

**Pirates on Board:
An Assessment of the Actions Done by the Optical Media Board in
Deterring Music and Video Piracy in the Philippines**

An Undergraduate Thesis
Presented to
The Faculty of the Department of Social Sciences
College of Arts and Sciences
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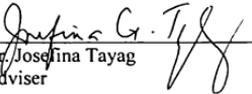
In Partial Fulfillment
of the Requirement for the Degree on
Bachelor of Arts in Political Science

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Approval Sheet

In partial fulfillment of the requirements for the degree of Bachelor of Arts in Political Science, this thesis entitled "Pirates on Board: An assessment of the Actions Done by the Optical Media Board in Deterring Music and Video Piracy in the Philippines" prepared and submitted by Jacqueline Rose Bautista Ong Pe, is hereby recommended for approval.



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Abstract

The problem of piracy is one of the concerns of local film industries. Severe cutting down of film production resulted as losses were experienced. Even businesses producing computer softwares expressed their sentiments against the chronic problem of piracy in the country. The Philippines is still included in the “watch list” of the United States in the intellectual property violators. Consequently, the country has adopted several changes to deal with the problem.

One of the changes adopted was the reorganization of the Videogram Regulatory Board. This was replaced by the Optical Media Board (OMB) which is now headed by Eduardo Manzano. With the new board, it was expected that greater achievements will be accomplished regarding curtailing piracy in the country. Unfortunately, as evident in many places, particularly in Quiapo, piracy has not been solved nor has it been lessened. In fact, many people still opt to buy pirated discs because of their affordable prices.

This study revealed the reasons why elimination of piracy is still not realized. There are factors which are actually beyond the control of the Optical Media Board. These factors include budgetary constraints and shortage in manpower. The Board has to deal with these internal limitations and settle with what the government had provided. In addition, outside factors also affects the operations of the Board. These are first, the politics behind the implementation of OMB's activities, second, the judicial system in the Philippines, third, the local government unit, fourth, the general status of poverty in the Philippines, fifth, the general perception of people in the issues of piracy and artists' protection, and last, the political will of the Arroyo administration. For the most part,

these factors appear to be outside the domain of influence of the OMB. Hence, changes are hard to come by.

However, the Optical Media Board also has its shortcomings as well. The Board needs to strengthen its information campaigns and coordination with other agencies; and employ rigid measures for the implementation of the law. The Board must also ensure the eradication or, at least, the lessening of the padrino system and espouse strict prosecution of cases.

CHAPTER 1

Introduction

Introduction

The Philippines has been included in the United States Trade Representative's Priority Watch List of intellectual property violators. Reports have shown that the Philippine movie industry has been losing millions and millions of pesos due to the proliferation of unregulated and pirated VCDs and DVDs.

Quiapo is one of the most popular places for purchasing very affordable pirated optical discs. One will be amazed at the sight of enormous patronizers haggling to get the cheapest price possible. With pirated CDs, people can watch the films repeatedly; catch the craze caused by telenovelas without waiting for the television channels to put them on air; and enjoy a higher value for their hard-earned money. Who wouldn't be enticed? Leisure for a cheaper price. Furthermore, complaints of low quality pirated CDs are now being eliminated with the existence of CDs, especially DVDs, that are of good quality.

However, the Optical Media Board has been very firm in its fight against piracy. This research will assess the programs and campaigns of the board in fighting piracy in the Philippines. With this, the researcher will provide concrete reasons or factors contributing to the effectiveness or ineffectiveness of the Optical Media Board in its function of eradicating violations of intellectual property rights.

Research Question

How effective are the actions done by the Optical Media Board in deterring music and video piracy in the Philippines?

Sub-questions

1. What is the Intellectual Property Rights and the Copyright Law?

2. What is the Optical Media Board? What are its functions and actions?
3. What is piracy? How is it manifested in the case of selling and buying of VCDs and DVDs?

Objective

To study how effective are the actions done by the Optical Media Board in deterring music and video piracy in the Philippines

Specific Objectives

1. To discuss intellectual property rights and the Copyright Law
2. To study the Optical Media Board as to its structures and functions
3. To assess the factors which contribute to the success or failure of the Optical Media Board in its goal of deterring piracy
4. To give recommendations on how to enhance the OMB's implementation of its function of regulating the production and sales of optical discs

Tentative Answer/Hypothesis

The continuous proliferation of pirated discs is enough evidence that the Optical Media Board has not been successful in its endeavor of curtailing the problem of piracy. People still take the issue lightly as evidenced by the fact that more and more people still buying pirated discs. There are several reasons that contribute to the lingering problem of piracy in the Philippines. First is that people are not made aware of the consequences which results from piracy. There may be advertisements that expose the losses in business and movie industry; however, the general perception is that artists, producers and other people affected by piracy are already multi-billionaires and are continually profiting from the business albeit this piracy problem . A loss of this kind is, as viewed

by many, rather negligible at best. Second, since people are still purchasing these discs, pirates produce even more copies of pirated CDs. Though raids are done by the government, particularly the Optical Media Board, piracy itself is not deterred as vendors and retailers continue on with their operations.

Third, the raids target only the small dealers. The owners of the machines, that is big time dealers, time and again are able to avert the law. And although there were factories and warehouses of pirated discs that have been closed down, these manufacturing establishments continued on with its operations after some time.

The problem of piracy has been in existent for quite a long time. . It is a continuing cycle that is still turning because the source of the problem has not been truly shaken.

Review of Related Literature

The researcher reviewed books, articles, internet materials, and Republic Acts pertinent for better comprehension of the concept of law, intellectual property rights and its components, intellectual property law, piracy, and evaluation research. In addition, the researcher looked into the role of globalization in the evolution of intellectual property rights in developing countries. The Copyright Law as specified in the Intellectual Property Code of the Philippines was used as the main source of information for the specifications of intellectual property in the Philippine context. Furthermore, Republic acts establishing the different agencies designed to eradicate piracy in the Philippines were delved into as well.

Developing countries or the Third World in this time of globalization have been contending to function in an international arena wherein technology is very advanced. P.

Ebony Bondzi-Simpson in the book *The Law and Economic Development in the Third World* (1992) stated that the first and third world are divided on the basis of economic growth. In the quest for economic development, Simpson asserted that the political and economic schemes employed should be for the benefit of the citizens of the state. The law is defined as an instrument through which development in all its dimensions may be pursued. A law is considered authoritative if there is certainty as to what body will carry out the rights, obligations and entitlements. In addition, the nature or content of the rights, obligations and entitlements should be validated and be made certain. One prerequisite of the successful enforcement of a law is the allocation of powers to institutional bodies to execute the provisions of the schemes. Limitations, however, occur when political orders are illegitimately forced, apathetically supported or externally controlled.

The Idea of Law (1987) by Dennis Lloyd provided for two starting points taken to explain the very nature of law. The first view is that law was made in order to achieve social harmony. In addition, this type suggests that man is basically born evil and that no social progress can be attained without a guiding law. On the other hand, another view espoused that man is actually born innately good, but due to sin, man became inept in handling his affairs with harmony with other men. The book also discussed the nature of compliance. Subjects obeying a law may do so because of different reasons. Some reasons cited by the author include authority, charisma, traditional domination, legal domination, force, and force in international law.

Jeremy Phillips and Alison Firth in their book *Introduction to Intellectual Property Law* (1990) defined intellectual property as having two sides. First is the colloquial description which encompasses all things which originate from the use of the

human brain. This includes ideas, inventions, poems, designs, microcomputers and the like. On the other hand, the other side focused more on intellectual creators' rights upon that property. Phillips and Firth, moreover, manifested that intellectual properties are enjoyed by people because of the author's creative use of the mind. Therefore, the word "property" is used because an individual or group of individuals asserted rights and powers enjoyed by one over another's work.

Another perception was manifested in the book of P.Ebow Bondzi-Simpson, *The Law and Economic Development in the Third World* (1992). Simpson's perception consists of two conceptual views of intellectual property rights. The first as "public goods or free goods" and the other as "private property." The author's position is that intellectual property is not a property right in the same sense that authors and creators have the sole power over their ideas and inventions. Rather, the book acknowledges the existence of a social contract wherein grants of limited monopoly to the author will be made and in return, the author will allow the general public to have access to his work. This view of the social contract was also cited in the book *Proceedings of the Lecture-Forum on the Intellectual Property (IP) Code* (1998). It states that the intellectual property system balances two interests, and these are the rights of the intellectual creator to his/her work on the one hand and the right of the public to have access to such work on the other. Trevor Black, another concurring author, in his book *Intellectual Property in Industry* (1989) affirmed that the IP system should meet the needs and requirement of groups. Such groups include manufacturer of goods or artifacts; creators of works, materials or ideas; and the consumer.

Furthermore, Simpson criticized the view that intellectual property rights are solely public goods and the assumption that intellectual property rights are exclusively a private property. These stances are the very reason why, as the book suggests, division between the North and the South with regards to intellectual property rights structuring occurred.

The South, generally views IP as a public good, thus it rationalizes the need for a more lenient intellectual property law. This assumption, however, tends toward a moral-driven concept rather than an economic one. It recognizes that knowledge is a common property in which all should benefit. The North, on the other hand, believes that IP is a private property and as such should be protected by a strict intellectual property law. As Edwin Mansfield commented “Intellectual property rights must be respected to provide a fair return to the private investors who take the substantial risks involved in developing and commercializing a new technology. Unless such returns are forthcoming, the incentives for inventive and innovative activity will be impaired, to the detriment of all nations, rich or poor.”

Intellectual property laws are utilized to protect the rights of inventors, authors, and creators. In *Introduction to International Law* (1990) by Phillips and Firth, they asserted that in its traditional sense, intellectual property laws safeguarded owners by grants given by the state of an exclusive exploitation of that which is derived from the use of the human brain. Intellectual property laws encourage the creation of thoughts, ideas, systems and inventions and at the same time gives premium for these to be disclosed and generally to be beneficial for everyone. Some argued that to be genuinely protected, one

should just keep the idea to himself. However, keeping such will not allow that idea to be commercialized.

There are five ways in which the intellectual property law can benefit the owner of intellectual property. These are absolute monopoly of the market, qualified monopoly, the monopoly of use of one's personal creation, compulsory license and unfair competition. Absolute monopoly is the right of the owner to stop other people from employing the property within the limits governed by the law. Qualified monopoly is a situation wherein the owner cannot ultimately stop other persons from using his idea or invention as a basis for that person's own creation. The monopoly of use of one's personal creation is the right in which the owner can stop other people from copying but cannot stop others from exploiting an identical work produced independently.

Furthermore, compulsory license is the right to use a property by everyone who wishes to do so. In a way, the owner is forced to surrender control of the property. But in return, those who want to use the creation are compelled to pay the owner. Unfair competition philosophized that grants of monopoly should be dispensed with because in the end establishment of monopolies are not commercially beneficial. The solution is for the elimination of activities that prejudices the creator by rendering them unlawful.

Authors, Simpson and Adeyinka gave justifications for a strict observance of intellectual property rights. *The Law and Economic Development in the Third World* (1992) by P. Ebow Bondzi-Simpson enumerated several perceptions with regards to a more lenient intellectual property rights and repudiated these arguments. These arguments were not blatantly espoused by developing countries, but trends towards these thoughts were manifested in international debates. However, the author did not adhere to

these perceptions. As a matter of fact, he rejected this kind of reasoning. It was said that weak protection saves the country's money because the state will not bother paying huge sum for royalties. Moreover, the general public will be able to afford the product. Secondly, because it is widely viewed that the sole beneficiaries of a strict intellectual property law are the foreign suppliers, having weak protection can be assumed as promoting the domestic and national industry. Furthermore, adoption of foreign technology will be made more possible since it prevents foreigners from asserting their rights as the sole providers of such technology. Lastly, because all of these are made possible, it is taken that weak protection decreases the level of dependency of developing countries on developed countries.

