



A Primer on
Performers' Intellectual Property Rights

by
Performers Rights Society of the Philippines

With the support of
Intellectual Property Office of the Philippines
National Commission for Culture and the Arts
Organisasyon ng Pilipinong Mang-aawit
Asosasyon ng Pilipinong Mang-aawit
Katipunan ng mga May Taal na Himig at Awit
Film Academy of the Philippines
Filipino Society of Composers, Authors and Publishers

ARTISTS HAVE RIGHTS, TOO!

“I’m only an artist. I’m here only to please my audience.”

We often hear these words from singers, actors, dancers, writers, directors, composers and other non-performing artists. True to our calling, we are here to create works that give meanings, insights, relevance, and colors to an otherwise dull daily existence of our audiences. Many of us want to change society through our works while few others are content with providing momentary relief from life’s hardship.

Whatever our goals are as artists, the fact remains that other people profit from our works even if we do not want them to. When our works are disseminated to a bigger market, they become commodities for entrepreneurs to profit on.

We have heard sad stories of how artists fell victims to other people’s unscrupulous practices, artists who trustingly signed contracts with provisions that virtually waived their rights in favor of other people. A National Artist with thousands of popular musical compositions died a pauper because he waived his rights to many of his very popular works that continue to be exploited by others. A singer’s work was used for almost a decade by a high-rating television series without due compensation. Writers’ works continue to be used by many textbook publishers with neither permission nor royalty compensation. No one seems to care.

Many of us have spent our entire professional lives perfecting our craft. Just like any other professionals or sectors of society, we contribute so much to nation building not only through earned revenues through taxes but also to the formation of our cultural identity as a people. We deserve the same treatment that society accords its professionals and productive members.

Still unknown to many artists, there are laws that guarantee our rights to our works. Ignorance of the law is not an excuse to forfeit your rights and let others exploit you and your works. This is what this reading material is all about. Take time to read this as this will certainly come in handy the next time you sign your work engagement contracts or when in doubt about the proceeds you are entitled to for commercial utilization of your works.

Your partners in artists’ rights protection,

The PRSP Board of Trustees

Artists and Intellectual Property Rights

On June 6, 1997, Republic Act No. 8293 or the Intellectual Property Code of the Philippines (IP Code) was signed into law. Principally authored by the late Senator Raul Roco, the IP Code contains provisions on copyright (moral and economic rights) and related rights relevant to the needs of the creative sector.

Copyright

Copyright pertains to the bundle of rights granted by law to creators of original intellectual creations in the literary and artistic domains. 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. Creators do not have to undergo any formal process to enjoy the benefits of copyright. Section 172 of the IP Code identifies these works as follows:

1. Books, pamphlets, articles and other writings;
2. Periodicals and newspapers;
3. Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
4. Letters;
5. Dramatic or dramatic-musical compositions; choreographic works or entertainment in dumb shows;
6. Musical compositions, with or without words;
7. Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
8. Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
9. Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
10. Drawings or plastic works of a scientific or technical character;
11. Photographic works including works produced by a process analogous to photography; lantern slides;
12. Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
13. Pictorial illustrations and advertisements;
14. Computer programs; and
15. Other literary, scholarly, scientific and artistic works.

Derivative works are those derived from previous works. The law also covers such works falling into the following categories:

- (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.

Economic Rights refer to the exclusive rights of the creator to carry out, authorize (usually, upon payment of royalties) or prevent the following acts enumerated under Section 177 of the IP Code:

1. Reproduction of the work or substantial portion of the work;
2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;
3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
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;
5. Public display of the original or a copy of the work;
6. Public performance of the work; and
7. Other communication to the public of the work.

Moral Rights refer to the rights that preserve the personal link between the creator and his work. Section 193 of the IP Code further enumerates these rights as follows:

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

Copyright Ownership

As provided in Section 178, copyright ownership are governed by the following rules:

1. In the case of original literary and artistic works, copyright belongs to the author, the natural person who has created the work;
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;
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.
4. For works 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;
5. For 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;
6. For letters, the copyright shall belong to the writer subject to the provisions of Article 723 of the Civil Code.
7. For anonymous and pseudonymous works, 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.

Duration of Copyright Protection

Works are protected during the life of the author and for fifty (50) years after his death. This rule also applies to posthumous works. For works of joint authorship, the economic rights are protected during the life of the last surviving author and for fifty (50) years after his death.

Performers' Rights

Performers are actors, singers, musicians, dancers, and other persons who act, sing, declaim, play in, interpret, or otherwise perform literary and artistic work.

The performers' economic rights cover all aspects relative to the rendering or use of their performances. The exclusive rights of performers under Sec. 203 of the IP Code are as follows:

1. The right of authorizing the broadcasting and other communication to the public of their performance, and the fixation of their unfixed performance;
2. The right of authorizing the direct or indirect reproduction of their performances fixed in sound recordings, in any manner or form;
3. 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;
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
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.

Duration of Performers' Economic Rights

For performances not incorporated in recordings, Sec. 215 of the IP Code grants a fifty (50) – year protection to performers and producers of sound recording reckoned from the end of the year in which the performance took place. If the performance is incorporated in recordings, the 50-year period is counted from the end of the year in which the recording took place.

