
(ii) stating or declaring the nature or value of goods;
(iii) issuing a receipt for goods;
(iv) confirming that goods have been loaded;
- (b) (i) notifying a person of terms and conditions of the contract;
(ii) giving instructions to a carrier;
- (c) (i) claiming delivery of goods;
(ii) authorizing release of goods;
(iii) giving notices of loss of, or damage to goods;
- (d) giving any other notice or statement in connection with the performance of the contract;
- (e) undertaking to deliver goods to a named person or a person authorized to claim delivery;
- (f) granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods;
- (g) acquiring or transferring rights and obligations under the contract.

Sec. 36. Transport Documents. – (1) Subject to paragraph (3), where the law requires that any action referred to in the immediately preceding Section be carried out in writing or by using a paper document, that requirement is met if the action is carried out by using one or more electronic data messages or electronic documents. The transport documents referred to herein shall include, but not be limited to, those enumerated in Annex “1” hereof. Concerned agencies such as, but not limited to, the DTI, Department of Finance, DOTC, Philippine Ports Authority and other port authorities, shall, within their respective mandates, issue

appropriate rules and guidelines with respect to transport documents as provided herein.

- (2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for failing either to carry out the action in writing or to use a paper document.
- (3) If a right is to be granted to, or an obligation is to be acquired by, one person and no other person, and if the law requires that, in order to effect this, the right or obligation must be conveyed to that person by the transfer, or use of, a paper document, that requirement is met if the right or obligation is conveyed by using one or more electronic data messages or electronic documents: Provided, That a reliable method is used to render such electronic data messages or electronic documents unique.
- (4) For the purposes of paragraph (3), the standard of reliability required shall be assessed in the light of the purpose for which the right or obligation was conveyed and in the light of all the circumstances, including any relevant agreement.
- (5) Where one or more electronic data messages or electronic documents are used to effect any action in subparagraphs (f) and (g) of Section 25 of the Act, no paper document used to effect any such action is valid unless the use of electronic data message or electronic document has been terminated and replaced by the use of paper documents. A paper document issued in these circumstances shall contain a statement of such termination. The replacement of electronic data messages or electronic documents by paper documents shall not affect the rights or obligations of the parties involved.
- (6) If a rule of law is compulsorily applicable to a contract of carriage of goods which is in, or is evidenced by, a paper document, that rule shall not be inapplicable to such a contract of carriage of goods which is evidenced by one or more electronic data messages or electronic documents by reason of the fact that the contract is evidenced by such electronic data message or electronic document instead of a paper document.

PART IV
ELECTRONIC TRANSACTIONS IN GOVERNMENT

Chapter I
Government Use of Data Messages, Electronic Documents and
Electronic Signatures

Sec. 37. Government Use of Electronic Data Messages, Electronic Documents and Electronic Signatures. – Notwithstanding any law to the contrary, within two (2) years from the date of the effectivity of the Act, all departments, bureaus, offices and agencies of the government, as well as all government-owned and-controlled corporations, that pursuant to law require or accept the filing of documents, require that documents be created, or retained and/or submitted, issue permits, licenses or certificates of registration or approval, or provide for the method and manner of payment or settlement of fees and other obligations to the government, shall:

- (a) accept the creation, filing or retention of such documents in the form of electronic data messages or electronic documents;
- (b) issue permits, licenses, or approval in the form of electronic data messages or electronic documents;
- (c) require and/or accept payments, and issue receipts acknowledging such payments, through systems using electronic data messages or electronic documents; or
- (d) transact the government business and/or perform governmental functions using electronic data messages or electronic documents, and for the purpose, are authorized to adopt and promulgate, after appropriate public hearing and with due publication in newspapers of general circulation, the appropriate rules, regulations, or guidelines, to, among others, specify –
 - (1) the manner and format in which such electronic data messages or electronic documents shall be filed, created, retained or issued;
 - (2) where and when such electronic data messages or electronic documents have to be signed, the use of a electronic signature, the type of electronic signature required;

- (3) the format of an electronic data message or electronic document and the manner the electronic signature shall be affixed to the electronic data message or electronic document;
- (4) the control processes and procedures as appropriate to ensure adequate integrity, security and confidentiality of electronic data messages or electronic documents or records or payments;
- (5) other attributes required of electronic data messages or electronic documents or payments; and
- (6) the full or limited use of the documents and papers for compliance with the government requirements;

Provided, That the Act shall by itself mandate any department of the government, organ of state or statutory corporation to accept or issue any document in the form of electronic data messages or electronic documents upon the adoption, promulgation and publication of the appropriate rules, regulations, or guidelines. Nothing in the Act or the Rules authorizes any person to require any branch, department, agency, bureau, or instrumentality of government to accept or process electronic data messages; conduct its business; or perform its functions by electronic means, until the adoption, promulgation and publication of the afore-mentioned appropriate rules, regulations or guidelines. Such rules, regulations or guidelines as well as the underlying technologies utilized in the implementation of the Act and these Rules shall conform the principles set forth in the immediately succeeding section.

Sec. 38. Principles Governing Government Use of Electronic Data Messages, Electronic Documents and Electronic Signatures. – The following principles shall govern the implementation of Section 27 of the Act and shall be mandatory upon all departments, bureaus, offices and agencies of the government, as well as all government-owned and-controlled corporations:

- (a) Technology Neutrality. – All solutions implemented shall neither favor a particular technology over another nor discriminate against or in favor of particular vendors of technology.

(b) Interoperability. – All implementation of technological solutions shall ensure the interoperability of systems forming part of the government network.

(c) Elimination of Red Tape. – Government processes shall be re-examined and if appropriate, simplified or re-engineered to maximize the functionality of technology and to eliminate unnecessary delays in the delivery of governmental services.

(d) Security Measures. – Government shall implement appropriate security measures to guard against unauthorized access, unlawful disclosure of information, and to ensure the integrity of stored information.

(e) Auditability. – All systems installed shall provide for an audit trail.

Sec. 39. Government Information System Plan (GISP). – It is hereby mandated that the GISP shall be adjusted, modified and amended to conform to the provisions and requirements of the Act, RPWEB and these Rules.

Chapter II **RPWEB**

Sec. 40. RPWEB To Promote the Use Of Electronic Documents and Electronic Data Messages In Government and to the General Public. – Within two (2) years from the effectivity of the Act, there shall be installed an electronic online network in accordance with Administrative Order 332 and House of Representatives Resolution 890, otherwise known as RPWEB, to implement Part IV of the Act to facilitate the open, speedy and efficient electronic online transmission, conveyance and use of electronic data messages or electronic documents amongst all government departments, agencies, bureaus, offices down to the division level and to the regional and provincial offices as practicable as possible, government-owned and -controlled corporations, local government units, other public instrumentalities, universities, colleges and other schools, and universal access to the general public.

The RPWEB network shall serve as initial platform of the government information infrastructure to facilitate the electronic online transmission and conveyance of government services to evolve and improve by better technologies or kinds of electronic online wide area networks utilizing,

but not limited to, fiber optic, satellite, wireless and other broadband telecommunication mediums or modes.

Sec. 41. Implementing Agencies. – To facilitate the rapid development of the government information infrastructure, the Department of Transportation and Communications, National Telecommunications Commission and the National Computer Centers shall in coordination with each other, promulgate the appropriate issuances in accordance with their respective mandate to aggressively formulate, promote and implement a policy environment and regulatory or non-regulatory framework that shall lead to the substantial reduction of costs of including, but not limited to, leased lines, land, satellite and dial-up telephone access, cheap broadband and wireless accessibility by government departments, agencies, bureaus, offices, government-owned and -controlled corporations, local government units, other public instrumentalities and the general public, to include the establishment of a government website portal and a domestic internet exchange system to facilitate strategic access to government and amongst agencies thereof and the general public and for the speedier flow of locally generated internet traffic within the Philippines.

Sec. 42. Cable Television and Broadcast as Telecommunications. – The physical infrastructure of cable and wireless systems for cable TV and broadcast excluding programming and content and the management thereof shall be considered as within the activity of telecommunications for the purpose of electronic commerce and to maximize the convergence of ICT in the installation of the government information infrastructure.

Chapter III **Delineation of Functions**

Sec. 43. Delineation of Functions and Coordination by the DTI. – In the implementation of the Act, the following government agencies shall have the functions stated hereunder:

- (a) The Department of Trade and Industry shall:
 - (i) Supervise and coordinate the full implementation of Section 27 of the Act. For this purpose, all government agencies intending to comply with the said provision of law shall coordinate with the DTI in order to ensure adherence with the principles provided for in Section 38 of these Rules. Observance of all laws and

regulations on public bidding, disbursements and other restrictions, including COA policies, shall be mandatory.

- (ii) Install an online public information and quality and price monitoring system for goods and services aimed in protecting the interests of the consuming public availing of the advantages of the Act.
 - (iii) Establish a voluntary listing system for all businesses or entities involved in electronic commerce including, but not limited to, value-added service (VAS) providers as this term is understood in Republic Act No. 7925, banks, financial institutions, manufacturing companies, retailers, wholesalers, and on-line exchanges. The list of electronic commerce entities shall be maintained by the DTI and made available electronically to all interested parties.
 - (iv) Review, study and assess all legal, technical and commercial issues arising in the field of electronic commerce which may be directed to the DTI and if necessary, convene the appropriate government agencies in order to discuss, deliberate on and resolve the same and in the proper cases, promulgate additional rules and regulations to implement the Act.
- (b) The Bangko Sentral ng Pilipinas shall exercise and perform such functions as mandated under the Act including the promulgation of the rules and regulations to implement the provisions of the Act with respect to banks, quasi-banks, trust entities, and other institutions which under special laws are subject to the Bangko Sentral ng Pilipinas supervision.
- (c) The Department of Budget and Management shall identify the fund source for the implementation of Sections 37, 39 and 40 of the Rules, consistent with the provisions of the annual General Appropriations Act, and in its capacity in managing the budget execution and accountability processes of government, shall be responsible for putting such core processes on-line.

PART V
FINAL PROVISIONS

Sec. 44. Extent of Liability of a Service Provider. – Except as otherwise provided in this Section, no person or party shall be subject to any civil or criminal liability in respect of the electronic data message or electronic document for which the person or party acting as a service provider as defined in Section 6(n) of these Rules merely provides access if such liability is founded on:

- (a) The obligations and liabilities of the parties under the electronic data message or electronic document;
- (b) The making, publication, dissemination or distribution of such material or any statement made in such material, including possible infringement of any right subsisting in or in relation to such material: Provided, That –
 - (i) The service provider: (1) does not have actual knowledge, or (2) is not aware of the facts or circumstances from which it is apparent, that the making, publication, dissemination or distribution of such material is unlawful or infringes any rights subsisting in or in relation to such material, or (3) having become aware, advises the affected parties within a reasonable time, to refer the matter to the appropriate authority or, at the option of the parties, to avail of alternative modes of dispute resolution;
 - (ii) The service provider does not knowingly receive a financial benefit directly attributable to the unlawful or infringing activity; and
 - (iii) The service provider does not directly commit any infringement or other unlawful act and does not induce or cause another person or party to commit any infringement or other unlawful act and/or does not benefit financially from the infringing activity or unlawful act of another person or party;

Provided, further, That nothing in this Section shall affect –

- (a) Any obligation founded on contract;

- (b) The obligation of a service provider as such under a licensing or other regulatory regime established under written law;
- (c) Any obligation imposed under any written law; or
- (d) The civil liability of any party to the extent that such liability forms the basis for injunctive relief issued by a court under any law requiring that the service provider take or refrain from actions necessary to remove, block or deny access to any material, or to preserve evidence of a violation of law.

Lawful Access

- Sec. 45. Lawful Access to Electronic Documents, Electronic Data Messages, and Electronic Signatures. – Access to an electronic file, or an electronic signature of an electronic data message or electronic document shall only be authorized and enforced in favor of the individual or entity having a legal right to the possession or the use of the plaintext, electronic signature or file and solely for the authorized purposes.
- Sec. 46. Lawful Access to Electronic Keys. – The electronic key for identity or integrity shall not be made available to any person or party without the consent of the individual or entity in lawful possession of that electronic key. The testimonial disclosure of an electronic key in any proceeding shall be limited by the Constitutional right against self-incrimination.
- Sec. 47. Obligation of Confidentiality. – Except for the purposes authorized under the Act, any person who obtained access to any electronic key, electronic data message, or electronic document, book, register, correspondence, information, or other material pursuant to any powers conferred under the Act, shall not convey to or share the same with any other person.