Simpson readily gave his stand regarding this matter. He stated that developing countries' notion that mere copying will promote the domestic industries should be given a second look. He added that weak protection will not automatically lower the level of technological dependency rather it only allows recycling, thus hampering the creativity and ingenuity of its local inventors and authors. In addition, it was also pointed out that pirate copies are more often than not inferior than the original on the basis of quality. This is especially significant in the pharmaceutical arena wherein piracy of drugs can have very serious effects. A slight error can cause losses of lives of many people as what happened in Nigeria.

Alex G. Adeyinka in his article "Intellectual Property Rights in Developing Countries: Nigeria's Copyright Decree, 1988" stated that the benefits of having a weak intellectual property law are only short term. In the long run, countries having this kind of rules will eventually experience intellectual bankruptcy also called "brain drain." In

addition, continuing employment of a lenient law for intellectual property will be detrimental for the country's economy as multinational enterprises (MNEs) will condemn them for disengagement from the strict observance of IPR. For Adeyinka, developing countries should rather take the opportunity to seek alliances of mutual benefits with the MNEs since the latter control the know-how needed to help developing countries.

Furthermore, Alex G. Adeyinka added that the negative effects of weak protection are apparent. Among these are problems of domestic piracy, and problems wherein the local industrial base is not conditioned to think in terms of protection. The Nigerian government changed its Copyright Law due to the pressures exerted by the MNEs and the intimidation imposed by the United States to adopt reciprocal trade measures.

Globalization is a key ingredient in the imposition of strict IPRs. During the General Agreement on Tariffs and Trade Uruguay Rounds, participants debated upon the need for an agreement on intellectual property. *Trade Related Aspects of Intellectual Property Rights: A Concise Guide to the TRIPs Agreement* (1996) by Michael Blakeney laid down the provisions of the TRIPs agreement. He defined the minimum standards of intellectual property rights protection, the nationals benefiting from the agreement, the effect of existing intellectual property conventions, the most favoured-nation treatment, the technology transfer, and the public interest considerations. Delving more into the technology transfer, Article 7 of the agreement says that the "objective of the protection of the intellectual property right is the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and technological knowledge and in a manner conducive to social and economic welfare and

to the balance of rights and obligations.” However, such objective, according to some analysts, remained goals that have never been realized.

Martin Khor, author of the article “TRIPs Agreement and the WTO’s Crisis of Legitimacy” (2001), asserted that several developing countries have insisted on including IPR in the agenda. Khor gave several disadvantages to the pursuance of the TRIPs provisions. These are the increased consumer prices of certain commodities including medicine, the high costs needed to pay for royalties, and the phenomenon of biopiracy. The latter meant having developed countries patent the research and knowledge originally from the South. Because of these problems, there were demands that flexibility be given to countries in implementing the rules of the agreement. The balance and mutual advantage of producers and technological knowledge affirmed the Article 7 was challenged by Martin Khor. The monopolistic profit of the IPR holders geared the “should be balanced” system away from the public interest. He added that though developing countries are the ones mostly affected by the agreement, even developed countries have experienced the detriments from its provisions.

“Review of the TRIPs Agreement: Fostering the Transfer of Technology to Developing Countries” (2003) by Carlos Correa argued that the technological growth even after the effectivity of the agreement has widened. Strict intellectual property rights rather than inspire development will only limit the access to technological innovations. Correa cited the views of professors, economists and different organizations which took the same stand on the damage done by a severe inflexibility of IPRs. UNDP Human Development Report 1999 stated, “The relentless march of intellectual property rights needs to be stopped and questioned. Developments in the new technologies are running

far ahead of the ethical, legal, regulatory and policy frameworks needed to govern their use. More understanding is needed –in every country- of the economic and social consequences of the TRIPS agreement.”

The laws concerning intellectual property rights in the Philippines have undergone revisions. Esteban B. Bautista in his lecture on the salient features of the decree on the intellectual property compiled in the *“Proceedings of the Lecture-Forum on the Intellectual Property Rights of the University of the Philippines under the Intellectual Property Code (1998),* discussed the important changes and innovations introduced by P.D. No. 49 in relation to the former Copyright Law, RA 3134. In another lecture also found in the same book, Susan D. Villanueva discussed the Copyright Law as defined in the Intellectual Property Code. Because P.D. No. 49 did not anticipate tremendous changes and innovations, the adoption of the Intellectual Property Code was deemed necessary. The IPC is the current code providing protection to intellectual creators and authors.

Susan D. Villanueva in her lecture on intellectual property laws on copyright in the Philippines defined copyright as was specified in the IPC. Copyright shall consist of the elusive right to carry out, authorize or prevent the following acts: (a) reproduction of the work or substantial portion of the work, (b) dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work, (c) first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership, (d) rental of the original or a copy or an audiovisual or cinematic work, (e) public display of the original or a copy of the work, (f) public performance of the work; and (g) other

communications to the public of the work. Elaboration of the scope and limitation of the copyright law and the remedies of the copyright owner were also tackled by the lecturer.

Intellectual Property Patent and Trademark Laws of the Philippines (1995) provided for the act creating the Videogram Regulatory Board or P.D. No. 1987. Among the stated reasons for the creation of such body include the proliferation and unregulated circulation of videograms which have been detrimental to the operations of moviehouses. The movie industry was also cited as one business that is gravely affected by the unregulated activities in videogram industry. In addition, it was made clear that to be able to achieve national economic recovery, there is a need to ensure that businesses including the movie industry will be protected by the government against unfair distribution of works.

Republic Act No. 9239 provided for the reorganization of the VRB to Optical Media Board. Unlike the Video Regulatory Board, the Optical Media Board is tasked with broader functions focused mainly on the abatement of the proliferation of unregulated and pirated CDs, VCDs, and DVDs. The board also has the capacity to give license and registrations for the legal exploitation and use of intellectual properties.

The problem of piracy in the Philippines has been rampant even at the time of President Fidel V. Ramos. In the International Intellectual Property Association (IIPA), it was said that the Philippines has been included in the United States Trade Representative's Priority Watch List. An article released by the Motion Picture Association on the actions done by the Optical Media Board asserted that removal of the Philippines from the watch list is still a major concern. However, Chairman Edu Manzano added that more crucial concern is the acquisition of long-term benefits from

the creation of a healthy business environment that encourages our local creative industries to produce more intellectual property works.

The researcher also deemed it necessary to review the concept of “evaluation” as the study to be done deals with assessing and evaluating. In *Evaluation: A Systematic Approach* (1993) by Peter H. Rossi and Howard E. Freeman, evaluation research is defined as the systematic application of social research procedures for assessing the conceptualization, design, implementation, and utility of social intervention programs. The reading tackled the history of evaluation research, the growing demand and need of such in the contemporary world, and the flexibility in the adoption of evaluation methods. Basically, steps of evaluation are as follows: 1. Specify, select, refine, or modify project goals and evaluation objectives 2. Establish standards/ criteria where appropriate 3. Plan appropriate evaluation design 4. Select or develop data gathering methods 5. Collect relevant data 6. Process, summarize, analyze relevant data 7. Contrast data with evaluation standards or criteria 8. Report and feedback results 9. Assess cost-benefit/ effectiveness.

To summarize, intellectual property is viewed differently by various authors. It is regarded by some as everything which encompasses the use of the human brain. Another posits it to be a public good thus entitling the consumer to access and enjoyment. Contrary to this is the view that, some authors perceive IP as a private good which is inclined to benefit more the intellectual creator rather than the consumers. However, another view gives a more reliable definition for IP. It is considered as a social contract wherein the creator gains monopoly but, because of this, consumers are allowed to use

the product. The views of developed as well as the developing countries were presented giving justifications for their respective arguments.

All the concepts, terms, ideas reviewed by the researcher were necessary to fully understand the study at hand. It is important that the researcher be made aware of general concepts regarding the topic to allow wider scope of comprehension. It is essential that the two sides of intellectual property be discussed and analyzed to acquire greater knowledge in dealing with the study. Furthermore, with the information gathered, the researcher will have more background hence more leverage in asking questions to the interviewee and survey respondents. Although interviews with experts in OMB will be done, it is imperative that the basic functions and power of the office is already known to the researcher, thus a review is indeed indispensable.

Moreover, different laws were reviewed as they will provide the researcher a preview of the provisions that should be implemented by the Optical Media Board. Aside from this, the reasons behind this enforcement were given by analyzing the contents of the law.

Theoretical Framework

Intellectual property is a legal definition of inventions, ideas, and artistic works that encompass the use of human brain. As such, owners of intellectual creation have a right to utilize their products and thus have legal protection. The problem occurs in the difference of views with how to regard intellectual property. Some believe it to be a public good while some as a private good. Intellectual property as a public good tends to benefit the consumers more while IP as a private good is more advantageous for the intellectual creator. There is, however, another view used for the purpose of this study.

P. Ebow Simpson in his book *The Law and Economic Development in the Third World* (1992) regarded intellectual property rights as a social contract; he stated that both intellectual producer and consumer will benefit with a strict implementation of the intellectual property laws. With this, the intellectual owner will be given monopoly or remuneration for his invention while the consumers will be given access to these creations. This type allows both parties to fully utilize the products. Furthermore, with strict implementation, Simpson stated that the creativity and ingenuity of a country's inventors and authors will be advanced. Furthermore, the quality of the products that will be available for public consumption will be of high standard as pirated materials will be totally eliminated.

There are five ways by which the intellectual property law can provide protection for holders of the intellectual property. The right of the owner of the IP to stop other people from utilizing his work is called the absolute monopoly of the market. In this case, the creator has the power to thwart others from copying the idea. Furthermore, even if another person was able to come up with the same idea independently as was embodied in the intellectual property, the owner of the first patent has the right to prevent him from utilizing the idea. This owner exhibits great power over the market especially if the consumers actually want to purchase or use his invention. In this scenario, no person can be allowed to patent subject matters already dubbed as intellectual property. Thus, another person who has exhausted his efforts to develop a similar subject matter independently from that of the owner's work, will not be able to reap any benefit as long as the patent for the original holder is still in effect. However, a different case will apply if the person conceives and uses the invention even prior to the date of which the patent

was granted. In such situation, the person can continue enjoying the utilization of the invention (Phillips and Firth, 1990).

The qualified monopoly is similar to absolute monopoly but with one major qualification. The author cannot prevent other persons from using his work as a basis for that person's creation. This is also known as "reverse engineering." This type of protection was designed to avert possible detrimental impacts of having a single dominant monopoly, thus damaging competition, scientific research and consumer choice (Phillips and Firth, 1990).

Another kind of protection is the monopoly of use of one's personal creation. In such case, the holder of the intellectual property can stop other people from copying the work produced by him. Yet, the holder of the IP cannot actually prevent another person who conceived the same idea to utilize his similar creation of which was produced independently. It is indeed possible that several persons come up with the same idea and creation. If this happens, it is most likely that the first creator will be given the right since notions that other persons copied the works of the first creator exist (Phillips and Firth, 1990).

