



16 December 2010

Mr. Jared Ragland
Director
Intellectual Property and Innovation
Office of the United States Trade Representative

Re: Docket Number USTR-2010-0035 (2010 Special 301 Out-of-Cycle Review)

Dear Director Ragland:

We respectfully submit the Comments of the Government of the Republic of the Philippines (GRP) pursuant to the request of the Office of the United States Trade Representative (USTR) in relation to the 2010 Special 301 Out-of-Cycle Review (OCR) of the Philippines.

We are also requesting that the GRP be allowed to submit supplemental comments or responses to comments from other parties.

Thank you and best regards.

Sincerely,

Mr. Ricardo R. Blancaflor
Director General

COMMENT

GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

**Submitted to the Office of the United States Trade Representative
(2010 Special 301 Out-of-Cycle Review)**

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INTRODUCTION

The Philippines is very mindful of the value and importance of intellectual property rights (IPR), thus, it has established legal and policy framework to promote, protect and ensure enforcement of IPR. While the present global trend in trade is indeed a challenge for the Philippines to use the IP system and optimize the use of its intellectual property assets, the area of IPR enforcement plays a vital aspect in promoting the use of the IP system as well as maintaining good international trade relations.

One of the challenges in the area of IPR enforcement is the concerns raised by the Office of the United States Trade Representative (USTR) in its annual Special 301 Review. In its 2010 Special 301 Report (30 April 2010), it stated that:

“The Philippines will remain on the Watch List in 2010 with an Out-of-Cycle Review to be conducted this year. Ineffective enforcement of IPR continues to be a concern. Although some agencies continue making progress to increase raid and seizure activity, these efforts have proven insufficient to address widespread piracy and counterfeiting in the country. The United States encourages ongoing efforts to address inefficiencies in the judicial system, and to establish specialized IPR courts so that rights holders have a reliable avenue for recourse and prosecutions move forward effectively and without delay. The United States also encourages the Philippines to complete its work on legislative reforms needed to strengthen IPR protection, including the implementation of the WIPO Internet Treaties, which has been pending in Congress for years, and the final signing of the anti-camcording bill. The United States remains concerned about amendments to the patent law that prohibit patents on certain chemical forms unless the applicant demonstrates increased efficacy. The United States urges the Philippines to address its IPR protection and enforcement challenges, and looks forward to working with the Philippines in the coming year to address these and other issues.”

The Government of the Republic of the Philippines (GRP), through the Intellectual Property Office of the Philippines (IPOPHL), submits this comment to the USTR in relation to the 2010 Out-of-Cycle Review (OCR).

The comment highlights the important strategic actions, reforms, gains and initiatives undertaken by GRP in the promotion, protection and enforcement of IPR, particularly in the areas of enforcement, legislative, and judicial and administrative remedies.

This comment also includes the consolidation of accomplishments of member government agencies of the National Committee on Intellectual Property Rights (NCIPR) formally established on 21 June 2008 through Executive Order No. 736 (E.O. 736). NCIPR is an inter-agency committee tasked, among others, with consolidating policies, plans and programs for the promotion, protection and enforcement of IPR.

A. IPR ENFORCEMENT

I. Strategic Approach

Under Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines (IP Code) the IPOPHL is mandated to administer and implement laws and state policies on intellectual property. While IPOPHL has no enforcement mandate, it takes the lead in ensuring enforcement of IPR both in operations and prosecution of IPR violations through a holistic approach.

Intensified Operations

To strengthen enforcement operations in coordination with several enforcement authorities, the following were undertaken to wit:

1. **Organization:** Established an Operations Center in May 2010 to coordinate and spearhead enforcement operations of various law enforcement authorities. It also receives complaints from rights holders and if necessary, undertakes case build up, to ensure prosecution of IPR violation cases. For immediate assistance and reporting of places where pirated and counterfeit goods are sold, a hotline number can be contacted at (0632) 752-4870.
2. **Funding Support:** Released P10 Million support fund from the Office of the President (OP) in June 2010 for the operational requirements of the National Committee on Intellectual Property Rights (NCIPR) for the promotion, protection and enforcement of IPR.

3. Secured Warehouse Facility: Worked out the availability of a warehouse which can be used by rights holder, free of charge, during the pendency of IPR violation cases. This was undertaken to address the concern of rights holders on the cost of storage whenever there are seizures made and cases filed.
4. OMB and BOC Deputization of IPOPHL:
 - Institutional arrangement with the Optical Media Board (OMB) wherein certain IPOPHL employees were deputized as agents of OMB. This gives said IPOPHL employees visitorial and inspection powers, at least, for optical media products.
 - Institutional arrangement with the Bureau of Customs (BOC) giving IPOPHL, upon request, mission orders, to conduct visitorial and inspection powers on imported items in violation of the IP Code and also in violation of the Tariff and Customs Code of the Philippines (TCCP).
5. Clean Up of Notorious Malls: IPOPHL secured the commitment and cooperation of Greenhills Shopping Center (GSC) administration in combating counterfeiting and piracy.

IPOPHL in a series of high level forum convinced brand owners/rights holders to provide a list of their authorized sellers in the Philippines. On this basis, IPOPHL wrote on 14 December 2010 GSC to disallow stalls or lessees selling said counterfeit products.

In this campaign, IPOPHL secured the initial participation of famous brands such as Louis Vuitton, Nike, Breitling, Sanuk, Fitflop, and Gucci. Initial reports gathered, counterfeit products of these brands are no longer blatantly sold in stalls.

Strengthened Mechanisms for Prosecution

To complement the aggressive enforcement operations, IPOPHL strengthened internal administrative mechanisms for disposition of IP cases and ensured greater involvement of key partners: To this end, the following were the reforms and initiatives undertaken:

1. Immediate Injunctive Relief and Introduction of Forensic Evidence: Office Order No. 186 [Enhancing the Enforcement of Intellectual Property Rights by Amending Certain Provisions of the Regulations on Administrative Complaints for Violation of Law involving Intellectual Property Rights (IPV Rules)] was issued giving, among others, rights holder an immediate remedy of temporary restraining order upon complaint if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury.
2. Institutional arrangement with DOJ to provide full time prosecutors for the handling of IPR violation cases.
3. Pursued Public Private Partnership (PPP): Spearheaded and maintained PPP including regular conduct of High Level Forum on IPR Enforcement to build a good working relationship and coordination with the rights holders and their representatives or counsels, and encourage them to pursue and prosecute IPR violation cases.
4. Cancellation of Business/Corporate Registration: IPOPHL shall institute action for the cancellation of business name of erring establishments registered with the DTI on the ground of trade and industry law violations. The same arrangement is being worked out with the Securities and Exchange Commission (SEC) for corporate entities.

In addition, IPOPHL took the initiative of asking the US Embassy in the Philippines to cancel the visa of mall/store owners violating IPR.

Equally important in its drive to ensure enforcement of IPR, IPOPHL continues in its effort to change the mindset of the people by conducting series of information campaign, and IP promotions and advocacy works to increase the level of awareness, appreciation of and respect for IPR.

With the continuous effort to enhance the legal and institutional framework of IPR protection and enforcement; intensified enforcement operations; and education campaign to instill respect for IPR, IPOPHIL is hopeful that counterfeiting and piracy will be substantially lessened.