Penal Provisions

- Sec. 48. Hacking. – Hacking or cracking which refers to unauthorized access into or interference in a computer system/server or information and communication system; or any access in order to corrupt, alter, steal, or destroy using a computer or other similar information and communication devices, without the knowledge and consent of the owner of the computer or information and communications system, including the introduction of computer viruses and the like, resulting in the

corruption, destruction, alteration, theft or loss of electronic data messages or electronic document shall be punished by a minimum fine of one hundred thousand pesos (P100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years.

Sec. 49. Piracy. – Piracy or the unauthorized copying, reproduction, dissemination, distribution, importation, use, removal, alteration, substitution, modification, storage, uploading, downloading, communication, making available to the public, or broadcasting of protected material, electronic signature or copyrighted works including legally protected sound recordings or phonograms or information material on protected works, through the use of telecommunication networks, such as, but not limited to, the internet, in a manner that infringes intellectual property rights shall be punished by a minimum fine of one hundred thousand pesos (P100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years. The foregoing shall be without prejudice to the rights, liabilities and remedies under Republic Act No. 8293 or Intellectual Property Code of the Philippines and other applicable laws.

Sec. 50. Other Penal Offenses. – Violations of the Consumer Act or Republic Act No. 7394 and other relevant or pertinent laws through transactions covered by or using electronic data messages or electronic documents, shall be penalized with the same penalties as provided in those laws.

Sec. 51. Other Violations of the Act. – Other violations of the provisions of the Act, shall be penalized with a maximum penalty of one million pesos (P1,000,000.00) or six-(6) years imprisonment.

Miscellaneous Provisions

Sec. 52. Statutory Interpretation. – Unless otherwise expressly provided for, the interpretation of these Rules and the Act shall give due regard to the Act's international origin – the UNCITRAL Model Law on Electronic Commerce – and the need to promote uniformity in its application and the observance of good faith in international trade relations. The generally accepted principles of international law and convention on electronic commerce shall likewise be considered.

- Sec. 53. Variation by Agreement. – Any provision of the Act may be varied by agreement between and among parties; Provided, that such agreement involves only the generation, sending, receiving, storing or otherwise processing of an electronic data message or electronic document. Nothing shall authorize contracting parties to agree upon stipulations or covenants, which defeat the legal recognition, validity and admissibility of electronic data messages, electronic documents, or electronic signatures.
- Sec. 54. Reciprocity. – All benefits, privileges, advantages or statutory rules established under this Act, including those involving practice of profession, shall be enjoyed only by parties whose country of origin grants the same benefits and privileges or advantages to Filipino citizens. Inasmuch as the Act merely contemplates the legal recognition of electronic forms of documents and signatures and does not amend any law governing the underlying substantive validity of acts or transactions, this provision shall be subject to existing Constitutional and statutory restrictions relative to activities which are reserved to Philippine citizens or juridical entities partially or wholly-owned by Philippine citizens.
- Sec. 55. Oversight Committee. – There shall be a Congressional Oversight Committee composed of the Committees on Trade and Industry/Commerce, Science and Technology, Finance and Appropriations of both the Senate and House of Representatives, which shall meet at least every quarter of the first two years and every semester for the third year after the approval of this Act to oversee its implementation. The DTI, DBM, Bangko Sentral ng Pilipinas, and other government agencies as may be determined by the Congressional Committee shall provide a quarterly performance report of their actions taken in the implementation of this Act for the first three (3) years.
- Sec. 56. DTI's Continuing Authority to Implement the Act and Issue Implementing Rules. – Among others, the DTI is empowered to promulgate rules and regulations, as well as provide quality standards or issue certifications, as the case may be, and perform such other functions as may be necessary for the implementation of this Act in the area of electronic commerce.
- Sec. 57. Separability. – If any provision in these Rules or application of such provision to any circumstance is held invalid, the remainder of these Rules shall not be affected thereby.

Sec. 58. Effectivity. – These Rules shall take effect fifteen (15) days from the complete publication thereof in a newspaper of general circulation.

Done this ___ day of July, 2000.

MANUEL A. ROXAS II
Secretary
Department of Trade and Industry

BENJAMIN E. DIOKNO
Secretary
Department Of Budget and Management

RAFAEL B. BUENAVENTURA
Governor
Bangko Sentral ng Pilipinas

ANNEX I

UNIFORM CUSTOMS AND PRACTICE. 500 (UCP)

Art. 23. Marine/Ocean bill of Loading

- 23.1. Late delivery, Misrouting, Mishandling, Loss and Damage
- 23.2 Customs Duties and Taxes
- 23.3 Port Charges i.e. Arrastre Wharfage
- 23.4 Inbound Shipment-Cargo Handler/Operator
 - 23.4.1 Warehouse Operator

Art. 24. Non-Negotiable Seaway Bill

- 24.1. Claim- ibid
- 24.2. Customs Duties and Taxes
- 24.3 Port Charges i.e., Arrastre Wharfage
- 24.4 Inbound Shipment-Cargo handler/operator
 - 24.4.1 Warehouse Operator

Art. 25. Charter Party/Bill of Lading

- 25.1 Claim – ibid.
- 25.2 Customs Duties & Taxes
- 25.3 Port Charges i.e., Arrastre Wharfage
- 25.4 Inbound shipment-cargo handler/operator
 - 25.4.1 Warehouse Operator

Art. 26 Multi-Modal Transport Docs.

- 26.1 late delivery, misrouting, mishandling, loss and damage
- 26.2 Customs, duties, and taxes
- 26.3 Port charges i.e. arrastre wharfage
- 26.4 Inbound shipment-cargo handler/operator
 - 26.4.1. Warehouse operator

Art. 27. Airport Transport Documents

- 27.1. Claim-ibid
- 27.2 Customs duties & taxes
- 27.3 Airport charges
- 27.4 inbound shipment-cargo handler/operator
 - 27.4.1. Warehouse operator

Art. 28. Road, Rail, or Inland Waterway Transport Documents

- 28.1 Claim- ibid
- 28.2 Customs Duties & taxes
- 28.3 Terminal charges
- 28.4 Inbound shipment-cargo handler/operator
 - 28.4.1. Warehouse operator

Art 29. Courier and Post Receipts

- 29.1 Late delivery, misrouting, mishandling, loss & damage
- 29.2 Customs duties & taxes
- 29.3 Postal authority charges
- 29.4 Inbound shipment-cargo handler/operator
 - 29.4.1. Warehouse operator

Art. 30. Transport Documents issued by freight forwarders

- 30.1. Claim – ibid
- 30.2 Customs duties & taxes
- 30.3 Port charges i.e. arrastre wharfage
- 30.4 Inbound shipment- cargo handler/operator
 - 30.4.1. warehouse operator

ANNEX II

- a) the sophistication of the equipment used by each of the parties;
- b) the nature of their trade activity;
- c) the frequency at which commercial transactions take place between the parties;
- d) the kind and size of the transaction;

- e) the function of signature requirements in a given statutory and regulatory environment;
- f) the capability of communication systems;
- g) compliance with authentication procedures set forth by intermediaries;
- h) the range of authentication procedures made available by any intermediary;
- i) compliance with trade customs and practice;
- j) the existence of insurance coverage mechanisms against unauthorized messages;
- k) the importance and the value of the information contained in the data message;
- l) the availability of alternative methods of identification and the cost of implementation;
- m) the degree of acceptance or non-acceptance of the method of identification in the relevant industry or field both at the time the method was agreed upon and the time when the data message was communicated; and
- n) any other relevant factor.

REPUBLIC ACT NO. 9239
AN ACT REGULATING OPTICAL MEDIA, REORGANIZING
FOR THIS PURPOSE THE VIDEOGRAM REGULATORY BOARD, PROVIDING PENALTIES
THEREFOR, AND FOR OTHER PURPOSES

I. GENERAL PROVISIONS

- Sec. 1. Short Title. - This Act shall be known as the "Optical Media Act of 2003".
- Sec. 2. Policy. - It is hereby declared to be the policy of the State to ensure the protection and promotion of intellectual property rights. The unregulated mastering, manufacture, replication, importation and exportation of optical media in all forms is inimical to economic growth and public interest. Towards this end, the State shall institute the means to regulate the manufacture, mastering, replication, importation and exportation of optical media.
- Sec. 3. Definition of Terms. - For the Purpose of this Act, the following terms shall mean:
- (a) Economic Zone - the Special Economic Zones, Industrial Estates, Export Processing Zones and Free Trade Zones as defined in Republic Act No. 7916 or the PEZA Law including the Clark Special Economic Zone, the Cagayan Special Economic Zone, the Zamboanga City Special Economic Zone, the Subic Bay Freeport and other economic zones now in existence in the Philippines or as may be established in the future;
 - (b) IP Code - Republic Act No. 8293 also known as the Intellectual Property Code of the Philippines;
 - (c) License - the authority granted by the Optical Media Board (OMB) to establishments or entities registered with the OMB to engage in the business of mastering, manufacture, replication, importation or exportation of optical media;
 - (d) Magnetic Media - a storage medium or device characterized by a base, usually plastic, coated with ferric oxide powder, in which visual and/or aural information, or software code, may be recorded or

stored, including, but not limited to, magnetic tape, cassettes, video tape, diskettes, and floppy discs;

- (e) Manufacture - the act or business of producing optical media or devices containing sounds and/or images, or software code, including any work protected in Part IV of the IP Code, by mastering and/or replication. In relation to equipment, "manufacture" shall refer to the assembly or integration of various components into any equipment useful for the mastering, manufacture and/or replication of optical media;
- (f) Manufacturing Equipment - any and all equipment, machine or device, now known or to be known in the future, intended or design for the production or manufacture, by mastering and/or replication of optical media, optical media masters, or production parts thereof, including but not limited to, those which shall be listed in the Implementing Rules and Regulations (IRR) of this Act or as prescribed by the OMB. For the purpose of this Act, optical disc writers and such other devices used in personal computers not for commercial purposes shall not be considered as manufacturing equipment;
- (g) Manufacturing Material - any material such as, but not limited to, optical grade polycarbonate or polycarbonate substitutes with physical properties suitable for the manufacture of optical media;
- (h) Mastering - the act or business of producing a stamper made of glass, metal or other material, intended for the manufacture of optical media;
- (i) Optical Media - a storage medium or device in which information, including sounds and/or images, or software code, has been stored, either by mastering and/or replication, which may be accessed and read using a lens scanning mechanism employing a high intensity light source such as a laser or any such other means as may be developed in the future. The term shall include, but not be limited to, devices which shall be listed in the IRR of this Act, or as prescribed by the OMB;
- (j) OMB - the Optical Media Board;

- (k) Replication - the process of manufacturing optical media by reproducing or generating copies of the stamper in an injection molding machine or other forms of replicating equipment; and(l) Source Identification Code or SID Code - a system of codes to identify the source of all optical media mastered, manufactured or replicated by any establishment or entity.

II. THE OPTICAL MEDIA BOARD

- Sec. 4. Reorganization. - To implement the policies and attain the objectives enunciated in this Act, the Videogram Regulatory Board (VRB) created under Presidential Decree No. 1987 is hereby reorganized into the Optical Media Board (OMB). The OMB shall be placed under the Office of the President (OP) and shall have its principal offices in Metropolitan Manila.
- Sec. 5. Coverage. - The authority of the OMB shall cover the entire territory of the Republic of the Philippines including the economic zones as defined in this Act and in Republic Act No. 7916.
- Sec. 6. The Board. The OMB shall be composed of four (4) ex officio members and five (5) regular members to be appointed by the President. The Chairperson shall be appointed by the President from among the five (5) regular members. The ex officio members of the Board shall be composed of the Secretary of the Department of Trade and Industry (DTI) or his duly authorized representative; the Secretary of the Department of the Interior and Local Government (DILG) or his duly authorized representative; the Secretary of the Department of Finance (DOF) or his duly authorized representative; and the Director-General of the Intellectual Property Office (IPO) or his duly authorized representative: Provided, That the authorized representatives shall have a rank not lower than the Assistant Secretary. The Five (5) regular members shall be composed of three (3) representatives from the private sector, each of whom shall be appointed from an identified industry relying on intellectual property protection, one (1) representative from the consumer organizations and one (1) representative from the academe. The regular members shall be nominated by their nationally recognized associations or organizations. The members of the Board shall elect from among themselves the Vice-Chairperson. The Chairperson and the regular members of the Board shall hold office for a term of three (3) years, unless sooner removed by the President for cause: Provided, That the Chairperson and the Regular members may not serve for more than two

(2) consecutive terms: Provided, further, That if any member fails to complete his or her term, the person appointed to fill the vacancy shall serve only for the unexpired portion of the term.