Compulsory licensing, on the other hand, seems to detract from the notion of protection. It is because this type of safeguard relinquishes the control of the holder over his intellectual property. The good point about this, though, is its economic or monetary remuneration. Compulsory licensing allows everyone to use the creation or invention as long as a sum of money is paid to the owner (Phillips and Firth, 1990). The last type of protection which is unfair competition is not usually employed. This type does not deal

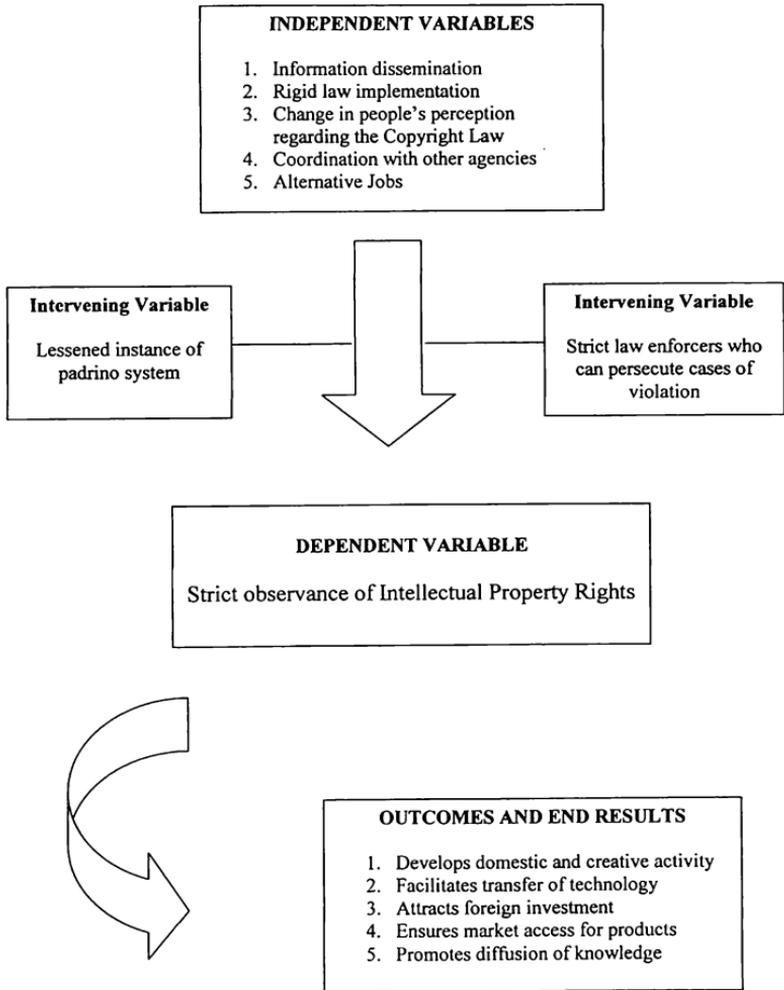
with any grant of monopoly but rather it renders activities prejudicing the ability of the intellectual property creator to acquire a fair profit unlawful (Phillips and Firth, 1990).

Copyright laws provide protection to authors against plagiarism. It is an infringement to copy a work of an intellectual author without his permission to do so. It should be noted, though, that the copy should emanate from the original protected work. The act of copying can be done directly or indirectly, partially or completely (Phillips and Firth, 1990).

Strict observation of intellectual property rights was propagated by the Trade-related Intellectual Property Rights adopted to further consolidate and put into action the concept of globalization. The Third World has been criticizing the provisions of the agreement arguing that poor countries cannot afford to pay huge royalties to authors. Furthermore, since developing countries have the perception that only foreign firms and companies will benefit from a strict intellectual property law, a lenient implementation of the law will automatically be favorable for the local industries. This is however, repudiated by P. Ebow Simpson asserting that strict intellectual property laws should be viewed as a helpful guide in achieving a more productive and creative society. Domestic inventors will be given much protection and thus much incentive to continue and allow ingenuity to flourish within the country.

For the purpose of the study, the researcher will take strict observance of intellectual property rights as the theory to be followed. The study involves the need for a more intensive implementation of intellectual property laws to totally eliminate the causes of piracy which up to now haunts the producers and artists of the movie industry.

Figure 1.1: Conceptual Framework



Strict observance of intellectual property rights is viewed as the desired effect which is also the dependent variable. To be able to achieve this, several independent variables were cited. These are information dissemination, rigid law implementation, change in people's perception of the Copyright Law, coordination with other agencies, and the provision of alternative jobs. It is essential that the general public be made aware of the Copyright Law. Thus, the government should ensure that the provisions, especially the pertinent ones, be made known to the people. Moreover, as there already exists a sound law protecting the rights of intellectual creators, rigid law implementation should consequently be pursued. For the protection of the rights of composers, singers, artists and producers, the Optical Media Board has been charged to solve the problem of music and movie piracy will be solved. The existence of such an agency, though, is not an assurance that violations of the Copyright law will be eradicated. It is important that the law be enforced consistently and uniformly.

Furthermore, the public should be made aware of the detriments that are connected with the non-observance of intellectual property rights. Changes of old perceptions regarding piracy should follow as well. The agency tasked to eliminate piracy should also coordinate with other institutions to enhance its enforcement efforts. In addition, alternative jobs for those who were previously engaged in intellectual property rights violations should be given. Once all of these are achieved, a higher probability of the realization of the dependent variable which is strict observance of intellectual property rights is likely to occur.

With intervening variables, like lessened instance of padrino system and strict law enforcement, independent variables cited above will ultimately lead to the strict

observance of intellectual property rights. The padrino system which is a well-known norm in the Philippines can stop the continuous flow towards observance of intellectual property laws. Once “palakasan, pakiusapan, and kai-kaibigan” is stopped and the concept of equality before the law is espoused, then there will be no more reason why rigid law enforcement cannot be achieved. Secondly, employment of law enforcers who can do their jobs well without having any ulterior motives can also lead to proper observance of the law.

With these intervening factors, the dependent variable can readily be achieved once the independent variables are guaranteed. The end results of strict observance of the intellectual property code include the following: development of domestic and creative activity, facilitation of transfer of technology, attraction of foreign investments, ensured market access for products, and diffusion of knowledge and information for the development of the nation. More people will be encouraged to develop and enhance their creativity because people are given incentives or grants for every intellectual creation. This creativity will later on yield innovations that are needed by the nation to compete with technologies possessed and applied by other countries. In addition to this, the consumers will generally have more choices as new products will be made available for consumption. Market access is achieved because the intellectual creator is encouraged to disclose his idea for the benefit of all. Foreign investments entering the country will also follow since foreign businesses see the place as conducive for hatching new ideas and thoughts. Of equal importance are the diffusion of knowledge and information for the development of the nation and the transfer of technology.

In the end, with proportionate intellectual property rights, both the intellectual creators and consumers will attain respective positive gains from the utilization of the intellectual property.

Definition of terms

- ❖ IP Code- Republic Act No. 8293 also known as the Intellectual Property Code of the Philippines (from RA No. 8293)
 - an act prescribing the intellectual property code and establishing the intellectual property office, providing for its power and functions, and for other purposes
 - provides the law on patents, licensing, trademarks, service marks, trade names, and copyright
- ❖ 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 laser or any such other means as may be developed in the future. (from RA No. 9239)
- ❖ Optical Media Board- created under RA No. 9239 which reorganized the Videogram Regulatory Board (from RA No. 9239) with the following functions:
 - Evaluate qualifications of any individual, establishment or entity to engage in the mastering, manufacturing or replicating of optical media
 - Conduct inspections by itself or in coordination with other agencies

- Apply for or obtain search warrants from any court of law, or take into preventive custody, with reasonable ground, any equipment which are used in violation of the Copyright law
- ❖ License- the authority granted by the Optical Media Board to establishments or entities registered with the OMB to engage in the business of mastering, manufacture, replication, importation or exportation of optical media (from RA No. 9239)
- ❖ 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 (from RA No. 9239)
- ❖ Copyright- is the right of the owner of the intellectual property in a work to prevent others from reproducing his work or material without his permission (Black 1989, 182)
- ❖ Piracy- unauthorized use of patented or copyrighted work (Webster 1990)
- ❖ Author- is the natural person who has created the work (from IPC, Part IV)

Research Design

A matrix shows the kind of data needed, its sources and technique of data gathering as well as the analysis. The researcher used both the qualitative and the quantitative approaches to determine the effectiveness of the Optical Media Board in deterring music and movie piracy in the Philippines. Data gathering techniques included library research, surveys and key informant interviews. Literature review was used to acquire the data regarding the history and contents of Copyright Law as part of the Intellectual Property Code and the history of intellectual property rights in the

Philippines. Furthermore, this type of data gathering was also utilized to get the basic information about the Optical Media Board, including its history, membership, functions, and programs.

Key informant interviews were also conducted to gather information on the problems experienced by OMB in its everyday operations. Aside from this, movie producers were also interviewed to know the general perception of the film industry on OMB's actions in deterring piracy in the country. Coding for themes followed these interviews.

Surveys were utilized to code the general public's perception regarding the Copyright Law and the treatment of piracy as a crime. There were 200 respondents for this and coding for themes followed. Respondents included intellectuals, middle-income earners and low income earners. For intellectuals, the students of the University of the Philippines Manila were the respondents. The researcher first drew lots to know from what departments the researcher will get the respondents. After which, the researcher got all the class schedules and again drew lots to determine the classes from which the survey would be conducted. After conducting the survey, meta analysis was done which combined all the findings in an integrated fashion. Moreover, articles having this topic were also used to further give strength to the data gathered.

Due to the sensitivity of the matter to be discussed, the researcher employed casual interviews with the sellers and retailers of pirated optical discs. The researcher focused on Quiapo because this is the most prominent center for pirated CDs. Five interviewees were chosen to answer questions ranging from the benefits of having piracy to their perceptions of the Optical Media Board. For ethical purposes, consent for the

interviews was secured from the interviewees. The interviewees were guaranteed that all things shared and disclosed by them will be highly confidential and will not be published.

After all these were done, careful analyses based on the conceptual framework and hypothesis were made to come up with a supported conclusion on whether or not the actions of the Optical Media Board are effective in its efforts to deter music and movie piracy in the Philippines.

Table 1.1: Data Gathering Techniques

<u>DATA NEEDED</u>	<u>SOURCES</u>	<u>TECHNIQUES IN GATHERING DATA</u>	<u>ANALYSIS</u>
1. history and content of the Copyright Law	<ul style="list-style-type: none"> ❖ Intellectual Property Code ❖ Secondary materials 	Literature review	Content analysis
2. history of intellectual property rights in the Philippines	<ul style="list-style-type: none"> ❖ Secondary materials ❖ Deliberations ❖ (Committee Hearings) 	Literature review	Content analysis
3. History and functions of the Optical Media Board	<ul style="list-style-type: none"> ❖ Republic Act No. 9239 ❖ Secondary materials ❖ Primary material 	<ul style="list-style-type: none"> ❖ Literature review ❖ Key informant interview 	<ul style="list-style-type: none"> ❖ Content analysis ❖ Coding for themes
4. Limitations experienced by the OMB in its tasked	<ul style="list-style-type: none"> ❖ Secondary materials 	<ul style="list-style-type: none"> ❖ Literature review 	<ul style="list-style-type: none"> ❖ Content analysis

job of deterring piracy in the country	❖ Primary material	❖ Key informant interview	❖ Coding for themes
5. perception of producers on the effectiveness of OMB in deterring piracy	❖ Secondary materials ❖ Primary material	❖ Literature review ❖ Key informant interview	❖ Content analysis ❖ Coding for themes
6. perceptions of the public regarding the Copyright Law and piracy in general	❖ Statistics ❖ Primary material	❖ Literature review ❖ Survey	❖ Content analysis ❖ Coding for themes
7. perceptions of sellers of pirated discs regarding the efforts of the OMB	Primary material	Key informant interview	Coding for themes

Scope and Limitation

This study focused primarily on music and video piracy in the Philippines. The researcher gathered first hand information from sellers and buyers of pirated VCDs and DVDs in the area of Quiapo. This is the most well-known spot for cheap pirated optical

discs. In fact, people from different social brackets go to this place to buy the cheapest music and movie videos.