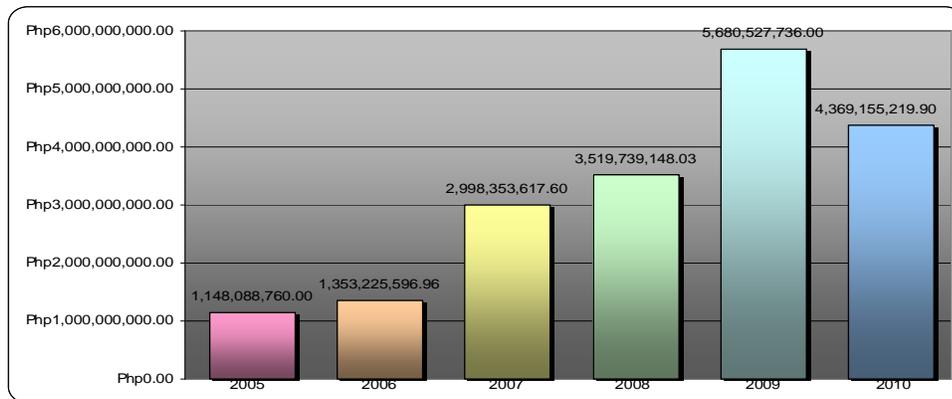
II. National Committee on Intellectual Property Rights (NCIPR)

For the period 2005 to 2010, the combined enforcement operations of the Intellectual Property Unit-Bureau of Customs (IPU-BOC), Anti-Fraud and Commercial Crimes Division-Philippine National Police (AFCCD-PNP), Intellectual Property Rights Division-National Bureau of Investigation (IPRD-NBI) and Optical Media Board (OMB) under the NCIPR resulted in the confiscation of 31 replicating machines and 38,840,971 pieces, 31 containers and 38,965 boxes of counterfeit and pirated products amounting to P19,068,970,378.49. (Annex "A")

For the period January to November 2010, the NCIPR was able to confiscate 4,626,011 pieces and 148 boxes of pirated and counterfeit goods with an estimated amount of P4,369,155,219.90. (Annex "B")

The yearly performance of the NCIPR from 2005 to 2009 shows that it went up by 61.39% (P2,160,788,587.97) in 2009 compared to 2008; it went up by 17.39% (P521,385,530.43) in 2008 compared to 2007; it went up by 121.57% (P1,645,128,020.64) in 2007 compared to 2006; and it went up by 17.87% (P205,136,836.96) in 2006 compared to 2005. The graph below shows the performance of the NCIPR for the years mentioned above.

**NCIPR Enforcement Data
(2005 – November 2010)**



The 2010 Special 301 Report notes that Greenhills, Quiapo, Binondo, Makati Cinema Square and 168 Mall are notorious physical markets. The USTR encouraged the responsible authorities to step up efforts to combat piracy and counterfeiting in these and similar markets. Moreover, the report stated that, "Street stalls in these areas are haven for counterfeit clothing, shoes, watches, and handbags. Due to unwillingness of local investigation agencies and

government authorities to confront stall owners, trademark owners have had a difficult time obtaining meaningful enforcement action. Also, although a 2006 Executive Order establishes landlord liability, reportedly no landlords have yet been prosecuted for IPR violations.”

Record shows that for the period 2005 to 2010, the NCIPR conducted 13,450 enforcement operations around the country. Of these activities, 8,914 were inspections of retail outlets and production areas, 4,332 were by search warrants, 57 plant audits and 147 warrants of seizure and detention. (Annex “A”) Of the 13,450 enforcement operations, 326 raids were conducted in notorious physical markets. 1,999 raids were conducted in other areas. (Annex “C”)

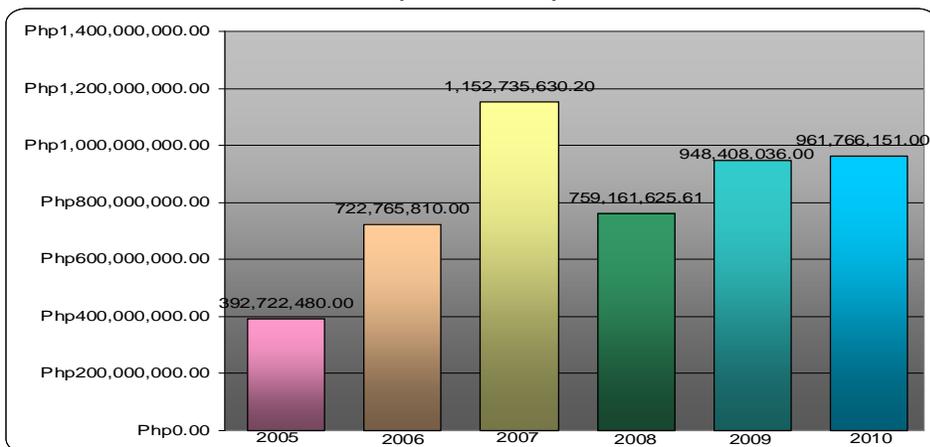
The aggregated data above was broken down below to highlight the contribution of the different law enforcement agencies under the NCIPR in curbing piracy and counterfeiting in the country:

b. Intellectual Property Unit-Bureau of Customs (IPU-BOC)

For the period January to November 2010, IPU-BOC issued 3 warrants of seizure and detention and confiscated 224,984 pieces and 4 boxes of fake products amounting to P961,766,151.00. (Annex “D”)

The yearly performance of IPU-BOC from 2005 to 2009 shows that it went up in 2006 compared to 2005 by 84.03% (P330,043,330.00) and in 2007 compared to 2006 by 59.49% (P429,969,820.20). However, it went down in 2008 by 34.14% (P393,574,004.59) compared to 2007. In 2009 it went up by 24.93% (P189,246,410.39) compared to 2008.

**BOC Enforcement Data
(2005 – 2010)**

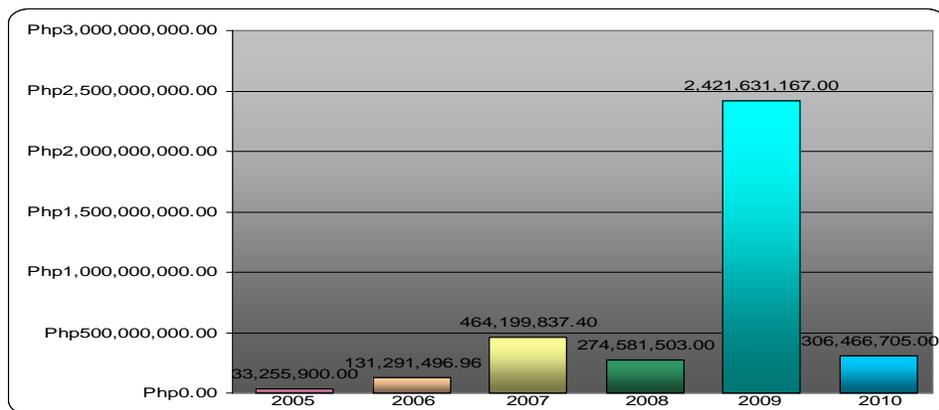


c. Anti-Fraud and Commercial Crimes Division-Philippine National Police (AFCCD-PNP)

For the period January to November 2010, AFCCD-PNP served 130 search warrants and seized a total of 150,107 pieces and 132 boxes of counterfeit and pirated goods worth P306,466,705.90. (Annex “E”)

The yearly performance of AFCCD-PNP from 2005 to 2009 shows that increases were significant in 2006 compared to 2005 (294.80% or P98,035,596.96) and in 2007 compared to 2006 (253.50% or P332,908,340.44). However, it went down in 2008 compared to 2007 by 40.85% (P189,618,334.40). In 2009 it went up by 781.94% (P2,147,049,664.00) compared to 2008.

**PNP Enforcement Data
2005 – 2010**

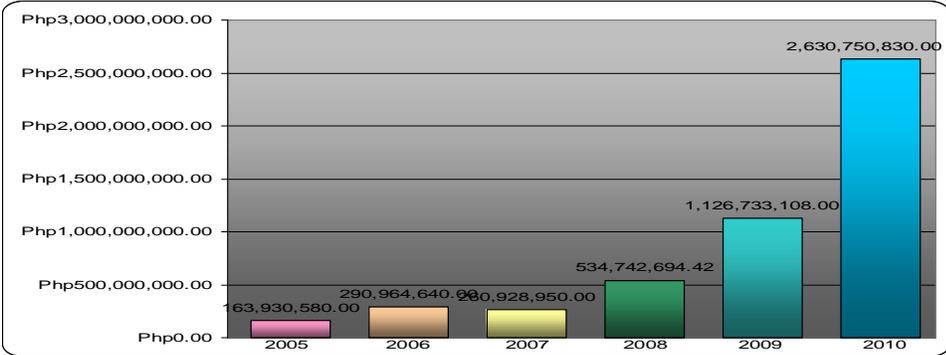


d. Intellectual Property Rights Division-National Bureau of Investigation (IPRD-NBI)

For the period January to November 2010, IPRD-NBI received 84 complaints and filed 149 cases directly with the Department of Justice (DOJ). It served 464 search warrants and seized a total of 1,117,925 pieces and 12 boxes of pirated and counterfeit goods with an estimated value of P2,630,750,830.00. (Annex “F”)

The yearly performance of IPRD-NBI from 2005 to 2009 shows that in 2006 it improved by 77.50% (P127,034,060.00) compared to 2005. However, it went down in 2007 by 10.32% (P30,035,690.00) compared to 2006. But there was a significant improvement in 2008 by 104.93% (P273,813,744.42) compared to 2007 and in 2009 by 107.21% (P591,990,413.58) compared to 2008.