Sec. 7. Qualifications. The regular members of the Board shall be Filipino citizens, at least twenty-one (21) years old, of good moral character and standing in the community, and with proven competence in the industry they represent: Provided, that the Chairperson shall be at least thirty-five (35) years old, of known probity and managerial and administrative competence: Provided, finally, That at least two (2) members of the board must be members of the Philippine Bar.

Sec. 8. Compensation. The Chairperson shall receive a salary and allowances based on current approved standardized government compensation. The Vice-Chairperson and members of the Board shall receive honoraria and allowances based on existing government accounting and auditing rules and regulations.

Sec. 9. Meetings. The Board shall meet regularly at least once a month or as often as necessary at the call of the Chairperson. A majority of the members of the Board shall constitute a quorum to do business.

Sec. 10. Powers and Functions of the OMB. - The OMB shall have the following powers and functions:

- (a) Formulate and implement such policies and programs as are necessary for the accomplishment of the purposes of this Act;
- (b) Evaluate the qualifications of any individual, establishment or other entity to engage in the mastering, manufacture or replication of optical media. For this purpose, the OMB shall require such person to substantiate its capability to engage in said activities;
- (c) Supervise regulate, grant, or renew licenses for specific periods, or deny, suspend, or cancel the same, subject to such conditions as it may impose, for the activities enumerated in Section 13(a), (b) and (c);
- (d) Conduct inspections, by itself or in coordination with other competence agencies of the government, at anytime, with or without prior notice, of establishments or entities including those within the

economic zones engaged in the activities as provided in Section 13(a), (b) and (c) of this Act, and employ reasonable force in the event that the responsible person or persons of such establishment or entity evades, obstructs, or refuses such inspection. For this purpose, the agents of the OMB shall be considered agents in authority;

- (e) Apply for or obtain search warrants from any court of law, or take into preventive custody any optical media and/or material or equipment, including parts, accessories and paraphernalia used for the mastering, manufacture or replication of optical media which are found in any premises if the OMB has reasonable ground to believe or suspect that these are evidence of violation of the provisions of this Act;
- (f) Act as complainant in the criminal prosecution of violators of this Act;
- (g) Hear and resolve administrative cases against violators of this Act and impose administrative sanctions including, but not limited to, the imposition of fines and penalties; confiscation of optical media; and suspension, non-renewal or cancellation of the license to operate and/or closure of establishments or entities that violate the provisions of this Act. For this purpose, the Board shall have the power to issue subpoena or subpoena duces tecum to compel the attendance of witnesses and production of documents and other effects;
- (h) Call upon law enforcement agencies and the managing authorities in the economic zones for assistance in the implementation and enforcement of its decisions, orders, rules and regulations;
- (i) To deputize, whenever necessary, provincial governors, city and municipal mayors, and representatives of the national government agencies, organizations representing copyright owners, neighboring rights owners and concerned sectors to help monitor compliance with and report to the OMB any violation of this Act;
- (j) Require persons, establishments and entities engaged in the activities in Sec. 13 to keep and maintain for a period of at least five (5) years true and complete records of all activities related to the conduct of its business. For this purpose, the Board may, at any time, require the

production of such records and samples of optical media from each mastering, manufacturing or replicating line;

(k) Levy, assess and collect, and periodically adjust and/or revise the rates of fees and charges for the issuance of licenses granted under this Act;

(l) Establish support offices as may be necessary;

(m) Create and maintain a database, and regularly publish data containing the list and activities of registered and/or licensed optical media and other related establishments. Any enforcement agency, including the Bureau of Customs, may refer to this database for enforcement and/or seizure;

(n) Prescribe the internal and operational procedures for the exercise of its powers and functions, the performance of its duties and responsibilities and other related matters; and(o) Exercise such other powers and functions as may be necessary or incidental to the attainment of the purposes and objectives of this Act, and to perform other related duties and responsibilities as may be directed by the President.

Sec. 11. Chief Executive Officer. - The Chairperson of the Board shall be the Chief Executive officer (CEO). The CEO shall exercise the following powers and functions:

(a) Execute and administer the policies, decisions, orders, resolutions and the rules and regulations issued by the Board;

(b) Establish the internal organization and administrative procedures of the OMB, and recommend to the Board the appointment, transfer, detail, and suspension or dismissal for cause of its administrative and subordinate personnel;

(c) Direct and supervise the operations and the internal affairs of the OMB;

(d) Submit an annual budget to the Board for its approval;

(e) Delegate his or her authority, in whole or in part, to other members of the Board, in accordance with the rules and regulations of the OMB;

and(f) Perform such other powers and functions as may be authorized by the Board or the President.

Sec. 12. The OMB Secretariat. - The OMB shall have a Secretariat, herein created, headed by an Executive Director who shall assist the Chairperson/CEO in the day-to-day operations of the OMB. The Executive Director shall be appointed by the Chairperson subject to the approval of the Board. His term shall be coterminous with the CEO. III. LICENSING AND OTHER REGULATORY PROVISIONS section 13. Licensing and Registration. - Any person, establishment or entity shall, prior to engaging in one or more of the business or activities enumerated hereunder, register with, and secure the appropriate licenses from the OMB:

- (a) Importation, exportation, acquisition, sale or distribution of optical media, manufacturing equipment, parts and accessories and manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media;
- (b) Possession or operation of manufacturing equipment, parts and accessories, or the possession acquisition, sale or use of manufacturing materials for the mastering, manufacture or replication of optical media; and(c) The mastering, manufacture, replication, importation or exportation of optical media.

With respect to the preceding paragraph (c), the licenses issued by the OMB are conditions precedent for securing the necessary business permits, licenses, or registration from the appropriate authorities, and shall also be necessary requirement for the release of manufacturing equipment, parts and accessories, and materials intended for use in mastering and/or manufacturing optical media, from customs or economic zones exercising independent custom laws. Those engaged or intending to engage in more than one of the above mentioned activities and/or conduct or intend to conduct business in more than one location shall separately register with and secure the license from the OMB for every business activity at each place of business. No business activity registered and licensed by the OMB for a specific place of business shall be conducted in a place and/or location other than that indicated in the license, without the prior written approval of the OMN. The registration and license issued by the OMB shall be prominently displayed at the designated place of business.

Sec. 14. Form, Term, Amendment and Renewal of License. - Every license shall be in a form prescribed by the OMB and shall be valid for a period of three (3) years subject to conditions as the OMB may impose. The OMB may amend or renew a license upon application made by the licensee in accordance with this Act. Failure to register and obtain a license from the OMB shall automatically cancel any permit, license or registration issued by any national or local government unit, agency or office.

Sec. 15. Grounds for Non-issuance or Non-renewal of License. - The OMB may refuse to grant a license, or to renew a license, upon the following grounds:

- (a) The applicant has failed to comply with any requirement imposed by the Board pursuant to this Act and its implementing rules and regulations;
- (b) The applicant or, in the case of juridical persons, any of its officers, directors, managers, shareholders, or partners, is convicted by final judgment of an offense under this Act or any law relating to the protection of intellectual property rights;
- (c) The application involves a place, location or premises where an offense has been committed under this Act or under any law relating to the protection of intellectual property rights: Provided, That the offenders have finally been convicted of such offense;
- (d) The applicant has furnished the OMB with any false or misleading information in connection with any application for or renewal of a license; or (e) The applicant has been previously issued a license that has been cancelled for cause within the preceding five (5) years from the date of the application.

The OMB shall decide whether or not to grant or renew a license within fifteen (15) working days from the filing of the application.

Sec. 16. Grounds for Suspension or Cancellation of License. - The OMB may, motu proprio or upon motion of any interested party, after notice and hearing, suspend or cancel a license on any of the following grounds:

- (a) when requested by the license holder;

(b) when the license holder has ceased to engage in the activities authorized under the license or in the place, location or premises indicated in the license;

(c) when the license holder has been convicted of an offense under this Act or under any other Law relating to the protection of intellectual property rights; or (d) when the license holder is in breach of, or is unable to comply with any of the conditions prescribed in the license.

Sec. 17. Registration of Present Licenses. - All existing establishments or entities in the Philippines engaged in activities enumerated in Section 13 shall, within thirty (30) calendar days after the effectivity of the rules and regulations implementing this Act, register with and secure the necessary licenses from the OMB.

Sec. 18. Source Identification (SID) Codes. - The OMB shall determine, develop and/or adopt a system of Source Identification (SID) codes that is of international recognition and acceptance. The OMB shall prescribe SID codes for all persons, establishments or entities registered with and licensed by the OMB to engage in the mastering, manufacture or replication of optical media, including such other codes as it may determine or require. Such codes shall be applied to each and every optical media mastered, manufactured or replicated including glass masters, stampers or other parts used for the manufacture of optical discs. The SID Codes shall be visible and legible and must conform to such specifications as prescribed by the OMB.

IV. PENAL PROVISIONS

Sec. 19. Offenses and Penalties. - (a) Imprisonment of at least three (3) years but not more than six (6) years, and a fine of not less than Five Hundred thousand pesos (Php 500,000.00) but not exceeding One Million five hundred thousand pesos (Php 1,500,000.00), at the discretion of the Court, shall be imposed on any person, natural or juridical, who shall:

(1) Engage in the importation, exportation, acquisition, sale or distribution of, or possess or operate manufacturing equipment, parts and accessories without the necessary licenses from the OMB;

- (2) Engage in the mastering, manufacture, replication, importation or exportation of optical media without the necessary license from the OMB;
 - (3) By himself, or through another, cause the mastering, manufacture or replication of any intellectual property in optical media intended for commercial profit or pecuniary gain without authority or consent of the owner thereof;
 - (4) Engage in the Mastering, manufacture, or replication of optical media without affixing or installing in the resulting products the SID Code, and/or such other codes prescribed, assigned and authorized by the OMB. The absence of the codes prescribed, assigned and authorized by the OMB in any optical media shall be prima facie evidence that said optical media are in violation of this Act;
 - (5) Engage in the mastering, manufacture, or replication of optical media using, affixing or installing in the resulting products false SID or other codes. The presence of false or unauthorized codes shall be prima facie evidence that said optical media are in violation of this act;
 - (6) Engage in the mastering, manufacture, or replication of optical media using, affixing or installing in the resulting products false SID or other codes that have been assigned by the OMB to another person, or, having been assigned and authorized said codes by the OMB, allow or authorize another person, establishment or entity to use, affix or install such codes in the latter's products;
- (b) Imprisonment of at least one year but not more than three years and a fine not less than one hundred thousand pesos, but not exceeding five hundred thousand pesos, at the discretion of the court, for the following offenses:
- (1) Engaging in the importation, exportation, sale or distribution of, or possess or acquire in commercial quantities manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media without the necessary licenses from the OMB;

- (2) Knowingly performing or rendering the service of mastering, manufacture or replication of optical media, after having been licensed by the OMB, to any person, in respect of any intellectual property, who does not have the consent by the owner of the intellectual property or his representatives or assigns; For this purpose, any person, establishment or entity that is licensed by the OMB to engage in the above mentioned activities shall be considered to have acted in good faith in respect of any transaction entered into by him in respect to the preceding paragraph, if he notifies the OMB of such transaction within five working days from receipt of the order, furnishing to the OMB all material information thereof;
- (3) Refusing to submit to inspection by the OMB, or surrender for preventive custody any optical media, equipment, manufacturing materials, including parts, accessories and paraphernalia found during inspection operations to be in violation of the provisions of this Act;

For purposes of this subsection, violators who will employ armed resistance against agents of the OMB shall be penalized under other applicable laws in addition to those provide in this Act; and

- (a) Imprisonment of at least 30 days but not more than 90 days or a fine of not less than 25,000.00 pesos but not exceeding fifty thousand pesos at the discretion of the court:
 - (1) Knowingly possess items of the same content or title, produced in violation of this Act, and used for the purpose with the intent to profit;
 - (2) Engaging in the sale, rental, distribution, importation, exportation of, or any other commercial activity involving optical media that are in violation of this Act.
- (b) For subsequent offenses in Section 19(a), uniform imprisonment of six (6) years but not more than nine (9) years and a fine of not less than One Million five hundred thousand pesos (Php 1,500,000.00) but not exceeding Three million pesos (Php 3,000,000.00) at the discretion of the Court, shall be imposed.(c) For subsequent offenses in Section 19(b), uniform

imprisonment of three (3) years but not more than six (6) years and a fine of not less than Five hundred thousand pesos (Php 500,000.00) but not exceeding One million five hundred pesos (PHp 1,500,000.00) at the discretion of the Court, shall be imposed.