Additional Remuneration of Performer for Subsequent Communication

Section 206 of the IP Code provides for additional remuneration for subsequent communications or broadcasts of a performance. 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.

Performers' Moral Rights

Independently of the performer's economic rights, the performer has the right to claim to be identified as the performer of his live aural performances or performances fixed in sound recordings (except where the omission is dictated by the manner of the use of the performance). He also has the right to object to any distortion, mutilation or other modification of his performance that would prejudice his reputation.

These rights are maintained and exercised fifty (50) years after his death by his heirs, and in default of heirs, the government, where protection is claimed.

Rights of Producers of Sound Recordings

The rights of producers of sound recordings refer to the right to control the use of the sound recordings, which may consist of music, sound effects, audio versions of science or literary books and the like. Section 208 of the IP Code enumerates the following exclusive rights:

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;
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
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 or pursuant to authorization by the producer.

Single Equitable Remuneration for 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. (Section 209)

Rights of Broadcasting Organizations

The rights of broadcasting organizations refer to their right to control the use of their broadcast. Section 211 provides the following scope of rights of broadcasting organizations:

1. The re-broadcasting of their broadcasts;
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
3. The use of such records for fresh transmissions or for fresh recording.

Limitations of Rights of Performers and Producers of Sound Recording

The law recognizes certain instances when non-commercial use of sound recording or television broadcast may be allowed without prior permission or payment of royalties. Section 212 of the IP Code defines the following acts as exemptions from performers' and producers' rights:

1. The use by a natural person exclusively for his own personal purposes;
2. Using short excerpts for reporting current events;
3. Use solely for the purpose of teaching or for scientific research; and
4. Fair use of the broadcast subject to the conditions under of Section 185.

Remedies on Copyright Infringement

The law allows the aggrieved party to seek preventive measures in the process of litigation. Section 216 provides for remedies available to copyrights owners. Persons found to be infringing copyrights shall be liable to:

1. An injunction restraining such infringement.
2. 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.

3. 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.
4. 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.
5. 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.

Criminal Liabilities and Penalties

The IP Code criminalizes copyright infringement and metes out punishments in the form of a fine and imprisonment terms subject to the gravity and frequency of the offense. Section 217 enumerates the following criminal punishments for persons found guilty of copyrights infringement:

1. 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.
2. 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.
3. 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.
4. In all cases, subsidiary imprisonment in cases of insolvency.

The Role of Collecting Societies

In many countries around the world, artists have formed collecting societies who act on members' behalf on matters pertaining to royalty collection. Collecting societies guarantee members of benefits derived from the exercise of their economic rights over their intellectual properties. This is a generally acceptable, legal, convenient way of enforcing the copyrights of artists in modern countries.

Section 183 of the IP Code authorizes the existence and operations of collecting societies. It specifically provides that 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.

The Filipino Society of Composers, Authors and Publishers (FILSCAP) pioneered the work of royalty collection on behalf of music composers who are its members and has been protecting their rights and interests for over four decades.

The Performers' Rights Society of the Philippines (PRSP)

PRSP is a pioneering attempt to rally performers to protect their intellectual property rights. It seeks to protect their common interests and welfare, promote cooperation and collective action in the pursuit of their similar goals and objectives. It groups together the following organizations of performers in the Philippines:

1. Organisasyon ng Pilipinong Mang-aawit (OPM) – organization of Filipino singers and performers
2. Asosasyon ng Musikong Pilipino (AMP) – organization of Filipino musicians
3. Katipunan ng mga May-Akdang Taal na Himig at Awit (KATHA) – organization of Filipino composers and lyricists
5. Philippine Legitimate Stage Artists Group, Inc. (PHILSTAGE) – alliance of professional performing arts companies
6. Film Academy of the Philippines' Kapisanan ng mga Artista sa Pelikulang Pilipino at Telebisyon (FAP-KAPPT) – assembly of film and television actors

Currently, an elected Board of Trustees composed of the following representatives of member-organizations governs the PRSP:

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| Chair | Leo Martinez (FAP-KAPPT) |
| President | Mitch Valdes (OPM) |
| Corporate Secretary | John Lesaca (AMP) |
| Members | Trina Belamide (KATHA) Dennis Marasigan (PHILSTAGE) |
| Managing Director | Atty. Pablito Perez |
| Secretariat Officer-in-Charge | Elmar Beltran Ingles (OPM-PHILSTAGE) |

Membership to PRSP is open to all Filipino performers. Interested parties only need to accomplish membership form and sign a pro-format Deed of Assignment designating and authorizing PRSP as collecting society to act on the member's behalf on matters pertaining to royalty collection and copyrights protection.

Contact Details:

Performers' Rights Society of the Philippines (PRSP)

Suite 24PB The Eisenhower Condominium

Eisenhower Street, Greenhills, San Juan, Metro Manila, Philippines

Tel. (632) 7231765; 7231845 / Telefax: (632) 7217229 / email: prsp@tri-isys.com