**NBI Enforcement Data
2005 – 2010**

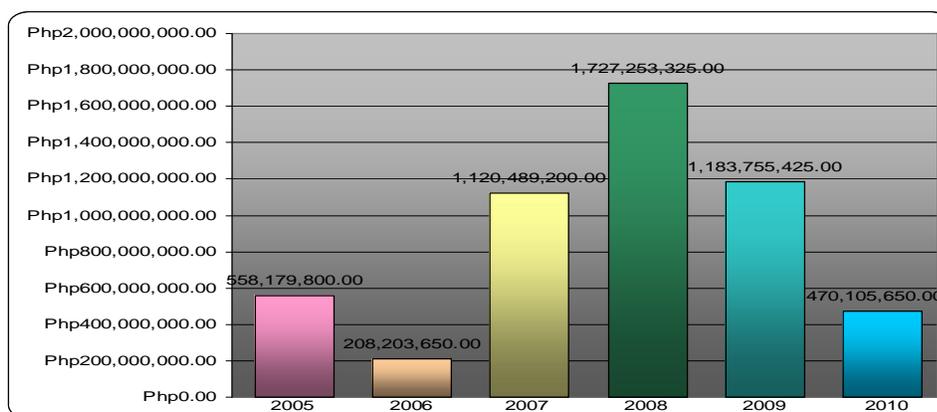


e. Optical Media Board (OMB)

For the period January to September 2010, OMB conducted 950 operations (by inspections) and seized 3,132,995 pieces of optical discs valued at P470,105,650.00. Other articles and equipment seized include: 25 DVD players, 52 televisions, 61 CPU, 25 amplifiers, 58 speakers, 9 sub-woofers, 18 monitors, 6 CD/DVD writers and 8 tower burners. (Annex “G”)

The yearly performance of OMB from 2005 to 2009 shows that it went down in 2006 by 62.70% (P349,976,150.00) compared to 2005. But increased dramatically in 2007 by 438.16% (P912,285,550.00) compared to 2006 and in 2008 by 54.15% (P606,764,125.00) compared to 2007. In 2009 it went down by 31.46% (P543,497,900.00) compared to 2008.

**OMB Enforcement Data
2005 – 2010**



B. LEGISLATIVE REFORMS AND INITIATIVES

I. Legislative Reforms

a. Republic Act No. 10088 (Anti-Camcording Act of 2010)

The Act was approved on 13 May 2010. It took effect on 04 July 2010. The law aims to curb illegal camcording activities in the country. It prohibits and penalizes the unauthorized use, possession and/or control of audiovisual recording devices for the unauthorized recording of cinematographic films and other audiovisual works and/or their soundtracks in an exhibition facility.

In August 2010, an Orientation Seminar on the provisions of the Anti-Camcording Act was provided to the Philippine National Police (PNP), whose agency has been designated to lead the enforcement of RA No. 10088. The fight against movie piracy in the country has been intensified with the signing of a Memorandum of Understanding (MOU) between the PNP, the National Bureau of Investigation (NBI), the Department of Justice (DOJ), the National Cinema Association of the Philippines (NCAP), the Motion Picture Anti-Piracy Council (MPAPC), the Motion Picture Association (MPA) and associations of local film producers to coordinate the fight against illegal camcording.

b. Republic Act No. 9502 (Universally Accessible Cheaper and Quality Medicines Act of 2008)

The Act was approved on 06 June 2008.¹ The law amends specific sections of Republic Act No. 8293 (Intellectual Property Code), Republic Act No. 6675 (The Generic Act of 1988), and Republic Act No. 5921 (The Pharmacy Law). The DOH-DTI-IPO-BFAD² Joint Administrative Order 2008-01, which is the Implementing Rules and Regulations for Republic Act No. 9502, was signed on 04 November 2008.³

The IPOPHL's Bureau of Patents (BOP) is amending its Manual of Substantive Patent Examination Procedures (MSPEP) for drugs and medicines.

c. Republic Act No. 10055 (Philippine Technology Transfer Act of 2009)

The law otherwise known as the Philippine Technology Transfer Act of 2009 became effective on May 8, 2010. It provides the framework and support system for the ownership, management, use and commercialization of intellectual property generated from research and development funded by government and for other purposes. This makes research and development institution the default owner of IPR arising from the results of government funded research. In addition, scientists will now be allowed to create, manage or serve as consultants to companies that can commercially exploit technology arising from government funded research.

The Joint DOST-IPO Administrative Order No. 02-2010 provides for the Implementing Rules and Regulations of RA No. 10055. The IRR underlined the intent of the law which is lodging ownership of IP rights to research and development institutions by setting parameters on copyright ownership and recovery of IP ownership.

¹ Published in two newspapers of general circulation on 19 June 2008.

² Department of Health-Department of Trade and Industry-Intellectual Property Office-Bureau of Food and Drugs

³ Published on 06 November 2008 and took effect on 21 November 2008.

II. Legislative Initiatives

a. **Copyright Bill to Implement World Intellectual Property Organization (WIPO) Internet Treaties (WIPO Copyright Treaty [WCT] and the WIPO Performances and Phonograms Treaty [WPPT])**

Both Houses of Congress have pending bills that intend to implement the WIPO Internet Treaties. The bills are:

1. **House Bill No. 47 (An Act Amending Certain Provisions of Republic Act No. 8293 Entitled, "An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions and for Other Purposes)**

Filed by Representative Rufus B. Rodriguez on 01 July 2010. The bill was read on First Reading and referred to the Committee on Trade and Industry on 27 July 2010.

The bill seeks to amend the Code through the integration of comprehensive, swift, efficient and adequate strategies designed to respond to the criminal onslaught of Internet piracy. At the same time, it seeks to give as much concern to the rights of performers, phonogram producers and broadcasters in the same breath as those accorded authors of artistic and literary works, by acknowledging the right of such phonogram producers, performers or broadcasters to control or be compensated for the various ways in which their works are used or enjoyed by others.

This measure also seeks to recognize rights to distribution and rental, and rights to receive payments for certain forms of broadcasting or communication to the public.

This bill was consolidated with House Bill 267 as approved by the Committee on Trade and Industry on 23 November 2010. The consolidated bill now House Bill 3841 is scheduled on the House of Representatives Calendar of Business for second Reading when it resumes session on 17 January 2011.

2. House Bill No. 267 (An Act Amending Certain Provisions of Republic Act No. 8293, Otherwise Known as the “Intellectual Property Code of the Philippines,” and for Other Purposes.

Filed by Representative Juan Edgardo M. Angara on 01 July 2010. The bill was read on First Reading and referred to the Committee on Trade and Industry on 27 July 2010.

The bill seeks to amend the Intellectual Property Code of the Philippines (IP Code) through the integration of comprehensive and efficient strategies to respond to the upsurge of Internet piracy. Also, it seeks to give recognition to the rights of performers, phonogram producers and broadcaster as are accorded authors of artistic and literary works, by acknowledging their right to control or be compensated for the various ways in which their works are used or enjoyed by others.

This measure also seeks to recognize rights to distribution and rental, and rights to receive payments for certain forms of broadcasting or communication to the public.

As stated, the consolidated House Bill 3841 is scheduled for Second Reading when the House of Representatives resumes session on 17 January 2011.

To highlight compliance of the said Bill with the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty refer to Annex “H”.

3. Senate Bill No. 2487 (An Act Amending Certain Provisions of Republic Act No. 8293 Entitled “An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions and for Other Purposes)

Filed by Senator Manuel B. Villar Jr. on 08 September 2010. The bill was read on First Reading and referred to the Committees on Trade and Commerce and Constitutional Amendments, Revision of Codes and Laws on 27 September 2010.