The offenses listed under this section shall be punished without prejudice to the application of appropriate penalties or sanctions provided under Section 216 and such other appropriate sections of the IP Code or Republic Act No. 8792 also known as the Electronic Commerce Act, the Revised Penal Code or other applicable laws.

Sec. 20. Determination of Penalties. In determining the number of years of imprisonment, or amount of fine to be imposed, the court shall consider the size of the operations of the offender, the value of the articles involved in the violation, and the period of violation. In imposing administrative penalties, the OMB shall likewise consider the said circumstances.

Sec. 21. Persons Liable. - If the offender is an alien, the person shall immediately be deported after serving his sentence, and shall, thereafter, be refused entry into the country. If the offender is a government official or employee, he shall suffer perpetual disqualification from public office and forfeiture of his right to vote and participate in any public election for ten (10) years. Should the offense be committed by the juridical person, the stockholder, chairperson, president, officer, director, trustee, partner or manager responsible for such violation shall be liable.

Sec. 22. Enforcement. The OMB may solicit the direct assistance of other agencies, the managing authorities in the economic zones and instrumentalities of the national and local governments, and may deputize for a limited period the heads or personnel of agencies to perform enforcement functions for the OMB, insofar as such functions are concerned shall be subject to the direction and supervision of the OMB.

Sec. 23. Disposal of Seized Materials. - Any optical media, equipment or materials found to be in violation of the provisions of this Act, any books, records, or paraphernalia providing evidence of any violation committed by any person, establishment or entity, shall be confiscated and forfeited in the favor of the government and shall be disposed in accordance with pertinent laws and regulations: Provided, That confiscated optical media may, pending consideration of the case, be immediately destroyed upon

final determination by the OMB in an administrative case, or by a court in a civil or criminal case, that are the same are in violations of this Act: Provided, further, That a sufficient representative sample shall be retained for evidentiary purposes. The retained representative sample shall remain in custodia legis until the final resolution of proceedings thereon. Equipment and materials imported of this Act shall be subject to seizure and immediate disposal by the Bureau of Customs.

IV. TRANSITORY PROVISIONS

Sec. 24. The Videogram Regulatory Board (VRB) and Secretariat. - The incumbent Chairperson, Vice-Chairperson, members of the Board and Secretariat shall continue to perform their duties and functions in a hold-over capacity, and shall receive their corresponding salaries and benefits until such time that the new chairperson and at least majority of the Board shall have been appointed and qualified. The Present officials and employees of the VRB shall be given priority, on the basis of experience, merit and fitness, in appointments to new positions to which they may qualify under the new staffing pattern: Provided, That those who shall be given new appointments shall be entitled to all compensation and benefits due them under existing laws: Provided, further, that those who shall be separated from service shall receive all separation pay and benefits due under existing laws. The transition period shall not exceed six months after effectivity of this Act i5xWILH.

Sec. 25. Transfer of Funds, Assets, Liabilities and Records. All unexpended appropriations , real and personal property, contracts, records, documents, and assets and liabilities of the VRB shall be transferred to the OMB.

Sec. 26. Regulation of Magnetic Media. - The provisions of this Act shall apply mutates mutandis to the regulation of magnetic media.

Sec. 27. Classification of Motion Pictures and Cinematographic Works. - The classification for audience suitability of motion pictures and cinematographic works in optical media including related publicity materials thereto shall be the function of the Movie and Television Review and Classification Board (MTRCB).

Sec. 28. Prosecution of Pending Cases. for the purpose of this Act, all pending cases for violation of presidential Decree No. 1987 shall continue to be prosecuted.

V. MISCELLANEOUS PROVISIONS

Sec. 29. Organization Structure. - the organizational structure and staffing pattern of the OMB shall be established in coordination with the Dept. of Budget and Management (DBM) and in accordance with Civil Service laws, rules, and regulations.

Sec. 30. Period of Implementation. The OMB and the DBM shall prepare the necessary work programs to cover the staggered implementation of this Act for a period not exceeding five (5) years.

Sec. 31. Appropriations. - The appropriations for the VRB under the current General Appropriations Act shall be used to carry out the initial implementation of this Act. Thereafter, such sums as may be necessary for its implementation shall be included in the General Appropriations Act 2giSHQm.

Sec. 32. Annual Report. - The OMB shall, within ninety days after the end of every fiscal year, submit to the President and to Congress an annual report on its accomplishments under this Act, together with its plans and recommendations to improve and develop its capability to enforce the provisions of this Act, and a complete accounting of transactions with respect to the use of income.

Sec. 33. Congressional Oversight Committee on the OMB.- The Congressional oversight committee on the optical media board shall be composed of the chairs of the senate committees on public information and mass media and trade and commerce and the house of representatives committees on trade and industry and public information, and two members each from the senate and house of representatives who shall be designated by the senate president and the speaker of the house of representatives: Provided, That one of the two senators and one of the two house members shall be nominated by the respective minority leaders of the senate and the house of representatives. The COC-OMB is hereby mandated to oversee the implementation of this Act for a period of five years. For this purpose, COC-OMB shall set the implementation of this act

and shall adopt its internal rules of procedure. The Secretariat of the COC-OMB shall be drawn from the existing Secretariat personnel of the Senate and House of Representatives Committees comprising the COC-OMB. To carry out the powers and functions of the COC-OMB, the initial sum of five million pesos shall be charged against the current appropriations of congress. Thereafter, the amount necessary for its continued operations shall be included in the annual General Appropriations Act mgF3.

Sec. 34. Implementing Rules and Regulations. - The OMB shall within three months from the effectivity of this Act submit to the COC-OMB, the implementing rules and regulations (IRR) governing this Act. The COC-OMB shall approve the IRR within thirty days.

Sec. 35. Separability Clause. - If, for any reason, any provision of this Act is declared invalid or unconstitutional, the other sections or provisions not so declared shall remain in full force and effect.

Sec. 36. Repealing Clause. - Presidential Decree No. 1987 is hereby repealed. Presidential Decree No. 1986 or the MTRCB Law and other laws, rules, regulations, decrees, executive orders, and other issuance or parts thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 37. Effectivity. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved, February 10 2004.

REPUBLIC ACT NO. 8371

AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLE, CREATING A NATIONAL COMMISSION OF INDIGENOUS PEOPLE, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

PART I THE INTELLECTUAL PROPERTY OFFICE

CHAPTER I GENERAL PROVISIONS

- Sec. 1. Short Title.- This Act shall be known as "The Indigenous Peoples Rights Act of 1997."
- Sec. 2. Declaration of State Policies.- The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:
- a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;
 - b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary law governing property rights or relations in determining the ownership and extent of ancestral domain;
 - c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;
 - d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinctions or discriminations;
 - e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their

cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population and

- f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, their rights to their ancestral domains.

CHAPTER II DEFINITION OF TERMS

Sec. 3. Definition of Terms.- For purposes of this Act, the following terms shall mean:

- a) Ancestral Domains - Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals, corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral land, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which their traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

- b) Ancestral Lands - Subject to Section 56 hereof, refer to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots;
- c) Certificate of Ancestral Domain Title - refers to a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law;
- d) Certificate of Ancestral Lands Title - refers to a title formally recognizing the rights of ICCs/IPs over their ancestral lands;
- e) Communal Claims - refer to claims on land, resources and rights thereon, belonging to the whole community within a defined territory
- f) Customary Laws - refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs;
- g) Free and Prior Informed Consent - as used in this Act shall mean the consensus of all members of the ICCs/IPs; be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;
- h) Indigenous Cultural Communities/Indigenous Peoples - refer to a group of people or homogenous societies identified by self-ascription and ascription by other, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads

of colonization, non-indigenous religions and culture, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;

- i) Indigenous Political Structure - refer to organizational and cultural leadership systems, institutions, relationships, patterns and processes for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holder, or any other tribunal or body of similar nature;
- j) Individual Claims - refer to claims on land and rights thereon which have been devolved to individuals, families and clans including, but not limited to, residential lots, rice terraces or paddies and tree lots;
- k) National Commission on Indigenous Peoples (NCIP) - refers to the office created under this Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs;
- l) Native Title - refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;
- m) Nongovernment Organization - refers to a private, nonprofit voluntary organization that has been organized primarily for the delivery of various services to the ICCs/IPs and has an established track record for effectiveness and acceptability in the community where it serves;
- n) People's Organization - refers to a private, non-profit voluntary organization of members of an ICC/IP which is accepted as representative of such ICCs/IPs;

- o) Sustainable Traditional Resource Rights - refer to the rights of ICCs/IPs to sustainably use, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices; and
- p) Time Immemorial - refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions.

CHAPTER III RIGHTS TO ANCESTRAL DOMAINS

- Sec. 4. Concept of Ancestral Lands/Domains.- Ancestral lands/domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the area which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.
- Sec. 5. Indigenous Concept of Ownership.- Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.
- Sec. 6. Composition of Ancestral Lands/Domains.- Ancestral lands and domains shall consist of all areas generally belonging to ICCs/IPs as referred under Sec. 3, items (a) and (b) of this Act.
- Sec. 7. Rights to Ancestral Domains.- The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:
 - a. Rights of Ownership.- The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places,

traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

- b. Right to Develop Lands and Natural Resources.-Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;
- c. Right to Stay in the Territories- The right to stay in the territory and not be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;
- d. Right in Case of Displacement.- In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support system: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that

the normalcy and safety of such lands shall be determined: Provided, further, That should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/IPs shall enjoy security of tenure over lands to which they have been resettled: Provided, furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed:

- e. Right to Regulate Entry of Migrants.- Right to regulate the entry of migrant settlers and organizations into the domains;
- f. Right to Safe and Clean Air and Water.- For this purpose, the ICCs/IPs shall have access to integrated systems for the management of their inland waters and air space;
- g. Right to Claim Parts of Reservations.- The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service; and
- h. Right to Resolve Conflict.- Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

Sec. 8. Rights to Ancestral Lands.- The right of ownership and possession of the ICCs/IPs, to their ancestral lands shall be recognized and protected.

- a. Right to transfer land/property.- Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.
- b. Right to Redemption.- In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs is tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer.

- Sec. 9. Responsibilities of ICCs/IPs to their Ancestral Domains.- ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:
- a. Maintain Ecological Balance- To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;
 - b. Restore Denuded Areas- To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and
 - c. Observe Laws- To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.
- Sec. 10. Unauthorized and Unlawful Intrusion.- Unauthorized and unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights herein before enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs.
- Sec. 11. Recognition of Ancestral Domain Rights.- The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.
- Sec. 12. Option to Secure Certificate of Title under Commonwealth Act 141, as amended, or the Land Registration Act 496.- Individual members of cultural communities, with respect to individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since the memorial or for a period of not less than thirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/IPs shall have the option to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.

For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.

The option granted under this Section shall be exercised within twenty (20) years from the approval of this Act.

CHAPTER IV RIGHT TO SELF-GOVERNANCE AND EMPOWERMENT

- Sec. 13. Self-Governance.- The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.
- Sec. 14. Support for Autonomous Regions.- The State shall continue to strengthen and support the autonomous regions created under the Constitution as they may require or need. The State shall likewise encourage other ICCs/IPs not included or outside Muslim Mindanao and the Cordillera to use the form and content of their ways of life as may be compatible with the fundamental rights defined in the Constitution of the Republic of the Philippines and other internationally recognized human rights.
- Sec. 15. Justice System, Conflict Resolution Institutions and Peace Building Processes.- The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.
- Sec. 16. Right to Participate in Decision -Making.- ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory

representation in policy-making bodies and other local legislative councils.