The research delved into the provisions of the Copyright Law as provided for in the Intellectual Property Code of the Philippines. The nature of works protected by the Copyright Law was defined as well. Furthermore, the owner and the limitations of Copyright was discussed as well. The rights of performers, producers or sound recordings and broadcasting organizations were also given emphasis. In addition to the elaboration of the Copyright Law, the office that enforces and implements that law was also given attention. The Optical Media Board's composition, structure, powers and functions were included as well. Since piracy is the problem that is to be eliminated, the nature of piracy was identified. Moreover, its manifestation in the Philippines was thoroughly explained.

In the process of completing the study, the researcher encountered several limitations. The researcher interviewed sellers of pirated VCDs and DVDs. However, it is only the retailers and not the actual producers that were contacted. In addition, only those retailers who were willing to give their stories were used as a source of information. It is possible that the interviewees withheld some information because the act of piracy is considered as a crime. Aside from interviews, surveys were also conducted. There were only 200 respondents for the survey. These samples are too few to make generalizations. Moreover, different instances or circumstances may exist in other areas outside Quiapo. The sampling of the place was done purposively; Quiapo is one of the most visited and most popular venue for obtaining pirated VCDs and DVDs.

The major source of the programs of the Optical Media Board was from the human resource of the board itself. Thus, it was likely that the agency gave only the good

side of its programs to make a pleasant impression to the general public. To solve this, the researcher reviewed records, studies, researches and evaluations regarding the functions and actions of the Optical Media Board. This was carried out to give credibility to the study. Aside from all of these, time constraint was also a limitation since too many data should be gathered to satisfactorily complete the study. To remedy this, time management was strictly observed by the researcher.

Relevance

Advertisements of anti-piracy have been launched by the Optical Media Board to publicize the immense injury done by piracy to local movie producers and artists. The OMB has been branding people who continuously buy pirated optical discs as either a thief or an accessory to the crime of theft. However, as can be seen at almost every street, there are still many vendors persistently selling these “illegal” optical discs. In 1997, piracy in the Philippines accounted for estimated losses of about 3 million US dollars in music, 22 million in motion pictures, 56.7 million in business application computer programs, 26 million in entertainment software, and 70 million in books (IIPA Special Recommendations, 1997) In fact, since the late 1990s, the International Intellectual Property Association included the Philippines in its watch list of intellectual property rights violators.

Though the government has been trying to protect the creation of intellectual authors from undue and unfair exploitation, present circumstances reveal that such efforts are not exactly enough. In 2003, the Videogram Regulatory Board was reorganized to better suit the needs of addressing music and video piracy in the Philippines. However, as reports have shown, agencies like the VRB now OMB, National Bureau of

Investigations, and others have been faced with crucial hindrances like lack of funds to support their programs. With this, the possibility of pirated discs entering the Philippines is still highly probable. Excerpt from the IIPA Special 301 Recommendations dated February 20, 1996 revealed that pirated cassettes and discs from the Middle East have entered the country without much obstruction from the Philippine Customs. Furthermore, reducing the level of piracy is hard to achieve because the activities of pirates are rather sporadic.

As can be seen, piracy has dominated the Philippine market. Despite the actions taken by the government and its agencies, the proper and effective law implementation is still yet to be realized. The effectiveness of OMB in solving the problems of music and video piracy will be assessed and recommendations on the things that should be done to achieve greater compliance will be given. If piracy will continue to haunt movie and recording producers, there is a possibility that in the end all that will be left are low-quality films and recordings.

As the study is being conducted, views of the buyers as well as of the sellers will give the other side of the story. Despite the efforts of OMB in suppressing piracy, producers as well as consumers continually engage in distributing and consuming pirated VCDs and DVDs. The reasons behind this phenomenon will be used in assessing the need for rigorous intellectual property rights. Many have argued that intellectual property rights are not for the Third World, as majority of the people do not have the means to acquire the properties.

The Philippines has gone through several revisions of the Copyright Law and reorganizations of the agencies in-charge. However, the perceived problem still lingers

with no manifestations that it will be eradicated soon. The root cause should be brought out to the open to achieve the solution to the problem of piracy.

CHAPTER 2

Piracy, IPR, Copyright Law: a Digest of the Evolution of IPR and Copyright Law with the Existence of Piracy in the Philippines

Intellectual property rights, together with its components, have been one of the agenda in the GATT Uruguay Rounds, thus, the creation of trade related intellectual property agreements. The TRIPs agreement provided that “Members shall accord the treatment provided for in the agreement to the nationals of other Members”. Generally, this agreement imposes that each member should treat nationals of other members with no less favorable treatment as to its own nationals with regards to the protection of the intellectual property. The TRIPs agreement is just one proof that the spread of globalization has permeated the entire system of the world (Blakeney 1996, 40).

According to former Charge' d' Affaires Darryl Johnson, strong adherence to the agreements in intellectual property protection is critical to encourage investments and entrepreneurship in the Philippines.

Nature of Globalization

Globalization has implanted its roots with the introduction of new inventions which later on led to the Industrial Revolution. The long, tedious hours of working with little efficiency was changed altogether with the emergence of power-driven machines (Ramos 2003, 15). As Thomas L. Friedman puts it, globalization is driven by “computerization, miniaturization, digitization, satellite communication, fiber optics and the Internet” (Friedman 1999, 8). This technological revolution called for a greater emphasis on re-engineering and higher investments. Aside from technological revolution, there was also a change concerning information. Both these transformations paved the

way for firms, investment, production and organization in the context of globalization (Alburo 1998, 23). It can be stated that global firms are actually a network of firms which are less hierarchical, more collaborative, less narrow and more flexible.

Oppositions to Globalization

Opposition to globalization hinge their criticisms on its effects on growth and equity. Arguments of unemployment, worsening inequality and constraining countries independently pursuing growth has been some of the detriments of globalization (Alburo 1998, 28). The World Bank together with the International Monetary Fund became the most powerful and influential economic actors through the adoption of the structural adjustment programs. Not long after, the World Trade Organization was established to implement the rules of world trade set at the GATT Uruguay Rounds Agreement (Bello 1998, 48).

During the years 1985-1995, Thailand was considered by the World Bank as the world's fastest growing economy. However, in 1998, Thailand's growth rate declined by 5 percent. As a matter of fact, the banking industry was in crisis. The market seems to be booming but in actuality this was not because of the increased purchasing power but rather because of the excessive credits. Farmers made their complaints and concerns known to the government as they have seen that the development that supposedly should include all has left the Thai countryside behind. Many developing countries have been opposed to globalization precisely because of this idea. Urban industrial development has been achieved at the expense of agriculture and the countryside. Poverty has become a rural phenomenon. In addition, there were also inequalities in the cities. In the period 1975-1990, the income share of the richest 20 percent of the population rose from 49.3

percent to 59.3 percent, while the income share of the poorest 20 percent declined from 6.1 percent to only 4.1 percent (Bello 1998, 50)

It is ironic that despite the North being the proponent of globalization, there have been evidences that its application has been somewhat detrimental to their economy as well (Bello 1998, 51). The mix policies of deregulation, liberalization, reengineering and restructuring of the firms and breaking of the labor movement resulted in increased redistribution of income towards the upper class.

Globalization and the TRIPs Agreement

Another factor of globalization arose from the new set of international rules accorded in the TRIPs Agreement that took effect on July 1, 1995. These heightened the benefits obtained by global producers with regards to their creation. Stronger sanctions were included to stop piracy and violations against intellectual property rights. A notable part of the agreement allowed the inventors and creators to have rights to the financial gains of their work. Many have countered the advocates of the anti-TRIPs agreement saying that without effective protection, there will be no inventors and artists who will be willing to share their works in countries where piracy is a business. In fact they argued that it is not only the foreign investors that will be decapitated with the emergence of piracy since the local distribution channels are also affected (Selected readings 1994, 27).

One of the major concerns of the proponents of the Trade-related Intellectual Property Agreement is the length of time given to the developing countries to conform to the Uruguay Rounds agreement. The International Intellectual Property Alliance reports that more than 75 percent of accounted piracy is from the developing countries and other

Asian countries. As such, these nations should conform to the internationally agreed norms for the security of intellectual property rights.

The rules of the Berne Convention were incorporated in the TRIPs agreement. They aimed at protecting literary and artistic works. The agreement provides that, "Protection extends for the duration of the life of the author plus 50 years, and includes rights of translation, reproduction, public performance, broadcasting, adaption and arrangement, and rental. In the case of sound recordings, this level of protection is up from 25 years (Selected readings 1994, 28).

The agreement clearly states, as well, that members should accord the same treatment to other members and signatories of the agreement. By this, it meant that there shall be no less favourable treatment with regards to the implementation and protection of intellectual property rights. Protection is defined to include "matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed".

In Article 7 of the TRIPs Agreement, the mutual advantage of both producers and users of technological knowledge is the utmost objective. As such, the agreement allows the employment of appropriate measures to prevent restrain in trade or hinder international transfer of technology. This provision has been earlier manifested in the Transfer of Technology Code promulgated under the UNCTAD. Article 8 which deals with public interest considerations permit member countries to amend their laws as long as the changes are still in compliance to the provisions of the TRIPs Agreement.

Copyright and Related Rights under the TRIPs Agreement

The provisions provided for in the Berne Convention were adopted by the TRIPs Agreements with several amendments. Article 9.2 states that “copyright protection shall extend to expression not to ideas, procedures, methods of operation or mathematical concepts as such.” Thus, to be able to acquire a copyright, it should be fixed in a material form. The Berne Convention thus included “every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression. These include books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works; works of drawing, painting, architecture, sculpture, engraving, and lithography; photographic works; works of applied art; illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.”

In addition, translations, adaptations, arrangements of music and other alterations are considered as original works. Also accorded the same status are encyclopedias and anthologies which are collections of literary and artistic works. The justification behind this is that selection and arrangement of contents signify intellectual creation.

The rights of authors as stated in the Berne Convention includes exclusive right to authorize reproduction, translation, authorization of public performance, rental rights, prohibition of bootlegging or the unauthorized recording of a live performance.

History of the Philippine Intellectual Property Code

The Philippines is a signatory to several international treaties and conventions that dealt with intellectual property. These are Convention Establishing the World Intellectual Property Organization (1980), Paris Convention for the Protection of Industrial Property (1965), Budapest Treaty on the International Recognition of the Deposit of Microorganisms for Purposes of Patent Procedure (1981), Berne Convention for the Protection of Literary and Artistic Works (1951), International Convention for the Protection of Performers Producers of Phonographs and Broadcasting Organizations (1984), and Agreement on Trade-Related Aspects of Intellectual Property Rights. With this, it can be seen that the Philippines has included the protection of intellectual properties as a goal that should be given attention. As a matter of fact, the 1987 Constitution explicitly mandates that the State shall protect intellectual property.

In 1947, the realization of a protecting law for intellectual properties was established. Republic Act No. 165 “An Act Creating a Patent Office, Prescribing its Powers and Duties, Regulating the Issuance of Patents and Appropriating Funds Therefore” was passed June 20, 1947. This allowed the creation of an office where all records, books, drawings, specifications, and other papers and things pertaining to patents shall be safely kept and preserved (RA 165 1947) Aside from this, it provided for the organization and operation of patents, inventions patentable, application for patent, issuance of patent, terms and cancellation of patent, and penalties and other infringement.

The Presidential Decree 1987 first defined the legal and illegal boundaries of video usage. Some said that this decree was extremely onerous leaving the video operators in a losing end. However, much was given to the producers of the film who

during this time have been experiencing great losses. Copies of the movie were circulated even before the film was actually shown in theaters. Because of this came the establishment of the Video Regulatory Board or the VRB (Dacanay 1986, 14). The Board which took several revisions in the end was changed into the Optical Media Board or the OMB with Eduardo Manzano as the chairperson.