Under this amendment, a Bureau of Copyright is created to focus on the literary and artistic works and its derivatives with the end in view of ensuring that any dispute that may arise related to the same may be swiftly addressed.

Further, in view of the changing times, i.e. the evolution of contracts, leap in the electronic age and information technology, the IP Code is likewise amended to adjust to these changes. For example the rights enjoyed by assignees of a copyright are now also enjoyable by licensees, the reproduction of a copyrighted work will not be considered an infringement if reproduced in a specialized format for use of visually impaired persons, the concept of “technological measure” is introduced to prevent the public from circumventing ways of gaining access to an otherwise restricted copyright, the power of the Customs Commissioner as regards infringing materials is now expanded not only to cover those imported protected materials but also those that are exported, and the rights of producers of sound recordings are also expanded to include the authority to permit and/or restrict public access of the same.

Instances when there are infringement and remedies if such arise are likewise amended. The principle of double the damage under certain circumstances is introduced to increase the penalty imposed against infringers and thereby dissuade future infringers from committing the acts prohibited under the law. A provision of disclosure of information is likewise inserted to provide notice to the owners of such copyright of any discovered infringement.

b. Visitorial and Enforcement Powers of IPOPHL Director General

- 1. House Bill No. 3147 (An Act Amending Certain Provisions of Republic Act No. 8293 Entitled “An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions and For Other Purposes”)**

Filed by Congressman Joel Roy Duavit on 04 October 2010. The bill was read on First Reading and referred to the Committee on Trade and Industry on 10 October 2010.

The bill which is still pending at the committee level seeks to address the inadequacy of enforcement mechanisms to protect IPR by according visitorial powers and empowering the Director General of IPOPHL to undertake enforcement functions supported by concerned agencies. Thus, IPOPHL would be more adequately equipped to protect IPR and provide immediate assistance to IPR owners.

2. Senate Bill No. 2553 (An Act Amending Certain Provisions of Republic Act No. 8293 Entitled “An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions and For Other Purposes”)

Filed by Senator Manuel B. Villar on 30 September 2010. The bill was read on First Reading and referred to the Committees on Trade and Commerce and Constitutional Amendments, Revision of Codes and Laws on 04 October 2010.

The bill which is still pending at the committee level seeks to address the inadequacy of enforcement mechanisms to protect IPR by according visitorial powers and empowering the Director General of IPOPHL to undertake enforcement functions supported by concerned agencies. Thus, IPOPHL would be more adequately equipped to protect IPR and provide immediate assistance to IPR owners.

C. JUDICIAL AND IPR DISPUTE RESOLUTION REMEDIES

I. Administrative Reforms

a. Office Order No. 186 (Enhancing the Enforcement of Intellectual Property Rights by Amending Certain Provisions of the Regulations on Administrative Complaints for Violation of Law involving Intellectual Property Rights (IPV Rules))

This Office Order which was signed on December 6, 2010 was an amendment to the modified rules and regulations on Administrative complaints which took effect last March 28, 2001. Office Order No. 186 was published in a newspaper of general circulation last December 10, 2010 and will be effective on 01 January 2011.

This amendment strengthened the provisional remedies/injunctive relief of the concerned party. If the matter is of extreme urgency and the applicant for provisional remedies will suffer grave injustice and irreparable injury, the Hearing Officer as approved by the Director with the concurrence of the Director General may issue EX PARTE a temporary restraining order effective for only seventy two (72) hours from issuance. It also allows the presentation or submission of forensic evidence which may be admitted and given weight.

b. Office Order No. 154 (Rules of Procedure for IPO Mediation Proceedings)

As an alternative dispute resolution scheme, IPOPHL issued rules on mediation proceedings covering the following cases:

1. Administrative complaints for violation of Intellectual Property Rights (IPV) and/or Unfair Competition;
2. Inter partes cases (IPC);
3. Disputes involving technology transfer payments;
4. Disputes relating to the terms of a license involving the author's rights to public performance or other communication of his work;
5. Cases appealed to the Office of the Director General from decisions of the Bureau of Legal Affairs (BLA) and the Documentation, Information and Technology Transfer Bureau (DITTB); and
6. All other cases which may be referred to mediation during the settlement period declared by the Director General.

Rules of Procedure for IPOPHL Mediation proceedings took effect last 21 October 2010. It was an expanded coverage for cases that will fall under mediation. Referral to mediation is mandatory. IP Philippines Mediation Office (IPPMO) was created last January 29, 2010 (Office Order No. 14 Series of 2010) to administer the mediation. A Steering committee was also established to provide legal and technical assistance as well as logistical support to IPPMO. The mediation period will start on 15 February 2011.

c. IOPPHL Arbitration Office

IOPPHL envisions an alternative IPR dispute resolution through arbitration. In coordination with World Intellectual Property Organization (WIPO) and the Philippine Dispute Resolution Center Inc. (PDRCI), training and seminars for IPR arbitrators have been conducted in preparation for the operationalization of the Arbitration Office. IOPPHL is now in the process of promulgating the Rules on Arbitration.

II. Judicial Initiatives

a. Special Rules on IP Litigation

The proposed Special Rules on IP Litigation is now being reviewed by a special committee in the Supreme Court prior to its submission to the Court en banc for approval. It is expected that the said special rules will be passed and approved early next year.

b. Specialized Intellectual Property Rights (IPR) Courts

To increase court competence and their efficiency in the disposition of IP cases, the proposed special rules recommends the designation of twenty-two (22) Regional Trial Courts, located mostly in urbanized areas throughout the country, as “Special IP Courts” having exclusive jurisdiction over IP cases within their respective territorial jurisdictions. Aside from the advantage of creating a system wherein resources for training and capacity building of court personnel may be more economically distributed among a limited number of courts, the proposal seeks foremost to expedite court procedures and reduce the backlog of IP cases. Increasing volume of IP cases concentrated in selected courts, the judges in these special courts will develop the expertise in IP cases, thus, hastening litigation and raising the quality and consistency of decisions. Different stakeholders welcome this move.

Complementary to the creation of Special IP Courts, the proposed Rules likewise recommends that the special courts be authorized to issue criminal and civil writs of search and seizure which are enforceable nationwide, even outside of their respective territorial jurisdictions. Such authority would

encourage more brand owners to pursue legal remedies to enforce IPR in light of safeguards against prejudicial disclosure or leakage of critical operational information. Aside from a more expedient resolution of warrant applications, judges from Special IP Courts would also be more equipped to establish the requirements of probable cause for issuance of a warrant, owing to their extensive training and proficiency in IP.

Moreover, the proposed rules also recommends that judicial authorities be allowed, after hearing and conditioned upon the posting of a sufficient bond, to order that goods found infringing be disposed of outside the channels of commerce after the filing of a complaint. Relevant evidence will be preserved under the requirement of retaining representative samples, together with photographs and inventories, which may be used as evidence in lieu of the actual items. The proposal seeks to alleviate the burden of IPR owners who must shoulder the exorbitant cost of storage, and addresses the problem of seized goods of a perishable nature, which will spoil during long-term storage. The remedy would likewise prevent the pilferage of warehouses, which makes possible the release of dangerous counterfeit goods into the market.

D. INSTITUTION AND CAPACITY BUILDING

I. Enforcement

A significant part of institution building is establishing and sustaining public-private partnerships to promote and protect IPR and to broaden support for the IP system. This year, IP Philippines and the NCIPR forged the following partnerships.

a. Public Private Partnership

1. Memorandum of Understanding (MOU) Formally Establishing the Anti-Book Piracy Coalition (ABC)

ABC is a partnership between the government and the private sector dedicated to combating all forms of book piracy in the country. The parties are IPOPHL, National Book Development Board (NBDB), Optical

Media Board (OMB), Philippine National Police (PNP), National Bureau of Investigation (NBI), Book Development Association of the Philippines (BDAP) and Filipinas Copyright Licensing Society Inc. (FILCOLS). The MOU was signed on 26 May 2010.

2. Reaffirmation of Memorandum of Understanding (MOU) between IPOPHL and the Intellectual Property Coalition Inc. (IP Coalition)

IPOPHL and IP Coalition signed on 28 October 2005 a MOU agreeing to support each other and nurture a strategic partnership that will work to open the gateway to economic growth and progress through genuine protection and promotion of IPR.