- Sec. 17. Right to Determine and Decide Priorities for Development.- The ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use. They shall participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them.
- Sec. 18. Tribal Barangays.- The ICCs/IPs living in contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute a separate barangay in accordance with the Local Government Code on the creation of tribal barangays.
- Sec. 19. Role of Peoples Organizations.- The State shall recognize and respect the role of independent ICCs/IP organizations to enable the ICCs/IPs to pursue and protect their legitimate and collective interests and aspirations through peaceful and lawful means.
- Sec. 20. Means for Development /Empowerment of ICCs/IPs.-The Government shall establish the means for the full development/empowerment of the ICCs/IPs own institutions and initiatives and, where necessary, provide the resources needed therefor.

CHAPTER V SOCIAL JUSTICE AND HUMAN RIGHTS

- Sec. 21. Equal Protection and Non-discrimination of ICCs/IPs.- Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity, accord to the members of the ICCs/IPs their rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every

member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force of coercion against ICCs/IPs shall be dealt with by law.

The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.

Sec. 22. Rights during Armed Conflict.- ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular, the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into armed forces, and in particular, for the use against other ICCs/IPs; not recruit children of ICCs/IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.

Sec. 23. Freedom from Discrimination and Right to Equal Opportunity and Treatment.- It shall be the right of the ICCs/IPs to be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities as other occupationally-related benefits, informed of their rights under existing labor legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labor and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment.

Towards this end, the State shall within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned, adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by the laws applicable to workers in general.

ICCs/IPs shall have the right to association and freedom for all trade union activities and the right to conclude collective bargaining

agreements with employers' conditions. They shall likewise have the right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.

Sec. 24. Unlawful Acts Pertaining to Employment.- It shall be unlawful for any person:

a. To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and

b. To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under this Act.

Sec. 25. Basic Services.- The ICC/IP have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government's basic services which shall include, but not limited to water and electrical facilities, education, health and infrastructure.

Sec. 26. Women.- ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.

The State shall provide full access to education, maternal and child care, health and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.

Sec. 27. Children and Youth.- The State shall recognize the vital role of the children and youth of ICCs/IPs in nation-building and shall promote and

protect their physical, moral, spiritual, moral, spiritual, intellectual and social well-being. Towards this end, the State shall support all government programs intended for the development and rearing of the children and youth of ICCs/IPs for civic efficiency and establish such mechanisms as may be necessary for the protection of the rights of the indigenous children and youth.

Sec. 28. Integrated System of Education.- The State shall, through the NCIP, provide a complete, adequate and integrated system of education, relevant to the needs of the children and Young people of ICCs/IPs.

CHAPTER VI CULTURAL INTEGRITY

Sec. 29. Protection of Indigenous Culture, traditions and institutions.- The state shall respect, recognize and protect the right of the ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation of national plans and policies.

Sec. 30. Educational Systems.- The State shall provide equal access to various cultural opportunities to the ICCs/IPs through the educational system, public or cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children/youth shall have the right to all levels and forms of education of the State.

Sec. 31. Recognition of Cultural Diversity.- The State shall endeavor to have the dignity and diversity of the cultures, traditions, histories and aspirations of the ICCs/IPs appropriately reflected in all forms of education, public information and cultural-educational exchange. Consequently, the State shall take effective measures, in consultation with ICCs/IPs concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among ICCs/IPs and all segments of society. Furthermore, the Government shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. The State shall likewise ensure the participation of appropriate indigenous leaders in schools, communities and international cooperative undertakings like festivals, conferences, seminars

and workshops to promote and enhance their distinctive heritage and values.

Sec. 32. Community Intellectual Rights.- ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual, religious, and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.

Sec. 33. Rights to Religious, Cultural Sites and Ceremonies.- ICCs/IPs shall have the right to manifest, practice, develop, teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access to their religious and cultural sites; the right to use and control of ceremonial objects; and the right to the repatriation of human remains. Accordingly, the State shall take effective measures, in cooperation with the burial sites, to be preserved, respected and protected. To achieve this purpose, it shall be unlawful to:

- a. Explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without the free and prior informed consent of the community concerned; and
- b. Deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage.

Sec. 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies.- ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts.

- Sec. 35. Access to Biological and Genetic Resources.-Access to biological and genetic resources and to indigenous knowledge related to the conservation,utilization and enhancement of these resources, shall be allowed within ancestral lands and domains of the ICCs/IPs only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.
- Sec. 36. Sustainable Agro-Technical Development. – The State shall recognize the right of ICCs/IPs to a sustainable agro-technological development and shall formulate and implement programs of action for its effective implementation. The State shall likewise promote the bio-genetic and resource management systems among the ICCs/IPs and shall encourage cooperation among government agencies to ensure the successful sustainable development of ICCs/IPs.
- Sec. 37. Funds for Archeological and Historical Sites. -The ICCs/IPs shall have the right to receive from the national government all funds especially earmarked or allocated for the management and preservation of their archeological and historical sites and artifacts with the financial and technical support of the national government agencies.

CHAPTER VII
NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP)

- Sec. 38. National Commission on Indigenous Cultural Communities /Indigenous Peoples (NCCP).- to carry out the policies herein set forth, there shall be created the National Commission on ICCs/IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.
- Sec. 39. Mandate.- The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.
- Sec. 40. Composition.- The NCIP shall be an independent agency under the Office of the President and shall be composed of seven (7) Commissioners belonging to ICCs/IPs, one (1) of whom shall be the Chairperson. The Commissioners shall be appointed by the President of the Philippines from a list of recommendees submitted by authentic ICCs/IPs: Provided, That the seven (7) Commissioners shall be

appointed specifically from each of the following ethnographic areas: Region I and the Cordilleras; Region II; the rest of Luzon; Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao: Provided, That at least two (2) of the seven (7) Commissioners shall be women.

Sec. 41. Qualifications, Tenure, Compensation.- The Chairperson and the six (6) Commissioners must be natural born Filipino citizens, bonafide members of ICCs/IPs ascertified by his/her tribe, experienced in ethnic affairs and who have worked for at least ten (10) years with an ICC/IP community and/or any government agency involved in ICC/IP, at least 35 years of age at the time of appointment, and must be of proven honesty and integrity: Provided, That at least two (2) of the seven (7) Commissioners shall be the members of the Philippine Bar: Provided, further, That the members of the NCIP shall hold office for a period of three (3) years, and may be subject to re-appointment for another term: Provided, furthermore, That no person shall serve for more than two (2) terms. Appointment to any vacancy shall only be for the unexpired term of the predecessor and in no case shall a member be appointed or designated in a temporary or acting capacity: Provided, finally, That the Chairperson and the Commissioners shall be entitled to compensation in accordance with the Salary Standardization Law.

Sec. 42. Removal from Office.- Any member of the NCIP may be removed from office by the President, on his own initiative or upon recommendation by any indigenous community, before the expiration of his term for cause and after complying with due process requirement of law.

Sec. 43. Appointment of Commissioners.- The President shall appoint the seven (7) Commissioners of the NCIP within ninety (90) days from the effectivity of this Act.

Sec. 44. Powers and Functions.- To accomplish its mandate, the NCIP shall have the following powers, jurisdiction and function:

- a) To serve as the primary government agency through which ICCs/IPs can seek government assistance and as the medium, through which such assistance may be extended;

- b) To review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development;
- c) To formulate and implement policies, plans, programs and projects for the economic, social and cultural development of the ICCs/IPs and to monitor the implementation thereof;
- d) To request and engage the services and support of experts from other agencies of government or employ private experts and consultants as may be required in the pursuit of its objectives;
- e) To issue certificate of ancestral land/domain title;
- f) Subject to existing laws, to enter into contracts, agreements, or arrangement, with government or private agencies or entities as maybe necessary to attain the objectives of this Act, and subject to the approval of the President, to obtain loans from government lending institutions and other lending institutions to finance its programs;
- g) To negotiate for funds and to accept grants, donations, gifts and/or properties in whatever form and from whatever source, local and international, subject to the approval of the President of the Philippines, for the benefit of ICCs/IPs and administer the same in accordance with the terms thereof; or in the absence of any condition, in such manner consistent with the interest of ICCs/IPs as well as existing laws;
- h) To coordinate development programs and projects for the advancement of the ICCs/IPs and to oversee the proper implementation thereof;
- i) To convene periodic conventions or assemblies of IPs to review, assess as well as propose policies or plans;
- j) To advise the President of the Philippines on all matters relating to the ICCs/IPs and to submit within sixty (60) days after the close of each calendar year, a report of its operations and achievements;
- k) To submit to Congress appropriate legislative proposals intended to carry out the policies under this Act;

- l) To prepare and submit the appropriate budget to the Office of the President;
- m) To issue appropriate certification as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the consensus approval of the ICCs/IPs concerned;
- n) To decide all appeals from the decisions and acts of all the various offices within the Commission:
- o) To promulgate the necessary rules and regulations for the implementation of this Act;
- p) To exercise such other powers and functions as may be directed by the President of the Republic of the Philippines; and
- q) To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns.

Sec. 45. Accessibility and Transparency.- Subject to such limitations as may be provided by law or by rules and regulations promulgated pursuant thereto, all official records, documents and papers pertaining to official acts, transactions or decisions, as well as research data used as basis for policy development of the Commission shall be made accessible to the public.

Sec. 46. Officers within the NCIP.- The NCIP shall have the following offices which shall be responsible for the implementation of the policies herein after provided:

- a. Ancestral Domains Office - The Ancestral Domain Office shall be responsible for the identification, delineation and recognition of ancestral land/domains. It shall also be responsible for the management of ancestral lands/domains in accordance with the master plans as well as the implementation of the ancestral domain rights of the ICCs/IPs as provided in Chapter III of this Act. It shall

also issue, upon the free and prior informed consent of the ICCs/IPs concerned, certification prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interests of ICCs/IPs in protecting the territorial integrity of all ancestral domains. It shall likewise perform such other functions as the Commission may deem appropriate and necessary;

- b. Office on Policy, Planning and Research – The Office on Policy, Planning and Research shall be responsible for the formulation of appropriate policies and programs for ICCs/IPs such as, but not limited to, the development of a Five-Year Master Plan for the ICCs/IPs. Such plan shall undergo a process such that every five years, the Commission shall endeavor to assess the plan and make ramifications in accordance with the changing situations. The Office shall also undertake the documentation of customary law and shall establish and maintain a Research Center that would serve as a depository of ethnographic information for monitoring, evaluation and policy formulation. It shall assist the legislative branch of the national government in the formulation of appropriate legislation benefiting ICCs/IPs.
- c. Office of Education, Culture and Health – The Office on Culture, Education and Health shall be responsible for the effective implementation of the education, cultural and related rights as provided in this Act. It shall assist, promote and support community schools, both formal and non-formal, for the benefit of the local indigenous community, especially in areas where existing educational facilities are not accessible to members of the indigenous group. It shall administer all scholarship programs and other educational rights intended for ICC/IP beneficiaries in coordination with the Department of Education, Culture and Sports and the Commission on Higher Education. It shall undertake, within the limits of available appropriation, a special program which includes language and vocational training, public health and family assistance program and related subjects.

It shall also identify ICCs/IPs with potential training in the health profession and encourage and assist them to enroll in schools of medicine, nursing, physical therapy and other allied courses pertaining to the health profession.

Towards this end, the NCIP shall deploy a representative in each of the said offices who shall personally perform the foregoing task and who shall receive complaints from the ICCs/IPs and compel action from appropriate agency. It shall also monitor the activities of the National Museum and other similar government agencies generally intended to manage and preserve historical and archeological artifacts of the ICCs /IPs and shall be responsible for the implementation of such other functions as the NCIP may deem appropriate and necessary;

- d. Office on Socio-Economic Services and Special Concerns - The Office on Socio-Economic Services and Special Concerns shall serve as the Office through which the NCIP shall coordinate with pertinent government agencies specially charged with the implementation of various basic socio-economic services, policies, plans and programs affecting the ICCs/IPs to ensure that the same are properly and directly enjoyed by them. It shall also be responsible for such other functions as the NCIP may deem appropriate and necessary;
- e. Office of Empowerment and Human Rights - The Office of Empowerment and Human Rights shall ensure that indigenous socio-political, cultural and economic rights are respected and recognized. It shall ensure that capacity building mechanisms are instituted and ICCs/IPs are afforded every opportunity, if they so choose, to participate in all level decision-making. It shall likewise ensure that the basic human rights, and such other rights as the NCIP may determine, subject to existing laws, rules and regulations are protected and promoted;
- f. Administrative Office - The Administrative Office shall provide the NCIP with economical, efficient and effective services pertaining to personnel, finance, records, equipment, security, supplies, and related services. It shall also administer the Ancestral Domains Fund; and
- g. Legal Affairs Office - There shall be a Legal Affairs Office which shall advise the NCIP on all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have

violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.