As early as 1987, legal sanctions have been employed to curtail film piracy. The Philippine Federation against Copyright Theft or the PFACT headed by Rico V. Domingo has devoted functions to stop and preserve the film industry against video piracy (San Juan 1987, 28). This organization was able to conduct raids and file cases of copyright theft. The problems occurred with the convictions of these cases. According to Atty. Domingo, convictions were hard to come by because of several factors. First is the lack of information about film piracy issues and complexities on the part of the government agencies concerned. The second concerns the irregularities in the pursuit of court processes, such as the dropping out of witnesses, and the disappearance of evidences. And the last is the lack of public support (San Juan 1987, 13).

In 1997, Philippine Congress passed Republic Act No. 8293 or the Intellectual Property Code which sought to give protection to all intellectual property creation. Aside from this, provisions in the code conformed to the terms of the Berne Convention as this is obligatory for members of the World Trade Organization. The need for new rules and sanctions were justified by the immense development in technology which made it easier for pirates to violate the intellectual rights of authors (HB 322).

Certain amendments in the Intellectual Property Code were passed to cope with the emergence of internet piracy in the Philippines. Among the amendments include

reproduction to mean copying in part or in whole whether temporary or permanent without authorization. In addition, “communication to the public” meant any communication to the public to include broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite.

As was mentioned earlier, the Intellectual Property Code was promulgated in conformity with the Philippine’s multilateral agreements. According to the 1997 deliberations of the IPC in the committee level, the time frame given by the World Trade Organization to comply with international agreements was January 1, 2000. Aside from this, the Philippines should comply to the bilateral commitment made with the United States with the need to pass a new intellectual property code in December of 1995 (CommitteeHearing,1996).

According to the deliberations, the Philippines will receive several benefits once the Intellectual Property Code will be passed earlier (please refer to appendix for committee deliberation). These are low tariff for the garments exported to the United States and the lowering of the Philippines from the “priority watch list” to “watch list” of intellectual property violators. The Navarro-Cantor Agreement in 1993 allowed for this change of watch list category. However, this same agreement could impose economic sanctions in the event that the Philippines be deemed lax in providing protection to intellectual creators (Committee Hearing, 1996).

Evolution of the Copyright Law in the Philippines

The first applicable law with regards to the rights of the authors and inventors was the copyright protection under the Spanish Law. After the Spaniards ceded the

Philippines in the Treaty of Paris, the country's law on copyright was molded under the influence of the American Copyright Law.

On March 6, 1924, the Philippine Legislature enacted its very own law on copyright. Even the first deliberated copyright law of the Philippines, Act No. 3134 which was entitled "An Act to Protect the Intellectual Property" was patterned after that of the United States. Several years after, it was amended with the name "The Copyright Law of the Philippine Islands." Under this law, it provided who will be given the ownership status of the intellectual creation. It also laid down the specific works that will be protected by the said law. In addition, the exclusive rights of the owners were enumerated with the following as examples: printing, reprinting, translating, and exhibiting among others. Once the terms of the law are not observed, the Copyright law also provided injunctions and infringements for the violators. The Director of the Philippine Library and Museum was given the authority to receive the fees subjected to the office (Copyright Law, 1946). During martial law, Presidential Decree No. 49 was promulgated which became one of the most advanced copyright laws among small nations. This was recognized since there were provisions acknowledging the protection of the intellectual property from the moment of its application. The law also included computer software to be under the protection of this copyright law. However, technological advancements have proven that the existing law on copyright during that time was already outdated and outmoded (Committee Hearing, 1996). Recent developments have included the need for a revised law to cope up with progress. The emergence of CD-ROMs and the rental rights were not anticipated by the proponents of P.D. 49.

Later on, the Philippines enacted Republic Act 8293 “Intellectual Property Code of the Philippines.” The code was divided into the following parts: the intellectual property office, the law on patents, the laws on trademarks, service marks, and trade names, and the law on copyright. The next discussion will deal more on the law on copyright as this is the law that will be taken into consideration with the study of movie and music piracy in the Philippines.

Part IV of IPC: Law on Copyright

In the latest Copyright Law, derivative works like dramatizations, translations, collections of literary and artistic works were given more emphasis as they are given a specific section in the code. It should be noted that such works are protected as a new work. Thus, subsisting copyright shall not be used against the new author of the new intellectual creation (Commercial Laws of the Philippines RA 8293, 1998).

The latest code include terms applicable for works of architecture, reproduction of published work, reprographic reproduction by libraries, reproduction of computer programs, importation for personal purposes, and moral rights (Commercial Laws of the Philippines RA 8293, 1998).

Separate chapter on the law of copyright gives due regards to the rights of performers, producers of sound recordings and broadcasting organizations. As the law provided, performers’ rights include the right of authorizing the broadcasting and other communication to the public of their performance and the fixation of unfixed performance. They shall also have the right of authorizing direct or indirect reproduction of their performance as well as the first public distribution of the original copies of their

performances. The rights granted shall be maintained and exercised up to fifty years after his death (Commercial Laws of the Philippines RA 8293, 1998).

The amended Copyright Law of the Philippines deals more with the fast changes in technology. As such, it was made to curtail piracy and protect the intellectual creators from copying, utilizing and exploiting his or her work without due authorization.

The Video Regulatory Board

The establishment of the Video Regulatory Board exposed the adverse effects of piracy in the country. The preamble of the PD 1987 cited that the theater attendance has declined by 40 percent. Because of this, more than 75,000 families and 500,000 workers of the movie industry were under serious threat of unemployment. The VRB has had several defense mechanisms against the illicit business of piracy. One of its first measures is the registration of videogram establishments and the affixation of the VRB seals on legitimate tapes and discs (San Juan 1987, 13). It also conducted inspections, raids and closures to unregistered and unlicensed video shops (San Juan 1987, 28). Despite the actions done by the VRB, it was still hindered by several problems experienced by the board. The organization lacked the funds as well as the personnel to fully utilize and put into actions the plans of the board. Because of the low wages of the personnel, reports have shown that they were easily enticed to take bribes from illegal operations (Jimenez 1994, 5). Excerpts from the IIPA Special 301 Recommendations dated February 20, 1996 acknowledged the lack of resources for the operations of the VRB, NBI and other offices that dealt with piracy. It also asserted that a declaration by the government of intellectual piracy as a top priority is not enough. There should be tangible actions and results to ensure that inventor and artists were well compensated.

Former Chairperson of the Video Regulatory Board Ramon “Bong” Revilla, Jr. also stated that meager budget allotted to the board was never enough to topple the national problem of piracy. As such, the board has been depending on volunteers and special teams to help in conducting raids (Villanueva 2003, 30). However, even though raids were done regularly, concrete results were not achieved since the people caught were not convicted of anything. As a matter of fact even foreign investors have been encouraging piracy by settling cases out of court. Moreover, Bong Revilla admitted that the laws against intellectual piracy should be improved (Varona 2003, 18).

The IIPA has identified deficiencies in the previous Copyright law in the Philippines. Among the revisions that were included were as follows: (1) repeals the book compulsory reprint license, P.D. 285 (2) increase the term of protection for sound recordings, cinematographic and audiovisual works, newspapers and periodicals to international standards (3) increases criminal penalties including fines and jail terms (4) extends rental rights to producers of sound recordings (5) appears to protect US performers against unauthorized fixations of their performances or “bootleg” (IIPA, 1996)

As of 2001, 60 percent of the entire recording industry has been controlled by pirates. A slash in the number of record companies proved that great losses were experienced by them. In 1996, there were 32 recording companies and come 2002 there were only 12 of them. According to former Videogram Regulatory Board Chairperson Atty. Lualhati Buenafe, the government lost P450 million in revenue to pirated VCDs (Angel 2002, 36). Reports have shown that in the year 2000, the software industry in the

country lost about \$27.1 million and about P1.4 billion in revenues as a result of 61 percent piracy rate. Some P170 million has also been taken from the government in taxes.

Piracy

Piracy in the film industry is a case wherein a party produces the copyright work without the permission of the author. There are several forms of piracy in the film industry. First is the “lagare” which happens once the movie is shown in theaters. After the projection of the first reel is completed, it will be transported to another movie house where it will also be shown. Another type is the film-to-tape transfer wherein someone will borrow the thirty-five or seventy millimeter cinema prints, and convert them to a *umatic* video. Once this is sold in the market, the copy is what is now called the bootleg copy or pirated film. Furthermore, tape-to-tape transfer also exists. It was said that one reason for the rampant duplication of films is the nature of copying. It is very easy to duplicate a tape needing only a video recorder and another tape. The sales of the tapes can also be a form of piracy. Pirated discs and tapes may appear to be packaged in the same way as the legitimate ones as pirates create more and more innovative ways to avert recognition (Domingo 1997, 138).

Moreover, video taping of the programs and movies in the television is another violation. The fifth form of piracy is the interception without authority of a commercial user’s satellite signals. Lastly is the free transmission or the exhibition of pirated materials by cable systems (Domingo 1997, 139).

The United States Embassy organized the Intellectual Property Rights Roundtable 2 to discuss issues with regards to intellectual property. Initiatives done by the Intellectual Property Office and the Optical Media Board were commended as piracy in

the Philippines has already been lowered. The IPO has been coordinating with the court system to establish IP courts in Manila. In addition, interagency coordination has been one of the agenda of intellectual property bodies (IPR Roundtable2, 2005).

In late 2004 and 2005, the Philippines launched the single largest seizure of optical discs. Different industries were subjected to great losses due to copyright piracy. In 2004 alone, the motion pictures lost approximately US\$33M followed by the lost acquired by the recording and music industry with US\$20M (IIPA Special Report, 2005)

Pirated optical discs from Malaysia, Thailand, China, Taiwan, Hong Kong, and Indonesia have been harmful to the local market especially the local industries. The very low prices of these discs compete with the high prices of original discs. Naturally, people will choose to buy with those that are affordable.

The usual notion of piracy is that it is illegal and seems bad to almost everyone considering the long term outlook. The entertainment industry has given its opinion regarding the detrimental effects of piracy on film and music production. However, alternative views have also been cited which should still be given more study. Proponents of this argument state that before the problem of piracy became rampant, the film and recording companies were very exploitative when it comes to charging the consumers. But now, because of the very challenging competitors, these production companies do not have much of a choice but to lower their prices to make them more affordable for consumers. The proponents also made clear that this does not mean that the producers were at a loss but rather they just reduced their profits with the corresponding lowering of prices (Torre, 2006)

Perceptions of the General Public with regards to Piracy

The public is divided as to the advantages and disadvantages of piracy. This issue has been quite controversial with the proof that even internet fora have this as its subject. With this means, people voiced their opinions on the nature of piracy and the ways to treat this kind of problem.

Piracy is a product of the unrelenting problem of poverty. People opt to purchase cheaper discs due to the fact that these are the only ones they can afford. Original discs, for some, are not at all practical since the in a month or so, the popularity of the song or movie will die down. Aside from this, buyers of the pirated version view watching films as “wants” and not “needs” and as such they should not be occupying a huge part of their income. For some, piracy is a source of survival. It is bread and butter for those selling the pirated discs. As a seller from Quiapo admitted, “*Ito lang ang aming pinagkakakitaan, dati ang trabaho ko lang ay 5-6.*” This reality, according to some, justifies the need for this type of business to continue, illegal as they seem to be. Piracy was able to bridge the gap between the rich and the poor as technology was made accessible even to the poorest sectors of the country. The minimum wage of an ordinary person cannot at all afford lavish spending for quality time with the family. The production of a cheaper alternative allowed greater worth for the money they had worked hard for. As was stated a while ago, the status of the economy and the practical side of piracy can not only justify but also entice people to buy these discs. Take for example, the students who most of the time are the ones engrossed with music and movies. This group relies mainly on their parents for financial support and as such cannot afford too expensive discs.