Considering the significance of the collaborative agreement in the promotion, protection and enforcement of IPR in the country, IPOPHL and IP Coalition reaffirmed this cooperation on 03 August 2010, and agreed to develop projects within the next three (3) months.

3. Memorandum of Agreement (MOA) on Cooperation of the Relevant Government Agencies of the Government of the Philippines with the Federation of the Swiss Watch Industry FH and Selective Trademark Union Limited (STU)

The parties⁴ to the MOA, which was signed on 17 August 2010, agreed to promote multi-lateral cooperation and to develop mechanisms and channels aimed at sharing and exchanging relevant information in order to prevent and suppress the importation, exportation, sale, wholesale, assembly and manufacture of products that infringe the IPR of Swiss watch brands and other members of the Federation of the Swiss Watch Industry (FH).

⁴ IP Philippines, Bureau of Customs (BOC), Philippine National Police (PNP), National Bureau of Investigation (NBI), Federation of the Swiss Watch Industry (FH) and Selective Trademark Union Ltd. (STU)

4. Public-Private Partnership Council for Intellectual Property Rights (P3CIPR)

On 15 September 2010, IP Philippines organized the 1st Public-Private Partnership Council for Intellectual Property Rights (P3CIPR) Forum for the year. This is a regular consultation, coordination and cooperation between the government (represented by NCIPR) and the private sector led by the Director General of IPOPHL on IPR protection and enforcement in the country. IPOPHL institutionalized the P3CIPR in April 2006.

b. Intellectual Property Rights (IPROTECT) Training Program

The IPROTECT Training program was institutionalized by IPOPHL in 2006 to improve personnel capability for IPR protection and enforcement.

This year, IPOPHL organized the following programs for the members of NCIPR:

1. Product Identification Training: Epson, Motorola & Canon

The training was conducted on 23 March 2010 in partnership with Epson, Motorola & Canon, and was attended by thirty-five (35) participants from the NCIPR.

2. Workshop on Effective Practices in the Regulation of Optical Media, Digital Piracy and Anti-Piracy Efforts

The workshop was in partnership with the Optical Media Board, United States Patent and Trademark Office Global Intellectual Property Academy (USPTO-GIPA) and the Embassy of the United States of America – Manila. It was conducted on 15 July 2010 and was attended by seventy-four (74) participants from the NCIPR.

3. Product Identification Training: Swiss Watches

Conducted on 17 August 2010 in partnership with the Federation of the Swiss Watch Industry FH (the Swiss watch industry's leading trade association currently bringing together more than 500 members

representing more than 90% of all Swiss watch manufacturers with a mission, among others, to protect the interests of the Swiss watch industry on a national and international level) and the Embassy of Switzerland – Philippines. Thirty-seven (37) participants from the NCIPR attended the activity.

4. National Workshop on Counterfeiting, Piracy and Border Measures

The activity was conducted in partnership with the IPR Business Partnership, a private aggregation of international IP stakeholders that works to reduce the effect of counterfeiting and piracy through active and practical cooperation between IP rights owners and the Customs, Police and other frontline law enforcement agencies and through the implementation of the TRIPS Agreement and other international instruments⁵. Ninety-nine (99) participants (NCIPR: 80 and private sector: 19) attended the workshop.

c. Ceremonial Destruction

To emphasize the significance of the efforts of the government in curbing piracy and counterfeiting in the country, IP Philippines led the NCIPR in the ceremonial destruction of counterfeit and pirated goods held on 23 June 2010 at the headquarters of the Philippine National Police in Camp Crame, Quezon City. The event marked the 13th anniversary of the passage of the Intellectual Property Code of the Philippines (Republic Act No. 8293).

Among the goods destroyed included pirated CD's and DVD's, a fake router, counterfeit Louis Vuitton and Coach bags, photocopied books and fake medicines.

Among those who witnessed the occasion were members of the Executive Committee of IP Philippines and representatives of the embassies of the United States of America and Switzerland.

⁵ Abercrombie & Fitch, Adidas, BBC, Societe BIC, BIEM, British American Tobacco, Chanel, Daimler Chrysler, Dolby Laboratories, EliLilly, Epson, General Motors, Harley Davidson, IFPI, Imaging Consumables, Imperial Tobacco, Intel Corporation, JT International, La Chemise Lacoste, LVMH Fashion Group, L'Oreal, Microsoft, Motion Picture Association, MSD Merck Shape & Dohme, New Era Cap, Nike, Pfizer, Hermes International, Pharmaceutical Security Institute (PSI), Philip Morris, Philips, Procter & Gamble, Reebok, Rouse & Co., Samsung, Sanofi Aventis, Sara Lee, SNB-REACT, Sony, Spirits International Swiss Watch Federation, Timberland, Tommy Hilfiger, Underwriters Labs, Unilever and V.F Europe

II. IP Promotions/Advocacy Works

a. Memorandum of Understanding/Agreement (MOU/MOA)

IPOPHL formalized its partnerships with various universities and institutions that have agreed to host the Innovation and Technology Support Offices (ITSO) or patent libraries. In Cebu City, four universities, namely: the University of San Carlos (USC), the University of San Jose-Recoletos (USJ-R), the Cebu Institute of Technology University (CITU), and the University of Cebu (UC) including one (1) business organization, the Cebu Furniture Industries Foundation (CFIF), have all signed the Memorandum of Agreement (MOA) on 17 November 2010.

In Metro Manila, the University of Santo Tomas (UST), and the Ayala Foundation, Inc. (AFI), have also signed agreements with IPOPHL on the establishment of patent libraries held last 15 November 2010 at the IPOPHL Office. The establishment of this facility will provide Filipinos access to global science and technology information that are legally available for developing innovations.

On 15 November, an MOU with IP Foundation and the Intellectual Property Association of the Philippines (IPAP) was also signed. The former is a study on the determination of the status of a trademark as an internationally well-known mark which has significant implications in the trademark system and Sections 123.1(d) and (f) of the IP Code while the latter is a study on the registration of geographical indications either under a sui generic protection system or under the trademark system in other jurisdictions, legal principles, criteria and parameters for protection.

On 27 October 2010, IPOPHL and the Department of Science and Technology entered into MOU regarding the "Balik Scientists Program." Other MOAs/MOUs entered into by IPOPHL with partner organizations are the Intellectual Property Alumni Association (IPAA) on the Fair Use Study which aims to clarify the concept of fair use of copyrighted works in the academe, considering the balancing of rights of copyright owners and the users of copyrighted works, the IP Coalition on the Study of Certification Marks which will compare systems of registration of certification marks in different jurisdictions, as well as the criteria and parameters of their

protection including the establishment of a system of registration of certification marks ideal to the Philippine setting, the IP PRO for studies on patents which includes the study on the concept of novelty as a requirement for patentability as applied in different jurisdiction such as the US and the EU, and the Bolar Exception which aims to dissect the doctrines enunciated in said US landmark and the Licensing Executives Society of the Philippines (LESP) on the study of non-traditional trademarks.

Aside from MOAs/MOUs signed with various IP organizations, IPOPHL also signed a Declaration of Commitment with the Philippine Chamber of Commerce and Industry (PCCI) in October 2010 to boost competitiveness of small and medium enterprises (SMEs) through the effective use of the patent system. A core group of IP advocates/specialists shall also be formed within the various local chambers of PCCI in the archipelago to assist SMEs in the creation, registration and commercialization of IP assets including the integration of IP Management in SMEs business strategy/plan.