Sec. 47. Other Offices.- The NCIP shall have the power to create additional offices as it may deem necessary subject to existing rules and regulations.

Sec. 48. Regional and Field Offices.- Existing regional and field offices shall remain to function under the strengthened organizational structure of the NCIP. Other field office shall be created wherever appropriate and the staffing pattern thereof shall be determined by the NCIP: Provided, That in provinces where there are ICCs/IPs but without field offices, the NCIP shall establish field offices in said provinces.

Sec. 49. Office of the Executive Director.- The NCIP shall create the Office of the Executive Director which shall serve as its secretariat. The office shall be headed by an Executive Director who shall be appointed by the President of the Republic of the Philippines upon the recommendation of the NCIP on a permanent basis. The staffing pattern of the office shall be determined by the NCIP subject to existing rules and regulations.

Sec. 50. Consultative Body.- A body consisting of the traditional leaders, elders and representatives from the women and youth sectors of the different ICCs/IPs shall be constituted by the NCIP from the time to time to advise it on matters relating to the problems, aspirations and interests of the ICCs/IPs.

CHAPTER VIII

DELINEATION AND RECOGNITION OF ANCESTRAL DOMAINS

Sec. 51. Delineation and Recognition of Ancestral Domains.- Self-delineation shall be guiding principle in the identification and delineation of ancestral domains. As such, the ICCs/IPs concerned shall have a decisive role in all the activities pertinent thereto. The Sworn Statement of the Elders as to the Scope of the territories and agreements/pacts made with neighboring ICCs/IPs, if any, will be essential to the determination of these traditional territories. The Government shall take the necessary steps to identify lands which the ICCs/IPs concerned traditionally occupy and guarantee effective protection of their rights of ownership and possession thereto. Measures shall be taken in appropriate cases to safeguard the rights of the ICCs/IPs concerned to land which may no longer be exclusively occupied by them, but to which they have

traditionally had access for their subsistence and traditional activities, particularly of ICCs/IPs who are still nomadic and/or shifting cultivators.

Sec. 52. Delineation Process.- The identification and delineation of ancestral domains shall be done in accordance with the following procedures:

- a. Ancestral Domains Delineated Prior to this Act- The provisions hereunder shall not apply to ancestral domains/lands already delineated according to DENR Administrative Order No. 2, series of 1993, nor to ancestral lands and domains delineated under any other community/ancestral domain program prior to the enactment of this law. ICCs/IPs enactment of this law shall have the right to apply for the issuance of a Certificate of Ancestral Domain Title (CADT) over the area without going through the process outlined hereunder;
- b. Petition for Delineation - The process of delineating a specific perimeter may be initiated by the NCIP with the consent of the ICC/IP concerned, or through a Petition for Delineation filed with the NCIP, by a majority of the members of the ICCs/IPs;
- c. Delineation Paper - The official delineation of ancestral domain boundaries including census of all community members therein, shall be immediately undertaken by the Ancestral Domains Office upon filing of the application by the ICCs/IPs concerned. Delineation will be done in coordination with the community concerned and shall at all times include genuine involvement and participation by the members of the communities concerned;
- d. Proof required - Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of owners which shall be any one (1) of the following authentic documents:
 1. Written accounts of the ICCs/IPs customs and traditions;
 2. Written accounts of the ICCs/IPs political structure and institution;
 3. Pictures showing long term occupations such as those of old improvements, burial grounds, sacred places and old villages;

4. Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs;
 5. Survey plans and sketch maps;
 6. Anthropological data;
 7. Genealogical surveys;
 8. Pictures and descriptive histories of traditional communal forests and hunting grounds;
 9. Pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges, hills, terraces and the like; and
 10. Write-ups of names and places derived from the native dialect of the community.
- e. Preparation of Maps - On the basis of such investigation and the findings of fact based thereon, the Ancestral Domains Office of the NCIP shall prepare a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein;
 - f. Report of Investigation and Other Documents - A complete copy of the preliminary census and a report of investigation, shall be prepared by the Ancestral Domains Office of the NCIP;
 - g. Notice and Publication - A copy of each document, including a translation in the native language of the ICCs/IPs concerned shall be posted in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial and regional offices of the NCIP, and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere postings shall be deemed sufficient if both newspaper and radio station are not available;

- h. Endorsement to NCIP - Within fifteen (15) days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence: Provided, That the Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification: Provided, further, That in case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP: Provided, furthermore, That in cases where there are conflicting claims, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to the selection below.
- i. Turnover of Areas Within Ancestral Domains Managed by Other Government Agencies - The Chairperson of the NCIP shall certify that the area covered is an ancestral domain. These secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of the Interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation, and any other government agency claiming jurisdiction over the area shall be notified thereof. Such notifications shall terminate any legal basis for the jurisdiction previously claimed;
- j. Issuance of CADT - ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a CADT in the name of the community concerned, containing a list of all those identified in the census; and
- k. Registration of CADTs - The NCIP shall register issued certificates of ancestral domain titles and certificates of ancestral lands titles before the Register of Deeds in the place where the property is situated.

Sec. 53. Identification, Delineation and Certification of Ancestral Lands.-

- a. The allocation of lands within any ancestral domain to individual or indigenous corporate (family or clan) claimants shall be left to the

ICCs/IPs concerned to decide in accordance with customs and traditions;

- b. Individual and indigenous corporate claimants of ancestral lands which are not within ancestral domains, may have their claims officially established by filing applications for the identification and delineation of their claims with the Ancestral Domains Office. An individual or recognized head of a family or clan may file such application in his behalf or in behalf of his family or clan, respectively;
- c. Proofs of such claims shall accompany the application form which shall include the testimony under oath of elders of the community and other documents directly or indirectly attesting to the possession or occupation of the areas since time immemorial by the individual or corporate claimants in the concept of owners which shall be any of the authentic documents enumerated under Sec. 52 (d) of this act, including tax declarations and proof of payment of taxes;
- d. The Ancestral Domains Office may require from each ancestral claimant the submission of such other documents, Sworn Statements and the like, which in its opinion, may shed light on the veracity of the contents of the application/claim;
- e. Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspapers and a radio station are not available
- f. Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcelary survey of the area being claimed.

The Ancestral Domains office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. In case of conflicting claims among individual or indigenous corporate claimants, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and

- g. The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate or corporate (family or clan) claimant over ancestral lands.

Sec. 54. Fraudulent Claims.- The Ancestral Domains Office may, upon written request from the ICCs/IPs, review existing claims which have been fraudulently acquired by any person or community. Any claim found to be fraudulently acquired by, and issued to, any person or community may be cancelled by the NCIP after due notice and hearing of all parties concerned.

Sec. 55. Communal Rights.- Subject to Section 56 hereof, areas within the ancestral domains, whether delineated or not, shall be presumed to be communally held: Provide, That communal rights under this Act shall not be construed as co-ownership as provided in Republic Act No. 386, otherwise known as the New Civil Code.

Sec. 56. Existing Property Rights Regimes.- Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

Sec. 57. Natural Resources within Ancestral Domains.- The ICCs/IPs shall have the priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-

five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the all extractions shall be used to facilitate the development and improvement of the ancestral domains.

Sec. 58. Environmental Consideration.- Ancestral domains or portion thereof, which are found necessary for critical watersheds, mangroves wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by the appropriate agencies with the full participation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes. The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of the government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirement of the existing laws on free and prior informed consent: Provided, That the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer: Provided, further, That no ICCs/IPs shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent.

Sec. 59. Certification Precondition.- all department and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certificate shall only be issued after a field-based investigation is conducted by the Ancestral Domain Office of the area concerned: Provided, That no certificate shall be issued by the NCIP without the free and prior informed and written consent of the ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or controlled corporation may issue new concession, license, lease, or production sharing agreement while there is pending application CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

Sec.60. Exemption from Taxes.- All lands certified to be ancestral domains shall be exempt from real property taxes, specially levies, and other forms of exaction except such portion of the ancestral domains as are actually used for large-scale agriculture, commercial forest plantation and residential purposes and upon titling by other by private person: Provided, that all exactions shall be used to facilitate the development and improvement of the ancestral domains.

Sec. 61. Temporary Requisition Powers.- Prior to the establishment of an institutional surveying capacity whereby it can effectively fulfill its mandate, but in no case beyond three (3) years after its creation, the NCIP is hereby authorized to request the Department of Environment and Natural Resources (DENR) survey teams as well as other equally capable private survey teams, through a Memorandum of Agreement (MOA), to delineate ancestral domain perimeters. The DENR Secretary shall accommodate any such request within one (1) month of its issuance: Provided, That the Memorandum of Agreement shall stipulate, among others, a provision for technology transfer to the NCIP.

Sec. 62. Resolution of Conflicts.- In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which cannot be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: Provided, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: Provided, further, That in any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.

Sec. 63. Applicable Laws.- Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application of laws shall be resolved in favor of the ICCs/IPs.

Sec. 64. Remedial Measures.- Expropriation may be resorted to in the resolution of conflicts of interest following the principle of the "common good". The NCIP shall take appropriate legal action for the cancellation of officially documented titles which were acquired illegally: Provided, That such procedure shall ensure that the rights of possessors in good faith shall be respected: Provided, further, That the action for cancellation shall be initiated within two (2) years from the effectivity of this Act: Provided, finally, That the action for reconveyance shall be a period of ten (10) years in accordance with existing laws.

CHAPTER IX

JURISDICTION AND PROCEDURES FOR ENFORCEMENT OF RIGHTS

Sec. 65. Primary of Customary Laws and Practices.- When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

Sec. 66. Jurisdiction of the NCIP.- The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs; Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

Sec. 67. Appeals to the Court of Appeals.- Decisions of the NCIP shall be appealable to the Court of Appeals by way of a petition for review.

Sec. 68. Execution of Decisions, Awards, Orders.- Upon expiration of the period here provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Hearing Officer of the NCIP.

Sec. 69. Quasi-Judicial Powers of the NCIP.- The NCIP shall have the power and authority:

- a. To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its

internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act;

- b. To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements and other documents of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of this Act;
- c. To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and
- d. To enjoin any or all acts involving or arising from any case pending therefore in which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.

Sec. 70. No restraining Order or Preliminary Injunction - No inferior court of the Philippines shall have the jurisdiction to issue any restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.

CHAPTER IX ANCESTRAL DOMAINS FUND

Sec. 71. Ancestral Domains Fund.- There is hereby created a special fund, to be known as the Ancestral Domains Fund, an initial amount of the One Hundred thirty million pesos (P130,000,000) to cover compensation for expropriated lands, delineation and development of ancestral domains. An amount of Fifty million pesos (P50,000,000) shall be sourced from the gross income of the Philippine Charity Sweepstakes Office (PCSO) from its lotto operation, Ten millions pesos (P10,000,000) from the gross receipts of the travel tax of the preceding year, the fund of the Social Reform Council intended for survey and delineation of ancestral lands/domains, and such other source as the government may be deemed appropriate. Thereafter such amount shall be included in the annual General Appropriations Act. Foreign as well as local funds which are made available for the ICCs/IPs through the government of the

Philippines shall be coursed through the NCIP. The NCIP may also solicit and receive donations, endowments shall be exempted from income or gift taxes and all other taxes, charges or fees imposed by the government or any political subdivision or instrumentality thereof.

CHAPTER XI PENALTIES

Sec. 72. Punishable Acts and Applicable Penalties.- Any person who commits violation of any of the provisions of this Act, such as, but not limited to, authorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: Provided, That no such penalty shall be cruel, degrading or inhuman punishment: Provided, further, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act.