Another perception of the public which makes piracy justifiable is the notion that it is only the artists and talents who are affected by piracy. This therefore will not be too burdensome for them since they are already rich and their families can afford a few millions slashed from their bank accounts. In addition, the film producers also were deemed as greedy cheaters. Thus, cheating cheaters is not at all bad and illegal.

Of course, there is always the other side of the coin. There are those who view that piracy is immoral and illegal whatever perspective would be used to look at it. "Live within your means, *kung wala ka nang pera 'wag kang bumili.*" This is one argument that was given by those who viewed intellectual property rights as intellectual property rights. If everybody will choose to buy pirated discs then there will be no more worthwhile films and music industries that will produce the commodity. In turn, those workers and employees working behind the production of these films and music will be put out of jobs since the management cannot accommodate too many staff and employees.

They also rebut the argument that those who produce legitimate discs should lower the price of original discs to be able to meet the quality of life of the people. Film production, for one, costs a lot of money. As Mr. Manuel Nuqui, president of the Philippine Motion Picture Producers Association puts it, you cannot totally lower the costs because of the present technology available (please refer to informed consent found in the appendix) The producers association, he added, is doing everything and is now studying how to lower the costs of production, that is, getting into the mainstream style of movies using the digital technology. In short, lowering the price of the original discs with the same level as that of the pirated discs is quite impossible with the current technology

since the business of piracy need not go through the stages of production since what they already have is the finished product.

As one who provided inputs in the forum said, “Modern technology can partly be blamed. Computer equipped with CD/DVD can copy hundreds of original CDs. Mr. Nuqui attested to the truth of this matter as well. He stated, “Advance technology, *maganda nga sana*, but sometimes it hampers some people. Unlike in the past, it used to be in betamax and VHS. Now, with advanced technology, *sa discs na maeenhance pa nga nila e*. you can just produce one disc and it will multiply. Its either you have the replication device or a simple burner.”

Furthermore, the makers of movies, for some, are entitled to whatever price they dictate for their product which is due to the combined efforts of hundreds of production and creative people. Once the film producers themselves feel that people cannot afford their products, then that is the only legitimate time that they can lower their prices. They argued that the producers should decide for themselves whether to make their products more affordable or not. Piracy should not be used to strangle the producers to lower the prices of original discs.

Piracy and its Existence

Too much leniency, non-implementation of sanctions, and lack of educational background are some of the many reasons why piracy continues to exist. Republic Act No. 9239 also known as the Optical Media Act of 2003, imposes imprisonment of at least three years but not more than six years and a fine of not less than five hundred thousand pesos but not exceeding one million five hundred thousand pesos to those who will engage in the importation, exportation, acquisition, sale and distribution of, or possess or

operate manufacturing equipment, parts and accessories without the necessary licenses from the OMB. However, interviews with sellers of pirated discs showed that there were no fines or imprisonment by the OMB imposed. Rather, they just confiscate the pirated discs and destroy them afterwards. This may be the reason why sellers continue to engage in this kind of business. Moreover, the profits can really sustain a family. The interviewees in Quiapo gave a rough estimate of the earnings they acquired. This is approximately Php 1500 net income per day. The computation of the payment for the place, however, is not yet included in the deduction. The lease of the place is per year with a payment of Php 160,000 to Php 200,000 depending on the strategic location of the stall. For the VCDs, the profit can range from Php 1.00 to Php 2.00 while for DVDs it is Php5.00. The profit per disc may be small but there are many discs sold per day which make the profit really significant.

The Filipinos need to be educated with the advantages and disadvantages of piracy with regards to the economy and businesses in the country. People know so little about the effects of the said illegal business and as such rely on their short term justifications and reasoning.

Piracy laws and implementation

Poverty cannot justify theft, as one commented “It is their intellectual property right.” It is a challenge to side with either one since both have their contentions that are really worthwhile. But for the purposes of this study, the researcher will side with treating piracy as a crime that needs to be eradicated to ensure that the film and music industry will be revived thus preserving our culture in the form of arts.

Summary

It is clearly seen that international arena has influenced greatly the passage of the Intellectual Property Code in the Philippines. This is because the Philippines is a signatory to different treaties which espouse strict observance of intellectual rights. Several Copyright Laws have been repealed to give way to the present Copyright Law suited for the existence of fast and modern technology.

In addition, the chapter emphasized the need for a regulatory board which will control the proliferation of piracy in the country. Though this regulatory board has been conscientious in performing its tasked job, several hindrances have kept it from achieving the ultimate goal of eradicating piracy in the Philippines.

Furthermore, the sentiments of people for and against piracy were discussed. But whether leaning more towards the advantages or disadvantages, there is no doubt that the agency charged to fight piracy should accomplish substantive results. The Optical Media Board which is currently the control board of piracy was designed to deal with piracy in the country. A thorough study of the structure and the functions of the Board will be discussed in the following chapter.

CHAPTER 3

The Optical Media Board: A Discussion on its Funding, Structure, Functions, Problems and Limitations

With the advent of fascination for optical discs, sales of VHS tapes have begun to decline. The proliferation of CD-Rom drives and VCD players caused the trouble-free way of replicating discs with tolerable quality. By the year 2000, it is very noticeable that legal companies were overtaken by the pirated discs sold in every corner of almost every place. It is not only the discs that were pirated, illegal VCD players from China also flooded the market. Thus there was a need to change the VRB law which cannot accommodate the latest developments in technology (Annual Report of OMB, 2004)

Republic Act No. 9239 also known as the “Optical Media Act of 2003” reorganized the Videogram Regulatory Board. It has become the policy of the State to ensure that the protection and promotion of the intellectual property rights will be strictly observed (RA 9239). Thus, it is but necessary that the regulation of replication, manufacture, mastering, importation and exportation of optical media be given due attention. Piracy as is the case where unauthorized people engage in these activities hampered economic growth and public interest.

The Optical Media Board is under the Office of the President and its authority covers the entire territory of the Republic of the Philippines. According to the Optical Media Act of 2003, the OMB will be composed of four ex officio members and five regular members who will be appointed by the president. The ex officio members will come from the Department of Trade and Industry, Department of the Interior and Local Government, Department of Finance and Intellectual Property Office. The five regular

members will be composed of three representatives from the private sector, one from the consumer protection and one representative from the academe. The Chairperson will be appointed by the president while the vice chairperson will be elected by the members of the Board. The chairperson and the regular members will hold office for a term of three years unless removed sooner by the president (RA 9239).

The Chairperson who also takes the position of the Chief Executive Officer (CEO) has the following functions as provided by the Optical Media Act of 2003: (1) execute and administer the policies, decisions, orders, resolutions and the rules and regulations issued by the Board; (2) 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; (3) direct and supervise the operations and the internal affairs of the OMB; (4) submit an annual budget to the Board for its approval; (5) 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; (6) perform such other powers and functions as may be authorized by the Board or the President. The Executive Director will assist the Chairperson in the operations of the Board (RA 9239).

Funding of the Optical Media Board

The fund of the Optical Media Board is given as part of the budget being disbursed by the government. The government gave the Board a target, and with that target comes a corresponding budget. In the interview conducted, it was made known that the Board was tasked to achieve results beyond the capacity of the agency. Mr. Dean Perez added that piracy is no longer a small industry; in fact smuggling is already

involved in the problem. Of the Php 80M that was asked by the Board, the government only granted Php 20M for the entire operations all over the archipelago (please refer to informed consent in the appendix).

According to Mr. Manuel Nuqui, President of the Motion Picture Anti-Piracy Council, their organization has been giving and donating financial assistance to the previous Video Regulatory Board and to the present Optical Media Board. They do this in recognition that the Board does not have the capabilities to act accordingly given the budgetary constraints (please refer to informed consent in the appendix).

Powers and functions of the OMB

The Optical Media Board currently with Eduardo Manzano as chairperson has the power to evaluate and substantiate the capabilities of individuals as well as groups to engage in the replication, mastering, and manufacturing of optical media. It also supervises the regulation, granting and renewal of licenses with the authority to conduct inspections whether in coordination with other government agencies or not. Aside from this, it can obtain search warrants and can confiscate optical media devices or machines used in violation of the intellectual property rights. The Optical Media Board adopts a system of Source Identification or SID codes which will be given to persons, establishments or entities licensed by the OMB (RA 9239).

The Optical Media Act also provided for penal provisions. In determining the sanctions that will be imposed, the court will consider the size of the operations of the offender, the value of the articles involved in the violation, and the period of violation. The implementing rules and regulations of the Optical Media Act gave OMB the authority to close the establishment, to confiscate the pirated goods being sold and/or to

impose fines upon individuals and entities that shall be caught violating the provisions of the Optical Media Act. It can also suspend the operations of the establishment according to the length of time prescribed in the IRR (IRR of RA 9239).

Actual actions and tangible results of Optical Media Board

The Optical Media Board has three divisions namely the licensing department, the inspection and intelligence department and the legal services department. For the year 2004, the licensing department was able to accomplish the following:

Table 3.1: Accomplishments of OMB's Licensing Department

PROJECTS	February 2004	February 2005
A. Licensing Unit		
Newly Registered/Licensed Establishments		285
Licenses Renewed		1,236
Total No. of Licensed Establishments (Video)		3,006
B. Registry Unit		
Commercial Permits issued		2,641
Special Commercial Permits issued		263
Import Clearances issued		356
Recordation of Titles		24
Hologram Labels Issued		2,704,146
Verification Labels		1,783
Total processed		597,804
C. Classification Unit		
Videograms Reviewed and Classified		1,686

Source: OMB Annual Report 2004

The inspections and intelligence division was able to achieve the following:

Table 3.2: Accomplishments of OMB's Inspections and Intelligence Division

PROJECTS	February 2004	February 2005
A. Retail Raids		
Total number of inspection orders served		1070
Total number of optical discs seized		2,056,623
Total value of optical discs seized		102,831,150
B. Search Warrant Operations		
Total number of search warrants served		108
Total number of optical discs seized		639,686

Total value of optical discs seized	31,984,300
C. Plant Inspections	
Plant visits conducted	9
Total number of plants with SID Codes	6
Total number of lines inspected	24
Total number of DVD lines inspected	6
Total number of mastering machines inspected	5

Source: OMB Annual Report 2004

For the legal services division, these were achieved for the year 2004:

Table 3.3: Accomplishments of OMB's Legal Services Division

PROJECTS	February 2004 - February 2005
A. Administrative Complaints Processed:	
Total number of administrative complaints	937
Total number of administrative cases Resolved	936
Total number of administrative cases pending	1
B. Prosecution of Violation of P. D. 1987	
Criminal Cases Initiated	0
Preliminary investigations pending as of February 2005	9
Preliminary investigations resolved	0
Total number of preliminary investigations pending as of February 2005	9
Criminal cases pending before the RTC	77
Criminal information filed before the RTC	0
Criminal cases decided	2
Criminal cases appealed	0
Criminal cases resolved with finality	2
Total number of criminal cases pending before RTC	75
C. Prosecution of Violation of R.A. 9239	
Criminal Cases Initiated	2
Preliminary investigations pending as of February 2005	2
Preliminary investigations resolved	0
Total number of preliminary investigations pending as of February 2005	2
Criminal information filed before the RTC	0
Criminal cases resolved with finality	0
Total number of criminal cases pending before RTC	0

Source: OMB Annual Report 2004

Aside from licensing, registration, inspection, raids and filing of administrative and criminal cases, the Optical Media Board has been busy during the first few months of its existence with the formulation of the Implementing Rules and Regulations of RA 9239 or the Optical Media Act. This was very important since it will be the leverage that will give the Board the coverage as well as the clear means and sanctions to be able to

fight piracy all over the country. With the passage of the IRR, the Optical media Board was able to work more readily as the provisions of the said IRR was sufficient in the daily dealings of the Board (Annual Report of OMB, 2004).