Superbrands, the only international Award giving body on marketing/branding in the Philippines, entered into a partnership with IPOPHL specifically the Bureau of Trademarks to deliver the second Superbrands Academy last July 2010. According to the Chief Executive Officer of Superbrands, it will now be a requirement for brands to be registered with IPOPHL before becoming a Superbrands.

b. Public Outreach Programs

Basic Orientation Seminars (BOS): IP Philippines conducted a total of 21 seminars, particularly with the following:

1. Adamson University (29 January 2010)
2. DLSU- St. Benilde School of Design and Arts (11 February 2010)
3. PUP Lopez Quezon (17 February 2010)
4. UP-IECEP (27 February 2010)
5. PROFES 1: DLS-CSB (10 March 2010)
6. B.R.A.I.N.S Institute for the Highly Talented (Bright) (05 May 2010)
7. BOC Employees (19 May 2010)
8. FIS (29 May 2010)
9. PROFES 1: DLS-CSB (22 June 2010)

10. PTTC (25 June 2010)
11. PTTC (30 June 2010)
12. PTTC (05 July 2010)
13. DOST PEZA Open Technology Business Incubator (07 July 2010)
14. for High School Students Philippine Science Centrum (22 July 2010)
15. DLSU College of Saint Benilde School of Design and Arts (17 August 2010)
16. Integrated Research and Training Center (15 September 2010)
17. FNRI- DOST Employees (20-21 September 2010)
18. BOC Employees (23 September 2010)
19. LGU's (24 September 2010)
20. 4th Cavite Entrepreneurship Students Summit-Intellectual Property Rights Seminar (26 November 2010)
21. College of Engineering Polytechnic University of the Philippines (01 December 2010)

Learn Earn and Protect IP (LE.A.P. IP): IP Philippines conducted a total of 21 seminars, particularly with the following:

1. The World of Patents: An Introduction to Invention Patents (12 February 2010)
2. Earn for your Innovations and Novel Designs: An Introduction to Utility Model and Design Patents (26 February 2010)
3. Distinguishing your Business Trademarks: An Introduction to Trademarks (12 March 2010)
4. Literary and Artistic Works: Your Valuable Copyright Creations – An Introduction to Copyright (26 March 2010)
5. The World of Patents: An Introduction to Invention Patents (16 April 2010)
6. Earn for your Innovations and Novel Designs: An Introduction to Utility Model and Design Patents (23 April 2010)
7. Distinguishing your Business Trademarks: An Introduction to Trademarks (14 May 2010)
8. Literary and Artistic Works: Your Valuable Copyright Creations – An Introduction to Copyright (28 May 2010)
9. The World of Patents: An Introduction to Invention Patents (11 June 2010)
10. Earn for your Innovations and Novel Designs: An Introduction to Utility

11. Distinguishing your Business Trademarks: An Introduction to Trademarks
(09 July 2010)

CONCLUSION

Indeed, notwithstanding the inadequacies in the existing IP Code regarding the enforcement mandate of IPOPHL, it is apparent that through coordinated efforts between and among various government agencies and stakeholders, the enforcement strategies and actions of the Philippines to enforce IPR have been greatly intensified. Notwithstanding the limited logistics and resources, the value of seizures alone from 2005 to date is significant. This is reflective of the dedication and commitment of IPR enforcers in curbing counterfeiting and piracy.

The legal technicalities of running after IPR violators continue to pose a major challenge for the enforcement authorities, thus, the urgency of securing utmost and timely cooperation of rights holders. Just as IPOPHL encourages IPR enforcers to be IP advocates, the rights holder must also be encouraged to be the first IPR enforcer. The fight against counterfeiting and piracy is a function of strong cooperation between the government and the rights holder.

Taking the lead on this campaign, IPOPHL embarked on a holistic approach using the following strategies:

1. IPOPHL in coordination with the BOC will exercise visitorial powers on imported items that are counterfeit.
2. IPOPHL in coordination with the OMB will exercise visitorial and inspection powers on optical media products.
3. PNP and NBI will conduct "test buy" on suspected counterfeit items as basis of probable cause to effect enforcement of IPR.
4. Application of search warrants.
5. Cancellation of Visa (e.g. US Visa) of IPR violators.
6. Cancellation of business name registration with the Department of Trade and Industry (DTI).
7. Cancellation of Mayor's Permit in coordination with the Local Government Units (LGUs).
8. Filing of cases for violation of Consumer Welfare Act against IPR violators.
9. Revocation of registration with the Securities and Exchange Commission (SEC) of IPR violators who are corporations or partnerships.

10. Application of Executive Order No. 913 on the power of DTI to enforce trade and industry laws.

Nonetheless, the Government may have all the necessary laws and institutional mechanisms to combat counterfeiting and piracy but without the proper cooperation from the rights holders the same cannot be successfully executed.

This year IPOPHL worked out the availability of a warehouse, free of charge, to address the concern of the rights holders on the cost of storage, yet to date there is no taker of said facility. With its Operations Center, it provides some intelligence information to rights holders for them to file the necessary complaint and effect enforcement operations. In one case, in May 2010 IPOPHL Operations Center received information about rampant copyright infringement in Cebu City of certain books, and immediately relayed the same to the concerned publishers who are members of Association of American Publishers (AAP). The enforcement authorities were already informed about the planned operations but the same was delayed because of the lack of special power of attorney from the publishers. IPOPHL constantly followed up the same with the rights holders' local representative but it took several months before the request was acted upon. Recently, IPOPHL was informed that while the special power of attorney of the publishers are already with their local representative, they could not yet file the necessary complaint or application for search warrant as they still have to conduct an investigation. This coordination process between rights holders and their respective local representatives must be duly addressed or streamlined to maintain the momentum of enforcement operations.

On the matter of getting convictions for violations of IPR, IPOPHL noted that either the rights holders would not pursue prosecution of cases after seizure is made or they would enter into an amicable settlement. With this, conviction would be impossible as cases are not being prosecuted. In fact, the number of cases filed is not proportionate to the amount and volume of seizures made by enforcement authorities. This can be explained by the said lukewarm attitude of rights holders in handling IPR violation cases. IPOPHL already wrote the US Embassy on this to inform them of certain US companies that opted to enter into an amicable settlement.

It may be an overwhelming task to weed out "notorious markets", but with the holistic approach to operations and enforcement, judicial reforms combined with the legislative initiatives particularly the grant of enforcement powers to IPOPHL, it is envisioned that the Philippines will be considered an **IP-friendly country**.

Annexes

Annex "A"
Combined Enforcement Operations
2005-2010 (January-November)

YEAR	NO. OF OPERATIONS				QUANTITY				ESTIMATED VALUE (Php)
	Inspection	Search Warrant	Plant Audit	WSD	Pieces	Boxes/Sacks	Replicating Machines	Container	
2005	1,565	1,339	-	26	5,208,142	9,072	11	1	1,148,088,760.00
2006	942	788	14	26	2,990,301	4,559	-	-	1,353,225,596.96
2007	2,503	486	23	33	7,301,262	17,707	4	-	2,998,353,617.60
2008	1,838	562	8	41	6,958,562	6,377	5	30	3,519,739,148.03
2009	1,134	563	12	12	11,756,693	1,102	11	-	5,680,527,736.00
2010	950	594	-	3	4,626,011	148	-	-	4,369,155,219.90
TOTAL	8,914	4,332	57	147	38,840,971	38,965	31	31	19,068,970,378.49

Annex "B"
Combined Enforcement Operations (Per Agency)
2010 (January-November)

AGENCY	NO. OF OPERATIONS				QUANTITY				ESTIMATED VALUE (Php)
	Inspection	Plant Audit	Search Warrant	WSD	Pieces	Cartons/ Boxes	Container	Replicating Machines	
NBI	-	-	464	-	1,117,925	12	-	-	2,630,750,830.00
PNP*	-	-	130	-	150,107	132	-	-	306,466,705.90**
OMB***	950	-	-	-	3,132,995	-	-	-	470,105,650.00
BOC****	-	-	-	3	224,984	4	-	-	961,766,151.00
TOTAL	950	0	594	3	4,626,011	148	-	-	4,369,155,219.90

*PNP no report for the month of November.