Sec. 73. Persons Subject to Punishment.- If the offender is a juridical person, all officers such as, but not limited to, its president, manager, or head of office responsible for their unlawful act shall be criminally liable therefor, in addition to the cancellation of certificates of their registration and/or license: Provided, That if the offender is a public official, the penalty shall include perpetual disqualification to hold public office.

CHAPTER XII
MERGER OF THE OFFICE FOR NORTHERN CULTURAL
COMMUNITIES (ONCC) AND THE OFFICE FOR SOUTHERN
CULTURAL COMMUNITIES (OSCC)

Sec. 74. Merger of ONCC/OSCC.- The Office for Northern Cultural Communities (ONCC) and the Office of Southern Cultural Communities (OSCC), created under Executive Order Nos. 122-B and 122-C respectively, are hereby merged as organic offices of the NCIP and shall continue to function under a revitalized and strengthened structures to achieve the objectives of the NCIP: Provided, That the positions of Regional Directors and below, are hereby phased-out upon the effectivity of this Act: Provided, further, That officials and employees of the phased-out offices who may be qualified may apply for reappointment with the NCIP and may be given prior rights in the filing up of the newly created positions of NCIP, subject to the qualifications set by the Placement Committee: Provided, furthermore, That in the case where an indigenous person and a non-indigenous person with similar qualifications apply for the same position, priority shall be given to the former. Officers and employees who are to be phased-out as a result of the merger of their offices shall be entitled to gratuity at a rate equivalent to one and a half (1 1/2) months salary for every year of continuous and satisfactory service rendered or the equivalent nearest fraction thereof favorable to them on the basis of the highest salary received. If they are already entitled to retirement benefits or the gratuity herein provided. Officers and employees who may be reinstated shall refund such retirement benefits or gratuity received: Provided, finally That absorbed personnel must still meet the qualifications and standards set by the Civil Service and the Placement Committee herein created.

Sec. 75. Transition Period.- The ONCC/OSCC shall have a period of six (6) months from the effectivity of this Act within which to wind up its affairs and to conduct audit of its finances.

Sec. 76. Transfer of Assets/Properties.- All real and personal properties which are vested in, or belonging to, the merged offices as aforesaid shall be transferred to the NCIP without further need of conveyance, transfer or assignment and shall be held for the same purpose as they were held by the former offices: Provided, That all contracts, records and documents shall be transferred to the NCIP. All agreements and contracts entered into by the merged offices shall remain in full force

and effect unless otherwise terminated, modified or amended by the NCIP.

Sec. 77. Placement Committee.- Subject to rules on government reorganization, a Placement Committee shall be created by the NCIP, in coordination with the Civil Service Commission, which shall assist in the judicious selection and placement of personnel in order that the best qualified and most deserving persons shall be appointed in the reorganized agency. The placement committee shall be composed of seven (7) commissioners and an ICCs/IPs representative from each of the first and second level employees association in the Offices for Northern and Southern Cultural Communities (ONCC/OSCC), nongovernment organizations (NGOs) who have served the community for at least five (5) years and people organizations (POs) with at least five (5) years of existence. They shall be guided by the criteria of retention and appointment to be prepared by the consultative body and by the pertinent provisions of the civil service law.

CHAPTER XIII FINAL PROVISIONS

Sec. 78. Special Provision.- The City of Baguio shall remain to be governed by its Charter and all lands proclaimed as part of its townsite reservation shall remain as such until otherwise reclassified by appropriate legislation: Provided, That prior land rights and titles recognized and/or required through any judicial, administrative or other processes before the effectivity of this Act shall remain valid: Provided, further, That this provision shall not apply to any territory which becomes part of the City of Baguio after the effectivity of this Act.

Sec. 79. Appropriations.- The amount necessary to finance the initial implementation of this Act shall be charged against the current year's appropriation of the ONCC and the OSCC. Thereafter, such sums as may be necessary for its continued implementation shall be included in the annual General Appropriations Act.

Sec. 80. Implementing Rules and Regulations.- Within sixty (60) days immediately after appointment, the NCIP shall issue the necessary rules and regulations, in consultation with the Committees on National Cultural Communities of the House of Representatives and the Senate, for the effective implementation of this Act.

Sec. 81. Saving Clause.- This Act will not in any manner adversely affect the rights and benefits of the ICCs/IPs under other conventions, recommendations, international treaties, national laws, awards, customs and agreements.

Sec. 82. Separability Clause.- In case any provision of this Act or any portion thereof is declared unconstitutional by a competent court, other provisions shall not be affected thereby.

Sec. 83. Repealing Clause.- Presidential Decree NO. 410, Executive Order Nos. 122-B and 122-C, and all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 84. Effectivity.- This Act shall take effect fifteen days (15) days upon its publication in the Official Gazette or in any two (2) newspapers of general circulation.

Approved: 29 October 1997.

REPUBLIC ACT NO. 8492

AN ACT ESTABLISHING A NATIONAL MUSEUM SYSTEM,
PROVIDING FOR ITS PERMANENT HOME AND FOR OTHER PURPOSES

Sec. 1. Short title. — This Act may be known as the "National Museum Act of 1998."

Sec. 2. Declaration of policy. — It is the policy of the State to pursue and support the cultural development of the Filipino people, through the preservation, enrichment and dynamic evolution of Filipino national culture, based on the principle of unity in diversity in a climate of free artistic and intellectual expression.

Sec. 3. Conversion of the National Museum. — To implement the above declared State policies, and to ensure its independence and autonomy, the present National Museum hereafter referred to as the Museum, is hereby converted into a trust of the government. The National Museum is detached from the Department of Education, Culture and Sports and from the National Commission of Culture and the Arts. It shall be placed solely for budgetary purposes under the Office of the President.

The Museum, as established under this Act shall be known by the name of "National Museum," and by that name shall be known and have perpetual succession with the power, limitations, and restriction hereafter contained and no other.

The National Museum shall be a permanent institution in the service of the community and its development, accessible to the public, and not intended for profit. It shall obtain, keep, study and present material evidence of man and his environment. The National Museum shall inform the general public about these activities for the purpose of study, education and entertainment.

The primary mission of the National Museum shall be to acquire documents, preserve, exhibit, and foster scholarly study and appreciation of works of art specimens and cultural and historical artifacts.

Pending its reorganization by the board of trustees, the National Museum shall be composed of the Museum structure, organization and its collections, properties, assets and liabilities.

Sec. 4. Permanent Home; Evidence of title to site and buildings. — The whole Executive House Building also known as the old Congress Building, the Department of Finance building and Department of Tourism building on Agrifina Circle shall be the permanent and exclusive site of the Museum. They shall be known as the National Museum Complex. The Executive House shall now be known as the "National Museum."

The site and lands selected for the building for the Museum shall be deemed appropriated to the Museum, and the record of the description of such site and lands, or a copy thereof, certified by the Chairman and Secretary of the Board of Trustees, shall be received as evidence in all courts of the extent and boundaries of the lands appropriated to the Museum.

Sec. 5. Preservation of the Senate Session Hall. — The National Museum shall preserve the Senate Session Hall as a tribute to the legacy of the great men and women of the Philippine Senate for their invaluable contributions to the Filipino people, and as a relic where democracy and freedom reigned and events of national significance transpired.

Sec. 6. Objectives. — The Museum shall have the following objectives:

6.1. As an educational institution, the National Museum shall take the lead in disseminating knowledge of Filipino cultural and historical heritage and developing a corps of professional knowledgeable about the preservation, enrichment and dynamic evaluation of the Filipino national culture.

6.2. As a scientific institution, the Museum shall continue to conduct basic and systematic research programs combining integrated laboratory and field work in anthropology and archaeology, geology and paleontology, botany, and zoology. It shall maintain reference collections on these disciplines and promote scientific development in the Philippines.

6.3. As a cultural center, the Museum shall take the lead in the study and preservation of the nation's rich artistic and cultural heritage, in the

reconstruction and rebuilding of our past, and the development of the national cultural wealth.

Sec. 7. Duties and function. — The Museum shall have the following duties and functions:

- 7.1. Acquire documents, collect, preserve, maintain, administer and exhibit to the public, cultural materials, objects of art, archaeological artifacts, ecofacts, relics and other materials embodying the cultural and natural heritage of the Filipino nation, as well as those of foreign origin. Materials relevant to the recent history of the country shall be likewise acquired, collected, preserved, maintained, advertised and exhibited by the Museum;
- 7.2. Conduct researches, archaeological and scientific, on Philippine flora and fauna; collect, preserve, identify and exhibit to the public systematically all types of plants and manuscripts and scientific papers on them and maintain a reference collection on such subjects;
- 7.3. Document all objects held by the National Museum in its collections or borrowed by the Museum by registering them in an inventory and cataloguing them, and manage any movement of the collections both within the Museum and elsewhere in such a way that the Museum is able to locate any object in the collections at any time, initially on paper records, but to be converted to computerized records on a professional museum documentation system as soon as time and budget allow.
- 7.4. Conduct researches on the origin, history and geographic distribution of, and to collect, preserve, study and exhibit rocks, minerals and fossils of plants and animals; maintain a reference collection and to prepare for publication scientific studies on them;
- 7.5. Regulate registration, excavation, preservation and exportation of Philippine cultural properties through a legal department and customs department which shall be established for these purposes;
- 7.6. Implement the pertinent provisions of Presidential Decree No. 374, as further amended, and other related laws on the protection and conservation of cultural properties;

- 7.7. Undertake research on salvage archaeology, monitor and control archaeological excavations, diggings and researches into Philippine pre-history and proto-history;
- 7.8. Gather, identify, reconstruct, restore and maintain a national archaeological reference collection; study archaeological artifacts and ecofacts, with their corresponding data and deduce archaeological interpretations;
- 7.9. Undertake researches on the pre-history of the Philippines in order to define the foundations of the cultures of the people by conducting systematic and controlled archaeological excavations in different sites on land and underwater, and to supplement existing historical documentation;
- 7.10. Collect, preserve, restore and exhibit to the public objects of arts;
- 7.11. Conduct researches on Philippine arts and its relations to the arts of other countries and prepare for publication research papers on them;
- 7.12. Carry out researches among different people of the Philippines to define the ethnography of each group, to establish the ethnology and to document for posterity and exhibit to the public their traditional and existing cultures, practices and artistic forms expressive of their culture;
- 7.13. Collect, acquire, identify, reconstruct, restore, preserve and maintain ethnographic items; gather their interpretations; mount exhibitions and prepare technical manuscripts for publication;
- 7.14. Maintain a chemical and physical laboratory where scientific analysis of materials recovered from archaeological and ethnographic sites may be undertaken for their preservation;
- 7.15. Plan, organize and stage exhibitions in all disciplines covered by the Museum geology, cultural properties, zoology, botany, archaeology, arts, anthropology, restoration and engineering;
- 7.16. Plan and organize library services, guided tours, lectures, seminars, symposia or workshops;

- 7.17. Implement and enforce Presidential Decree Nos. 260,374, 756, 1109, 1492, 996, 1683 and 1726-A;
- 7.18. Supervise restoration, preservation, reconstruction, demolition, alteration, relocation and remodeling of immovable properties and archaeological landmarks and sites;
- 7.19. Disseminate astronomical knowledge and information through planetarium shows, lectures and demonstrations, exhibits and actual celestial observations;
- 7.20. Maintain, preserve, interpret and exhibit to the public the artifacts in sites of the Paleolithic habitationsite of the possible earliest man to the Philippines, the Neolithic habitation of the ancient Filipino at the Tabon Caves, and other important archaeological sites;
- 7.21. Secure and receive bilateral and international grants and endowments to support its programs/projects.
- 7.22. Initiate, promote, encourage and support the establishment and promotion of, and extend management, technical and financial assistance to regional, provincial, city and/or local museums; and
- 7.23. Develop and implement consortium agreements and linkages with institutions of higher learning and other organizations engaged in similar researches being undertaken by the National Museum.

Sec. 8. Board of trustees. — The business of the Museum shall be conducted at the city of Manila by a Board of Trustees to be composed of the Chairmen of the Committees on Education of the Senate and House of Representatives, the Chairperson of the National Commission for Culture and the Arts and seven (7) representatives from the private sector. Of the seven (7) representatives from the private sector, there shall be included, one (1) distinguished Filipino Artist, one (1) distinguished Filipino Scientist, and one (1) distinguished Filipino historian.

The private sector representatives shall be selected on the basis of their demonstrated interest in and commitment to arts and culture.