As reports have shown, the OMB has been very active in raiding known establishments selling pirated optical discs. As a matter of fact, approximately 600,000 discs were confiscated and destroyed during the December 8, 2004 operation conducted in Quiapo. Test buys were made by the team in the said operation; and in the actual raid there were 80 search warrants served. The operation was deemed successful in that there were no acts of violence that transpired. The Chairperson of the Optical Media Board himself talked to the Muslim and Christian sellers to pacify them (Annual Report of OMB, 2004).

Another concrete example of the actions achieved by the Board is the closing down of Virra Mall in Greenhills. The management of Greenhills decided not to allow any marketing of pirated optical discs with the reopening of the mall. The fact that the Board has conducted several raids during the last quarter of the year has discouraged the vendors and the people who are engaging in the selling of pirated discs from renewing their lease in the said establishment. Furthermore, the new stalls planning to sell optical discs in the newly renovated mall shall first go to OMB for accreditation and to ensure that the optical discs being sold are legitimate.

The confiscated discs were publicly destroyed and the scraps of plastic were sold and recycled. Last January 2005, thousands and thousands of pirated discs were destroyed in the office of the Optical Media Board in Quezon City. Different agencies were present to witness the said pulverizing of illegitimate discs. General Avelino Razon

of the PNP-NCRPO and General Marcelino Franco of the Special Action Forces were among the distinguished guests in the said event (Annual Report of OMB, 2004).

With the intelligence reports from Indonesia, the Board was also able to give information to the Bureau of Customs to intercept an Indonesian Airplane containing fifteen (15) boxes of pirated DVDs. Because of this interception, the Manado-Davao route was exposed which made the transfer of DVDs from Jakarta to Quiapo difficult. This resulted in some changes in the supply chain of Quiapo for cheap DVDs coming from Indonesia. After several months, the Board revisited Davao City acting on intelligence reports that piracy has started again in the area. With the help of Davao Customs Police, a total of approximately 8,500 film and music discs were confiscated. The two couriers who violated RA 9239 were brought to Davao City Prosecutor's Office (Annual Report of OMB, 2004).

It is the aim of the Board to eliminate piracy by seizing the activities of the so-called "big fishes." In October 2004, search warrants were served on behalf of Playstation. In the said raid, the OMB confiscated 70 boxes with an estimated 284,400 discs of different games, softwares and MP3s. One example of the games found in the raid is the "Anito"; this is the first all-Filipino PC game developed by an all-Filipino company. Though the international market has raved the product because of the well thought of game, local market has not been very responsive to this all-Filipino product mainly due to piracy. "Anito" has won the "Innovation in Audio" award in the 2004 Independent Games Festival in San Francisco, California. However, it was pirated in the Philippines within the first few months of its release in the country. Instances like this

should pave more way for measures to eradicate piracy in the country (Annual Report of OMB, 2004)

Moreover, as was stated early on, renewal of licenses is also part of the work of the Board. In the year 2004, the OMB inspected replicating facility that failed to renew its license and found that such was engaging in illegitimate activities.

Aside from raids and inspections which deal with the already existing pirated goods, the Board also prevents the marketing of illegally made optical discs. The chairperson of OMB published a notice entitled “A Warning to Bazaar Organizers, Vendors, and the General Public” which aims to stop the mere thought of selling pirated discs in flea markets or “tiangges” during the Christmas season. The Board also publishes their estimated loss in the music, software, video, and movie industry due to the proliferation of piracy in the country.

As the level of piracy increases, it gradually became a nationwide problem. As such, the Optical Media Board surveyed places even outside of Metro Manila. Though faced with financial constraints, the Board in as much as possible does the best that they can to lower the level of piracy even outside urban areas. For areas which they cannot directly attend to like for example, Cotabato, Basilan, and Sulu, the Board coordinates with the local government units to help them in solving the spreading of pirated discs (Interview with Mr. Dean Perez, please refer to informed consent in the appendix).

As technology improves, so does the advancement and the easier way of pirating discs. The Board should be updated with the different styles and strokes being employed by the pirates. To be able to meet this requirement, the Board attends seminars to update them with the latest ways to detect pirated softwares and other kinds of optical discs.

Regional conferences were also graced by members of the Board to impart and learn as well the techniques and intelligence of Indonesia, Malaysia, Thailand, Taiwan and other countries from the Southeast Asia. The current proof which authenticates that a disc is original is the Source Identification (SID) Code. With this code, the Board will know from what company the disc originated. Ideally, the legal manufacturers of optical discs in the Philippines will be given the SID Code by the Optical Media Board (Interview with Mr. Dean Perez, please refer to informed consent in the appendix).

Actions in Cooperation with other Agencies

Piracy is a problem that affects thousands of lives as jobs were lost and industries were endangered from bankruptcy (Annual Report of OMB, 2004). Because of this, the Optical Media Board admitted that they cannot do it alone. Several agencies have been part in their quest for the solution that will totally eliminate the causes and roots of piracy in the country. As the Philippines is included in the watch list of the United States, it was not only the Optical Media Board that has been alarmed with the sanctions that goes with this status (Interview with Mr. Dean Perez, please refer to informed consent in the appendix).

The Optical Media Board has been coordinating with various agencies like the Intellectual Property Office, the Department of Trade and Industry, PARI, and Motion Picture Anti-Film Piracy Council. For the actual enforcements, the National Bureau of Investigations, the CIDG and the PNP are helping to secure and maintain a level of order in their operations. In addition, there are representatives from the Integrated Bar of the Philippines, local music and movies, artists and talents, software industry, academe and consumer groups. Ex officio members from Department of Trade and Industry,

Intellectual Property Office, Department of Interior and Local Government, and Department of Finance are also included.

International Organizations with the same objective of deterring piracy were also supportive of the achievements of the Board. As a matter of fact, Mike Ellis, Senior Vice President and Regional Director for Asia-Pacific of the Motion Picture Association said, “The public destruction of a million pirated discs sends a very clear message that piracy is a crime and will not be tolerated. Piracy has a direct impact on jobs and revenues in the local film production and distribution industries, and it costs society in terms of lost tax revenues and lost investment opportunities. In short, it hurts the Philippines and it hurts the Filipino people” (Annual Report of OMB, 2004). He added that the simple ways such as warning bazaars of the sanctions with the selling of pirated discs give the Board increased credibility in trying to solve the propagation of piracy. In addition, the head of Regional Enforcement of the International Federation of the Phonographic Industry Robert Youill signed a pact with the Optical Media Board giving the Board unlimited access to the forensic laboratories in London (Annual Report of OMB, 2004).

The OMB cannot continue on with their functions without the assistance of the different local government units. As was already stated earlier, provinces which are very far from the main office and which are considered as “hazardous” cannot be visited and revisited by the Board. As such, they just coordinate with the local government to deputize and help them in lowering the levels of piracy in their respective areas. This is very important since the local governments really hold the leadership of a certain city or province. Thus, the level of assistance and sincerity on the part of the local government

can greatly improve the status of piracy (Interview with Mr. Dean Perez, please refer to informed consent in the appendix).

Intelligence is one of the assets of any institution who wants to counter an illegal act. The Optical Media Board's intelligence was able to hand them tons and tons of pirated discs with just one interception. Although the Board has no control of the Bureau of Customs which sometimes fails to stop the entrance of pirated discs in the country from Malaysia, Indonesia, Taiwan and other Southeast Asian countries, informants and intelligence agents give tips on the whereabouts or the storage warehouse of the said illegal goods. Just recently, the Board was able to intercept a truck full of pirated discs. According to OMB Head of Operations Dean Perez, the total worth of the discs confiscated amounts to approximately P10M. He explained though that it should not stop there. The actions should be continuous since a confiscated 100,000 discs today will be followed by a new production of 300,000 pieces the next day (please refer to informed consent in the appendix).

The Board is very much open in giving lectures and talks about piracy especially as requested by students. In fact, the Board has been supportive of student advocacies. Students of the Junior Philippine Institute of Accountants staged a week long anti-piracy events which included two concerts, a motorcade, film screening, exhibit and CD sale. As information dissemination cannot be all given by the Board it is important that concerned groups be able to engage in the same activities to inform the public of the hazards that piracy can bring.

Problems Encountered by the Optical Media Board

Piracy is not an easy problem to solve. And the Optical Media Board is not a “superman” who can stop the problem with only almost three years of existence. Piracy is a well syndicated problem; it is already powered and operated with the influx of high technology which made it even harder for the members of the Board to cope up with. One of the gravest problems is the fact that one can burn as many copies in his/her condominium, apartment, and other types of residence. With this, it is really hard to distinguish and raid manufacturers since there is no definite place wherein replication is done. As Mr. Manuel Nuqui affirmed, high technology made it easier for pirates to reproduce thousands and thousands of copies by just using a simple computer burner. Mr. Dean Perez admitted that the Board only has 20 organic members that will inspect and raid establishments all over the archipelago. Thus, he added that the Board really lacked the manpower that is needed to do its job efficiently. The Board cannot hire since they are still holdovers from the previous Video Regulatory Board (please refer to informed consent in the appendix).

Although they have counterparts that help them in their operations, still these are not enough. There were instances as well that these agencies were not as cooperative as they should be. Another major factor faced by the Optical Media Board is the budgetary constraint. The Board has to pay for porters who were tasked to collect the pirated discs and segregate them afterwards according to the classifications instructed by the Board. Thus, they should wait until the government can give them the financial assistance needed to conduct raids and inspections.

Another aspect that proves to be a problem is the non-compensation of the Board's members and employees. People who were very active in the operations of the Board were not even given hazard pays considering the risks that they encounter every time they face enraged sellers of pirated optical discs. When asked whether there were inside information leaks as to the operations of the Board, Head of Operations Dean Perez said many agencies are involved in an operation. There are porters, agencies like NBI, PNP, and the CIDG. It is not proper to say that the leak comes from the Board itself since there are many agencies that go with OMB in conducting raids and inspections. Indeed, there should be just investigations in this issue.

Another problem is the scope of the office; Republic Act 9239 provided that the authority of the OMB shall cover the entire territory of the Republic of the Philippines including the economic zones. With this very big scope, it would be an arduous task to prioritize the places that its members should visit considering the limitations it has on manpower and finances. The Board is also mandated to secure the practice of intellectual property rights in game softwares as well. Unlike the Video Regulatory Board which most of time focuses on videograms, the Optical Media Board has additional clients which it has to cater to (RA 9239).

Summary

With the propagation of pirated discs, the Video Regulatory Board was reorganized to accommodate the changes in technology, thus, the creation of the Optical Media Board. The State acknowledges that the protection of intellectual property rights as one of its policies. Republic Act 9239 and its Implementing Rules and Regulations provide for the powers and functions of the Optical Media Board and the sanctions

imposed for those violating the intellectual property rights of artists and talents. With the provisions of the Optical Media Act, the Board was able to accomplish tangible results which include licensing, raids, search warrant operations, plant inspections, administrative and criminal cases initiated. The Board also coordinates with different agencies to enhance its enforcements. These are Intellectual Property Office, the Department of Trade and Industry, PARI, the Motion Picture Anti-Film Piracy Council, the NBI, PNP, and the CIDG.