**P1,405,750.00 reported by Directorate for Investigation & Detective Management (DIDM).

***No data for the month of November.

****No data for the months of March, April, August, October & November.

Annex "C"
Summary of Enforcement Activities Notorious (Physical) Areas
2005-2010 (January-November)

PERIOD	AGENCY	AREAS RAIDED							OTHERS
		QUIAPO	BINONDO	METO-WALK	168 MALL	MAKATI CINEMA SQUARE	ST. FRANCIS SQUARE	GREENHILLS (SAN JUAN)	
2005 to 2010 (Jan-Sept)	NBI	16	78	1	7	-	1	7	324
	PNP	4	37	-	2	1	-	5	166
	OMB	63	22	10	6	42	12	11	1503
SUB-TOTAL		83	138	11	15	32	43	23	1,999
GRAND TOTAL		2,325							

Annex "D"
IPU-BOC Enforcement Performance
2010 (January-November)

YEAR	NO. OF OPERATIONS	QUANTITY			ESTIMATED VALUE (Php)
	Warrant of Seizure and Detention	Container	Pieces	Sacks/Boxes	
January	-	-	63,804	-	5,700,324.00
February	-	-	-	4	4,855,434.00
March	-	-	-	-	-
April	-	-	-	-	-
May	-	-	-	-	-
June	-	-	120,975	-	886,206,913.00
July	-	-	-	-	-
August	-	-	-	-	-
September	-	-	40,205	-	65,003,480.00
October	-	-	-	-	-
November	-	-	-	-	-
TOTAL	-	-	224,984	4	961,766,151.00

Annex "E"
PNP-IPU Enforcement Performance
2010 (January-November)

MONTH	NO. OF SEARCH WARRANTS SERVED	QUANTITY		ESTIMATED VALUE (Php)
		Pieces	Boxes/Sacks	
January	10	27,708	122	164,720,145.00
February	7	59	10	15,250.00
March	15	82,164	-	301,600.00
April	11	7,803	-	673,409.00
May	2	83	-	5,403,000.00
June	9	4,364	-	30,172,780.00
July	6	122	-	15,758,200.00
August	6	15,393	-	21,000,000.00
September	35	4,078	-	1,354,397,50
October	29	438	-	2,468,642.00
November	-	-	-	-
TOTAL	130	150,107	132	306,466,705.90

Annex "F"
IPRD-NBI Enforcement Performance
2010 (January-November)

MONTH	NO. OF SEARCH WARRANTS SERVED	QUANTITY		ESTIMATED VALUE (Php)
		Pieces	Boxes/ Sacks	
January	34	28,512	-	25,433,200.00
February	55	60,271	-	233,299,000.00
March	50	36,481	-	185,788,000.00
April	54	2,311	-	9,420,270.00
May	16	4,021	-	65,869,000.00
June	19	9,183	-	28,597,500.00
July	23	44,716	-	125,105,000.00
August	44	158,749	-	175,451,000.00
September	44	206,877	12	620,981,000.00
October	43	16,847	-	191,680,000.00
November	82	549,957	-	724,163,830.00
TOTAL	464	1,117,925	12	2,630,750,830.00

Annex "G"
OMB Enforcement Performance
2010 (January-November)

MONTH	NO. OF OPERATIONS			ESTIMATED SEIZED OPTICAL DISCS			ESTIMATED VALUE (Php)
	Inspection	Search Warrant	Plant Audit	Inspection	Search Warrant	Total	
January	26	-	-	269,000	-	-	40,327,000.00
February	25	-	-	146,800	-	-	22,045,500.00
March	57	-	-	320,000	-	-	48,000,000.00
April	136	-	-	398,400	-	-	59,760,000.00
May	133	-	-	308,800	-	-	46,320,000.00
June	105	-	-	338,400	-	-	50,760,000.00
July	154	-	-	394,800	-	-	59,220,000.00
August	151	-	-	464,400	-	-	70,410,000.00
September	72	-	-	193,658	-	-	28,209,900.00
October	91	-	-	293,400	-	-	44,010,000.00
November	-	-	-	-	-	-	-
TOTAL	950	-	-	3,132,995	-	-	470,105,650.00

*Other articles and equipment seized include: 25 DVD players, 52 televisions, 61 CPU, 25 amplifiers, 58 speakers, 9 sub-woofers, 18 monitors, 6 CD/DVD writers and 8 tower burners.

Annex “H”
Matrix on House Bill No. 3841 and the WIPO Copyright Treaties

H.B. 3841	WIPO Copyright Treaty	WIPO Performances and Phonograms Treaty
<p>171.3 “Communication to the public” or “communicate to the public” means ANY COMMUNICATION TO THE PUBLIC, INCLUDING BROADCASTING, REBROADCASTING, RETRANSMITTING BY CABLE, BROADCASTING AND RETRANSMITTING BY SATELLITE, AND INCLUDES 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;”</p>	<p>Article 8</p> <p>Right of Communication to the Public</p> <p>Without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii) and 14bis(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.</p>	
<p>171.12 “TECHNOLOGICAL MEASURE” MEANS ANY TECHNOLOGY, DEVICE OR COMPONENT THAT, IN THE NORMAL COURSE OF ITS OPERATION, RESTRICTS ACTS IN RESPECT OF A WORK, PERFORMANCE OR SOUND RECORDING, WHICH ARE NOT AUTHORIZED BY THE AUTHORS, PERFORMERS OR PRODUCERS OF SOUND RECORDINGS CONCERNED OR PERMITTED BY LAW.</p> <p>171.13 “RIGHTS MANAGEMENT INFORMATION” MEANS INFORMATION WHICH</p>	<p>Article 11</p> <p>Obligations concerning Technological Measures</p> <p>Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.</p>	<p>Article 18</p> <p>Obligations concerning Technological Measures</p> <p>Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of</p>

<p>IDENTIFIES THE WORK, SOUND RECORDING OR PERFORMANCE; THE AUTHOR OF THE WORK, PRODUCER OF THE SOUND RECORDING OR PERFORMER OF THE PERFORMANCE; THE OWNER OF ANY RIGHT IN THE WORK, SOUND RECORDING OR PERFORMANCE; OR INFORMATION ABOUT THE TERMS AND CONDITIONS OF THE USE OF THE WORK, SOUND RECORDING OR PERFORMANCE; AND ANY NUMBERS OR CODES THAT REPRESENT SUCH INFORMATION, WHEN ANY OF THESE ITEMS IS ATTACHED TO A COPY OF THE WORK, SOUND RECORDING OR FIXATION OF PERFORMANCE OR APPEARS IN CONJUNCTION WITH THE COMMUNICATION TO THE PUBLIC OF A WORK, SOUND RECORDING OR PERFORMANCE.”</p>	<p>Article 12</p> <p>Obligations concerning Rights Management Information</p> <p>(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:</p> <p>(i) to remove or alter any electronic rights management information without authority;</p> <p>(ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances, works or copies of works knowing that electronic rights management information has been removed or altered without authority.</p> <p>(2) As used in this Article, “rights management information” means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.</p>	<p>phonograms concerned or permitted by law.</p> <p>Article 19</p> <p>Obligations concerning Rights Management Information</p> <p>(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:</p> <p>(i) to remove or alter any electronic rights management information without authority;</p> <p>(ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.</p> <p>(2) As used in this Article, “rights management information” means information which identifies the performer, the performance of the performer, the producer of the phonogram, the phonogram, the owner of any right in the performance or phonogram, or information about the terms and</p>
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		<p>conditions of use of the performance or phonogram, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a fixed performance or a phonogram or appears in connection with the communication or making available of a fixed performance or a phonogram to the public.</p>
<p>208.4 THE RIGHT TO AUTHORIZE THE MAKING AVAILABLE TO THE PUBLIC OF THEIR SOUND RECORDINGS IN SUCH A WAY THAT MEMBERS OF THE PUBLIC MAY ACCESS THE SOUND RECORDING FROM A PLACE AND AT A TIME INDIVIDUALLY CHOSEN OR SELECTED BY THEM, AS WELL AS OTHER TRANSMISSIONS OF A SOUND RECORDING WITH LIKE EFFECT.</p>		<p>Article 14 Right of Making Available of Phonograms</p> <p>Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.</p>
<p>216.1 Remedies for Infringement. - Any person infringing a right protected under this law shall be liable:</p> <p style="text-align: center;">x x x</p> <p>TO [P]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</p>	<p>Articles 11 and 12</p>	<p>Articles 18 and 19</p>