The Director of the National Museum is an ex-officio member of the Board of Trustees.

The chairman of the Board shall be appointed by the President of the Philippines. The President shall be the National Museum's Honorary Chairman and patron.

Sec. 9. Appointment of trustees. — The private sector representatives shall be appointed by the President of the Philippines from a short list nominated by recognized NGOs in the Museum and cultural sectors, as well as by prestigious business groups.

Of the private sector representatives, three (3) shall be appointed for a four-year term; three (3) shall be appointed for a two-year term; and one (1) shall be appointed for a one-year term.

They shall all be eligible for one reappointment. Appointment to a position vacated due to death, disability, resignation or any similar cause, shall be for the duration of said unexpired term only.

Sec. 10. Organization of board; expenses, gratuitous services; powers. — The Board of Trustees shall meet in the city of Manila and elect five (5) of their members as an executive committee, and shall fix the time for the regular meetings of the Board; and, on application of any three (3) of the trustees to the Director of the Museum, it shall be his duty to call a special meeting of the Board of Trustees, of which he shall give notice, by letter, to each of the members. The Board may function notwithstanding vacancies, and, at any meeting of the Board, six (6) shall constitute a quorum to do business. Each member of the Board shall be paid his necessary travel and other actual expenses, in attending meetings of the Board, which shall be audited by the executive committee, and recorded by the Director of the Museum; but his service as trustee shall be gratuitous.

The Board may establish such other committees as it may deem proper. The Chairman of any committee to be established must be a member of the Board.

The Board is authorized to adopt an official seal which shall be judicially noticed and to make such bylaws, rules, and regulations, as it deems necessary for the administration of its functions under this Act, including, among other matters, by laws, rules and regulations relating to the acquisition, exhibition, and loan of works of art, the administration of its trust funds, and the organization and procedure of the Board.

Sec. 11. Director of the National Museum; duties; programs and studies; annual report to Congress. — The Board of Trustees shall appoint the Director of the Museum and two (2) Assistant Directors. The Director shall be in charge of the over-all operations of the Museum and implement the policies set by the Board of Trustees and programs approved by it. The Director shall have a proven track record of competent administration and shall be knowledgeable about Museum management.

The Director assisted by two (2) Assistant Directors shall be in charge of the expanded archaeological sites and the Regional Museum Division of the Museum.

Sec. 12. Acting Director. — The Board may, by an instrument in writing filed in the office of the Secretary thereof, designate and appoint an Assistant Director to act as Director when there shall be a vacancy in said office, and whenever the Director shall be unable to perform the duties of his office due to illness, absence, or other cause, and in such case the person so appointed may perform all the duties imposed on the Director by law until the vacancy shall be filled or such inability shall cease. The Board may change such designation and appointment from time to time as the interests of the Museum may in its judgment require.

Sec. 13. Salary and removal of Director and Assistants. — The Director and his assistants shall, respectively, receive for their services such sum as may be allowed by the Board of Trustees; and shall be removed by the Board of Trustees whenever, in their judgment, the interests of the Museum require such removal.

Sec. 14. Personnel training and development. — The Museum shall undertake training and development programs to upgrade the capabilities of the Museum personnel in the various functions of the Museum.

Apart from the practice of allowing scholars to train abroad on official time, personnel involved in the technical aspects of museology and the graduate programs in the disciplines of anthropology, archaeology, the arts, botany, geology and paleontology, astronomy, and zoology, and services related to the operations of the Museum, shall be allowed to pursue their graduate programs on official time, subject to the needs of the service, upon approval of the Director.

Sec. 15. Exhibition unit and central registry unit. — An exhibition department shall be organized in the Museum that will specialize in the planning, design, and execution of quality exhibitions. The services of highly specialized persons may be engaged. The Director, shall have full supervision over regional museums and their personnel. The regional museums shall serve as information and cultural centers offering comprehensive and substantial collection of local archaeological finds, objects of art and other local cultural treasures.

Sec. 17. Reception and arrangement of specimens and objects of art. — Whenever suitable arrangements can be made from time to time for their reception, all objects of art and foreign and curious research, and all objects of natural history, plants, and geological and mineralogical specimens belonging to the Philippines, in whose custody they may be, shall be delivered to such persons as may be authorized by the Board of Trustees to receive them, and shall be so arranged and classified in the Museum as best to facilitate the examination and study of them; and whenever new specimens in natural history, geology, or mineralogy are obtained for the Museum, by exchanges of duplicate specimens, which trustees may in their discretion make, or by donation, which they may receive, or otherwise, the trustees shall cause such new specimens to be appropriately classed and arranged.

All specimens, artifacts and objects of art will be registered immediately upon entry to the Museum, and records will be maintained of all objects in the collections or on loan to the Museum. An inventory will be kept and updated to reflect any movement of objects within the Museum or elsewhere. The objective will be to add full catalogue entries to the records, based on curatorial expertise. Records will initially be kept on paper, but should be computerized in a professional museum documentation system as soon as time and budget allow.

Sec. 18. Laboratories and facilities. — The Museum shall have laboratories and such other adequate facilities for the conservation, preservation and storage of its collections.

Sec. 19. Protection of property. — All laws and ordinances for the protection of public property shall apply to, and be in force for, the protection of the lands, buildings, and other property of the Museum.

Sec. 20. Policing of buildings and grounds; authority to deputize. — The Board of Trustees through its secretary, or their authorized representatives, may designate employees of the Museum as special policemen, without additional compensation for duty in connection with the policing of the buildings and grounds of the Museum.

The Museum shall also have the authority to deputize the Philippine National Police and the Armed Forces of the Philippines for the following:

20.1. protection of newly discovered sites from illegal exploitation;

20.2. the reporting of discovery of archaeological sites; and

20.3. the preservation of important archaeological sites in danger of destruction.

Pursuant to this authority, it shall be obligatory for the local police and civil authorities, especially city and municipal mayors and barangay chairmen to report to the Museum the discovery of archaeological sites. The local police and civil authorities are tasked with the duty of preventing illegal exploitation by unauthorized persons of discovered sites until such time as the Museum shall have established control over them.

Sec. 21. Incentives for discovery of sites. — The Museum is authorized to provide incentives for the reporting of newly discovered archaeological, cultural, and historical sites and to devise a system of equitable rewards for verified reports of significance.

Sec. 22. Appropriation. — The Museum shall continue to submit and receive its annual budget from the general appropriations of the National Government. For this purpose, the Secretary shall submit to Congress annually at the beginning of each regular session thereof a detailed statement of the expenditures of the preceding fiscal year, under appropriations for the "National Museum."

The Museum is authorized to include in its estimate of appropriations such sums as may be necessary for the preservation of its art collection.

Sec. 23. Museum Endowment Fund. — A Museum Endowment Fund is hereby established to be used for special programs, projects and activities of the

Museum in accordance with Section 7 hereof. This Fund shall be administered directly by the Board of Trustees.

For this purpose, the sum of Five hundred million pesos (P500,000,000) is hereby appropriated from the following sources:

23.1 Two hundred fifty million pesos (P250,000,000) from the annual net earnings of the Philippine Charity Sweepstakes Office from its earnings in lotto;

23.2 Two hundred fifty million pesos (P250,000,000) from the annual net earnings of the Philippine Amusement and Gaming Corporation (PAGCOR).

Provided, That the foregoing appropriations shall be payable in quarterly remittances within a period of three (3) years until the amount of Five hundred million pesos (P500,000,000) is reached: Provided, further, That the regular operating budget of the Museum, including other operational costs such as the acquisition of collection materials for the national reference collections, procurement of equipment and supplies, studies and research in the various disciplines and exhibition of artistic and historical artifacts, shall be provided for in the General Appropriations Act: Provided, finally, That only the interest of the above Endowment Fund may be expended for the special projects and programs.

Donations and bequests to the Endowment Fund from the private sector will be exempt from any and all taxes. The Board of Trustees shall direct the investment of the Endowment Fund, and determine annual transfers from its earned interest to the Museum's special projects account.

Sec. 24. Disposal of unappropriated money. — The Trustees are authorized to make such disposal of any other moneys which have accrued, or shall hereafter accrue, as interest upon the Museum, not herein appropriated, or not required for the purposes herein provided, as they shall deem best suited for the promotion of the purpose of the Museum.

Sec. 25. Exemption from taxes. — The Museum shall be exempt from paying import taxes and tariff duties on all art/display materials and equipment directly used for the Museum's non-profit programs including but not limited to books, art materials, chemicals for preservation and restoration, exhibit and technical equipment and films.

Donations and legacies to the Museum shall be exempt from donor's, estate and inheritance taxes.

The Board of Trustees shall recommend to tax authorities the appropriate amount of exemption for donations of objects or donations in kind: Provided, That the Board shall refer to qualified external evaluators to determine the proper valuation of the donation.

Sec. 26. Revolving fund. — The income of the Museum not exceeding the amount of Two million pesos (P2,000,000) derived from the proceeds of the sales of reproductions, cultural items, publications, creation, restoration, conservation, identification, authentication, earnings from planetarium programs, and other auxiliary services shall be constituted as a revolving fund for the use of the Museum.

Sec. 27. Merit system; salaries; annual report of salaries.— Professional Museum personnel with graduate degrees shall be given the rank and benefits of National Scientists, subject to qualifying standards, equivalent to that prescribed in the scientific career merit system of the government.

Museum personnel belonging to the scientific career merit system shall be allowed one (1) year of sabbatical leave for every five years of productive scientific service.

With the approval of the Board, the Museum shall prepare and implement a staffing pattern to determine the duties, qualifications, responsibilities and functions as well as the compensation scheme for the personnel, for approval by the Department of Budget and Management.

The salaries of the professional and technical staff of the Museum shall be exempt from the salary standardization laws affecting personnel of the civil service.

A report in detail, for the preceding fiscal year, shall be made to Congress annually of the salaries of all officers and employees paid from appropriations under the Museum.

Sec. 28. Appointment and compensation of officers and employees; exemption from the attrition law. — The Board may employ such other officers and

employees as may be necessary for the efficient administration, operation, and maintenance of the Museum: Provided, That the Board may delegate to the Director the functions provided in this Section.

Sec. 29. Exemption from attrition law. — The National Museum shall not be subject to the attrition law.

Sec. 30. Hiring of foreign consultants. — Subject to the provisions of the Labor Code and other pertinent legislation, the National Museum may hire foreign consultants and experts.

Sec. 31. Health services. — The Museum shall be provided with adequate health care services.

Sec. 32. De-accessioning policy. — The National Museum may provide for a de-accessioning policy for the purpose of upgrading its collections.

Sec. 33. The National Museum shall be allowed to charge admission fees. It shall also be open on Saturdays, Sundays and public holidays.

Sec. 34. Special budget and audit rules applicable to the Museum. — Recognizing the unique status and special needs of the Museum, the Commission on Audit, Department of Budget and Management and the National Museum shall draw up special rules enhancing and implementing the legislative intention to provide the Museum complete and full flexibility and fiscal autonomy in accordance with generally accepted rules and practices applicable to similar institutions. Said rules shall be drafted and promulgated within sixty (60) days from the effectivity of this Act.

Sec. 35. Penalties. — In addition to the penalties provided under existing laws, any person, including the officers and employees of the museum, found guilty of violating any provision of this Act shall be imprisoned for a term not exceeding two (2) years or a fine not exceeding Ten thousand pesos (P10,000), or both such imprisonment and fine at the discretion of the court.

Sec. 36. Reorganization. — With the approval of the Board, the Museum shall have the authority to reorganize its structure and staffing pattern in order to carry out its functions.

The incumbents in the leadership structure of the existing National Museum shall automatically be upgraded to these analogous positions,

with respect to the rest of the personnel, they shall be extended automatic reappointment except those who opt to avail of an early retirement scheme as determined by the Board of Trustees.

Sec. 37. Repealing clause. — The provisions of Philippine Legislative Act No. 3477, Republic Act No. 4846, Presidential Decree No. 374, Executive Order No. 30, Presidential Proclamation No. 913 and other related laws to the extent that they be inconsistent with this Act, are hereby repealed or amended accordingly.

Sec. 38. Separability clause. — If, for any reason, any part or provision of this Act is declared invalid or unconstitutional, the parts or provisions not affected thereby shall remain in full force and effect.

Sec. 39. Effectivity clause. — This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation, whichever comes first.