<p>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: PROVIDED, THAT THE AMOUNT OF DAMAGES TO BE AWARDED SHALL BE DOUBLED AGAINST ANY PERSON WHO:</p> <p>CIRCUMVENTS EFFECTIVE TECHNOLOGICAL MEASURES; OR</p> <p>HAVING REASONABLE GROUNDS TO KNOW THAT IT WILL INDUCE, ENABLE, FACILITATE OR CONCEAL THE INFRINGEMENT, REMOVE OR ALTER ANY ELECTRONIC RIGHTS MANAGEMENT INFORMATION FROM A COPY OF A WORK, SOUND RECORDING, OR FIXATION OF A PERFORMANCE, OR DISTRIBUTE, IMPORT FOR DISTRIBUTION, BROADCAST, OR COMMUNICATE TO THE PUBLIC WORKS OR COPIES OF WORKS WITHOUT AUTHORITY, KNOWING THAT ELECTRONIC RIGHTS MANAGEMENT INFORMATION HAS BEEN REMOVED OR ALTERED WITHOUT AUTHORITY.</p> <p>TO [D]deliver under oath, for impounding during the pendency of the action,</p>		
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<p>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.</p> <p>TO [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.</p> <p>TO [S]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.</p> <p>THE COPYRIGHT OWNER MAY ELECT, AT ANY TIME BEFORE FINAL JUDGMENT IS RENDERED, TO RECOVER INSTEAD OF ACTUAL DAMAGES AND PROFITS, AN AWARD OF STATUTORY DAMAGES FOR ALL INFRINGEMENTS INVOLVED IN AN ACTION IN A SUM EQUIVALENT TO THE FILING FEE OF THE INFRINGEMENT ACTION BUT NOT LESS THAN FIFTY THOUSAND PESOS (Php50,000.00). IN AWARDING STATUTORY DAMAGES, THE COURT MAY CONSIDER THE FOLLOWING</p>		
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<p>FACTORS:</p> <p>(1) THE NATURE AND PURPOSE OF THE INFRINGING ACT;</p> <p>(2) THE FLAGRANCY OF THE INFRINGEMENT;</p> <p>(3) WHETHER THE DEFENDANT ACTED IN BAD FAITH;</p> <p>(4) THE NEED FOR DETERRENCE;</p> <p>(5) ANY LOSS THAT THE PLAINTIFF HAS SUFFERED OR IS LIKELY TO SUFFER BY REASON OF THE INFRINGEMENT; AND</p> <p>(6) ANY BENEFIT SHOWN TO HAVE ACCRUED TO THE DEFENDANT BY REASON OF THE INFRINGEMENT.</p> <p>IN CASE THE INFRINGER WAS NOT AWARE AND HAD NO REASON TO BELIEVE THAT HIS/HER ACTS CONSTITUTE AN INFRINGEMENT OF COPYRIGHT, THE COURT IN ITS DISCRETION MAY REDUCE THE AWARD OF STATUTORY DAMAGES TO A SUM OF NOT MORE THAN TEN THOUSAND PESOS (Php 10,000.00): PROVIDED, THAT THE AMOUNT OF DAMAGES TO BE AWARDED SHALL BE DOUBLED</p>		
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<p>AGAINST ANY PERSON WHO:</p> <p>(i) CIRCUMVENTS EFFECTIVE TECHNOLOGICAL MEASURES; OR</p> <p>(ii) HAVING REASONABLE GROUNDS TO KNOW THAT IT WILL INDUCE, ENABLE, FACILITATE OR CONCEAL THE INFRINGEMENT, REMOVE OR ALTER ANY ELECTRONIC RIGHTS MANAGEMENT INFORMATION FROM A COPY OF A WORK, SOUND RECORDING, OR FIXATION OF A PERFORMANCE, OR DISTRIBUTE, IMPORT FOR DISTRIBUTION, BROADCAST, OR COMMUNICATE TO THE PUBLIC WORKS OR COPIES OF WORKS WITHOUT AUTHORITY, KNOWING THAT ELECTRONIC RIGHTS MANAGEMENT INFORMATION HAS BEEN REMOVED OR ALTERED WITHOUT AUTHORITY.</p>		
<p>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[.]: PROVIDED, THAT THE RESPECTIVE MAXIMUM PENALTY STATED IN SEC. 217. 1 (A), (B) AND</p>		

<p>(C) HEREIN FOR THE FIRST, SECOND, THIRD AND SUBSEQUENT OFFENSE, SHALL BE IMPOSED WHEN THE INFRINGEMENT IS COMMITTED BY:</p> <p>THE CIRCUMVENTION OF EFFECTIVE TECHNOLOGICAL MEASURES; OR</p> <p>THE REMOVAL OR ALTERATION OF ANY ELECTRONIC RIGHTS MANAGEMENT INFORMATION FROM A COPY OF A WORK, SOUND RECORDING, OR FIXATION OF A PERFORMANCE, BY A PERSON, KNOWINGLY AND WITHOUT AUTHORITY; OR</p> <p>THE DISTRIBUTION, IMPORTATION FOR DISTRIBUTION, BROADCAST, OR COMMUNICATION TO THE PUBLIC OF WORKS OR COPIES OF WORKS, BY A PERSON WITHOUT AUTHORITY, KNOWING THAT ELECTRONIC RIGHTS MANAGEMENT INFORMATION HAS BEEN REMOVED OR ALTERED WITHOUT AUTHORITY.</p>		
<p>SEC. 220A. DISCLOSURE OF INFORMATION.</p> <p>220A.1. WHERE ANY ARTICLE OR ITS PACKAGING OR AN IMPLEMENT FOR</p>	<p>Article 14</p> <p>Provisions on Enforcement of Rights</p> <p>(1) Contracting Parties</p>	<p>Article 23</p> <p>Provisions on Enforcement of Rights</p> <p>(1) Contracting Parties</p>

<p>MAKING IT IS SEIZED OR DETAINED UNDER A VALID SEARCH AND SEIZURE UNDER THIS ACT IS, OR IS REASONABLY SUSPECTED TO BE, BY AN AUTHORIZED ENFORCEMENT OFFICER, IN VIOLATION OF THIS ACT, THE SAID OFFICER SHALL, WHEREVER REASONABLY PRACTICABLE, NOTIFY THE OWNER OF THE COPYRIGHT IN QUESTION OR HIS AUTHORIZED AGENT OF THE SEIZURE OR DETENTION, AS THE CASE MAY BE.</p> <p>220A.2. IN THE CIRCUMSTANCES DESCRIBED IN THE PREVIOUS PARAGRAPH, AN AUTHORIZED ENFORCEMENT OFFICER MAY DISCLOSE TO THE OWNER OF THE COPYRIGHT OR TO HIS AUTHORIZED AGENT THE FOLLOWING:</p> <p>THE TIME, AND THE ADDRESS OR PLACE, OF SEIZURE OR DETENTION OF THE ARTICLE;</p> <p>THE NAME AND ADDRESS OF THE PERSON FROM WHOM THE ARTICLE HAD BEEN SEIZED OR DETAINED;</p> <p>THE NATURE AND QUANTITY OF ARTICLES SEIZED OR DETAINED;</p> <p>ANY STATEMENT MADE TO AN AUTHORIZED ENFORCEMENT OFFICER BY THE PERSON IN CONNECTION WITH THE SEIZURE OR DETENTION, EITHER WITH THE PRIOR</p>	<p>undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.</p> <p>(2) Contracting Parties shall ensure the enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.</p>	<p>undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.</p> <p>(2) Contracting Parties shall ensure the enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.</p>
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CONSENT IN WRITING OF THAT PERSON, OR WITHOUT SUCH CONSENT WHERE THE PERSON IS DEAD OR CANNOT AFTER REASONABLE ENQUIRIES BY AN AUTHORIZED ENFORCEMENT OFFICER AS TO HIS WHEREABOUTS BE FOUND; AND

ANY OTHER INFORMATION OR DOCUMENT RELATING TO THE ARTICLE SEIZED OR DETAINED WHICH AN AUTHORIZED ENFORCEMENT OFFICER DEEMS FIT TO DISCLOSE.

220A.3. THE OWNER OF THE COPYRIGHT OR HIS AUTHORIZED AGENT SEEKING DISCLOSURE OF ANY INFORMATION OR DOCUMENT THAT IS NOT REFERRED TO IN THE PREVIOUS PARAGRAPH OR THAT IS NOT DISCLOSED BY THE AUTHORIZED ENFORCEMENT OFFICER MAY APPLY TO THE COURT FOR AN ORDER REQUIRING THE SAID OFFICER TO DISCLOSE SUCH INFORMATION OR DOCUMENT AND THE COURT MAY ON SUCH AN APPLICATION MAKE SUCH ORDER FOR DISCLOSURE AS IT THINKS FIT.