Despite the actions taken by the Optical Media Board, it is evident that the problem of piracy is far from being over. One of the reasons for this is the problems encountered by the Board within the agency itself. The OMB has been experiencing budgetary constraints and shortage of manpower. Though operatives' lives are put in danger every time there are raids, they do not receive hazard pay to compensate the risk. Another problem is the scope of the Board which includes all optical discs. Because of this, it is very difficult to prioritize the places that should be raided.

Considering the problems stated, the next chapter will criticize, analyze and assess the actions and the limitations of the Optical Media Board in deterring music and movie piracy.

CHAPTER 4

An Assessment of the Factors which Curtail the Actions of the Optical Media Board from Deterring Piracy

There is a need for a sense of government effectiveness and efficiency to satisfy the general public's expectations of government performance. As it is often said, efficiency and effectiveness mean "doing right things rights" (Mendoza, 2000). It is the objective of this paper to assess the actions done by the Optical Media Board in its tasked job of eradicating piracy in the country. In doing this, several factors which have been very crucial in the Board's actions will be discussed. Among the things that will be taken into consideration are the limitations within the Board itself, the politics behind the implementation of its activities, the local government unit, , the cultural values of the Filipinos, the general perception of people with regards to piracy, OMB's actions, and the political will of the current administration.

Limitations within the Optical Media Board

As was already mentioned in the previous chapter, the Optical Media Board which has been tasked by the government to solve the problem of optical piracy in the country has been facing chronic problems usually battled by government agencies. For one, the agency has limited resources to finance all the raids that they should be doing. There were instances, as a matter of fact, wherein information from their intelligence had not been useful as there was no fund that will enable them to execute the appropriate measures that they should have done. With this, it is clear that maximum utilization of information was not achieved since the Board was not able to use the information to advance one step in its objectives.

A recently concluded “destruction ceremony” in Camp Aguinaldo last February 11, 2006 gave the Board an additional income, however. Thousands and thousands of optical discs seized from raids in various parts of Metro Manila were pulverized and were sold as scrap in a public bidding. According to Chairperson Edu Manzano, “Last year, we sold more than 100 tons of scrap plastic discs. The income, which amounted to P1.4 million, is being used to repair service vehicles and to purchase equipment.” This year the money that will be raised will go to the funding of raids and the setting up of a website.

In addition to this, President Arroyo allocated 20% of the gross income of the recently concluded Metro Manila Film Festival to finance the activities of the Board (Vargas, 2006). This move, however, was disdained by producers and even artists. According to Mr. Manuel Nuqui, President of the Philippine Motion Picture Producers Association and VP for Internal and Administrative Affairs of Movie Industry Anti-Piracy Council, Inc, the Mowel Fund which is supposed to be the fund to support the artists especially the people who are working behind the camera should be given solely to the artists who have been working for the film industry. He added that the Optical Media Board has been receiving its funds as part of the General Appropriations Act given by the government (please refer to informed consent in the appendix).

This is not to say that the movie industry does not acknowledge the fact that the Board has its budgetary deficiencies. On the contrary, he disputed that the Anti-Piracy Council has been providing for financial assistance to the government agency which is mandated to help the industry fight piracy. In fact, the Anti-Piracy Council gave money to the Video Regulatory Board and the Optical Media Board. Financial assistance amounted up to Php 200,000 –Php 300,000 and sometimes even more.

Since the film industry is one of the most affected sectors with the problem of piracy, the Anti-Piracy Council has conducted raids of their own. With the help of NBI and PNP, the task force of the council went from Metro Manila to as far as Cebu to secure results for themselves. According to Mr. Nuqui, the time when pirates from Cebu were caught was really the time when piracy of local films was at its lowest. Moreover, aside from the raids conducted, the Council has been instrumental in the passage of three laws. These are the MTRCB Law, the Presidential Decree 1987 which established the Video Regulatory Board and the Intellectual Property Code (please refer to informed consent in the appendix).

Amidst the differences in opinion of producers and the OMB regarding the 20% share, the additional funds that will be gathered from the income generated from the MMFF will be an additional leverage for the Optical Media Board to enhance its enforcement activities (Vargas, 2006)

Another problem within the Board itself is the limited manpower for its operations. OMB Head of Operations Dean Perez stated that though there were other agencies which are aiding them in their activities, it is still not enough. For the Board, there were only 20 personnel to inspect and raid the whole of the archipelago. In Perez's words, "*Halos 20 lang kami at kilala na kami ng mga nagtitinda sa mga mall.*" The problem lies with the fact that the agency cannot hire additional personnel as there is no additional fund to support such hiring.

Politics behind the Implementation of OMB's Activities

It should be noted that the Optical Media Board is part of the government and thus it should conform and adjust to the happenings within the government. The passage

of the Implementing Rules and Regulations of the Optical Media Act has been postponed for a couple of months to give way to the canvassing of the 2004 national elections. According to Dennis Pinlac, representative of the OMB to the Congressional Oversight Committee (COC), Congress had deliberated on changes that were deemed necessary to widen the responsibilities of the Optical Media Board (Villafania, 2004).

However, Chairperson Edu Manzano, in an interview regarding the delayed promulgation of the Implementing Rules and Regulations of the Optical Media Act, said “Politics is hampering the approval of the implementing rules and regulations (IRR) of the optical media law...what is hard for us now is that if we can take out the politics out of the loop, then we can have the IRR of the Optical Media Law promulgated.” (Oliva, 2004).

Before the actual promulgation of the IRR last February of 2006, there have been statements that the Optical Media Board was operating “in a legal limbo.” Representative Ronaldo Zamora of San Juan pointed out that the lack of implementing rules made it difficult for the OMB agents to demarcate its actions as to whether they are within the limits of their authority or not (Ager, 2004).

The interruption in the promulgation of the IRR hindered the Board in its operations. The previous IRR has no teeth to combat the widened scope of the Optical Media Board and as such a new and extensive one should be passed for the Board.

Judicial System in the Philippines

Another factor is the judicial system in the Philippines. As known, the judicial system is an autonomous entity by itself. Thus, the Optical Media Board has no control over the administrative cases that will be filed against the pirates caught. According to

OMB Head of Operations Dean Perez, the PNP and the CIDG have several times caught Taiwanese illegal manufacturers but most of these illegal replicators have either disappeared or were freed after sometime (please refer to informed consent in the appendix). He added that they were not even certain whether cases have been filed or if trials were made. Furthermore, he added that due to limited personnel in the Board, they cannot file cases against all the vendors of illegal discs. If they will file cases against everyone who sells pirated discs then there will be no one available to conduct raids as the process to convict a person is actually long.

In addition, he added that when one comes to court, evidences should be specified. This means that the actual goods taken from a certain vendor of pirated discs should be intact. This is however, not the case with pirated discs. Because of the nature of the selling which is sometimes called as the “cat and mouse” type, it becomes difficult for agents to segregate which discs were acquired from which seller.

Penalizing manufacturers and not just sellers

As much as possible, the Board wanted to penalize the manufacturers and not the mere sellers of pirated discs. This can be an issue for debate since the RA 9239 and its IRR gave the OMB the authority to sanction even the distributors of pirated discs. Implementing Rules and Regulations of the Optical Media Act Title IV Rule I section I (h) specified “Suspension of operations of the establishment for a period of not less than one (1) month, but not more than three (3) months, confiscation of optical media products accessories and paraphernalia and/or a fine of not less than Php 50,000.00, but not more than Php 100,000.00, shall be imposed upon any person, establishment or entity who shall knowingly possess optical media produced in violation of the Act and/or these

Rules, for the purpose of sale, rental, distribution or any other commercial purpose or with the intent to profit” (IRR, 2005).

An interview conducted with sellers of pirated VCDs and DVDs confirmed that only their products were confiscated. The people who are engaging in the distribution were not caught nor asked to pay any fines. Mr. Dean Perez justified the action saying that for humanitarian reasons the Board does not file cases against the poor sellers. He added that piracy is their only source of income. Sometimes sellers of these illegally acquired discs were only fourteen to fifteen years old. Muslims who were from Mindanao deciding to go to Manila in pursuit of better lives ended up selling pirated discs in Quiapo. Muslim brothers would even justify what they are doing with the argument that the Koran does not prohibit them from selling these discs since they did not steal them. Hence it is not illegal and they should continue on with their businesses without interference from the government (please refer to informed consent in the appendix).

While it is hard to argue with this type of reasoning, this does not mean that the power or authority that was given to an institution should be forgotten altogether. It is justifiable that a poor person be given a leeway, however if this will continue, then there will really be no progress considering the number of “big fishes” caught.

The Local Government in Cooperation with the OMB

Decentralization in government has been one of the areas given much thought by researchers. For one, it has various advantages and disadvantages coupled with it. With the establishment of local government units, the political and administrative tendencies of dictatorship are greatly hindered. Furthermore, with decentralization comes the capabilities of experimentation and the development of new techniques by localities

without the requiring other localities to pursue these changes as well. Since the local government units are placed directly within the place wherein it has authority, these units actually know the peculiar needs of their population. Thus, it can establish organizations and methods to solve these problems without worrying whether other localities will be able to implement the said methods.

In addition, the issues gauged to be treated by the territorial subdivisions concerned can be facilitated by the local government units. This will help even the national government by lessening the problems it has to attend to. Decentralization also gives the citizens the feel of government. They can share their problems and participate more in the government than when the national government is the only entity that rules. With this, their political knowledge is enhanced giving political aspirants training for political leadership (Wit, 1967).

With decentralization, the local chief executive is not merely tasked to collect taxes and deliver services. He/she is to facilitate in problem solving by allowing the citizens of the community stimulate actions. He/she should also take efforts in defining community problems and gather the public and the private resources to achieve community aspirations (Mendoza, 2000).

This leads us to the next analysis on the actions done by the Optical Media Board. As we have said early on, the local government unit has been cooperating with the OMB in its objective of eradicating piracy in the country. Aside from this, it was made clear that the chief executives of these units have the power and the duty to solve problems that the society deemed detrimental. However, politics has entered even in this instance. The Optical Media Board Head of Operations Dean Perez though not in explicit terms, stated

that the local government units have not been very cooperative in trying to solve piracy (Interview with Perez, February 9, 2006). Take for example the case of Quiapo, Manila. It is not a secret that Quiapo is one of the hubs of piracy. Almost everyone who has been in Manila will notice the extreme case of piracy distribution in the area. However, despite this known fact, and amidst the need to lessen piracy in the country, the local government unit has not been able to stop the selling of pirated discs in the area.

Questions of why this is happening can have several answers, most of which are mere hypothesis. First, politicians are politicians; though this is not to generalize, there are politicians who want to protect their political ambitions. The people whom they will penalize are the same people who will vote in elections. Of course, if a politician has political aspirations, he/she will definitely think twice in ruining the trust that people have for him/her. Second, there were rumors that the manufacturers of these pirated discs have a hold in the government. This means that the big time manufacturers are backed by officials of the local government. This is not impossible considering the length of time that this problem haunts our society. Since the rule of President Ferdinand Marcos and up to the present administration the solution to the problem is still far from becoming a reality.

The state has declared as a policy the need to ensure protection and promotion of intellectual property rights. As such it is not merely the job of the Optical Media Board to address this problem. As much as possible, since it is really the local government unit who has a direct control over the given area, it should take the initiative to put necessary measures to eradicate piracy in its designated locations.

General Status of Poverty in the Philippines

Although the 1990s statistics signified the decline of poverty incidence from 49.3% of the total population in 1985 to 40.6% in 1994 and 36.8% in 1997, an ADB study conducted in 1998 by Ernie Pernia and Arsenio Balisacan stated that this decline in poverty incidence did nothing to improve the inequitable distribution of wealth in the country. Because of this, the Arroyo Administration focuses on developmental agenda specifically on the issues of poverty and unemployment. With the four primary strategies included in the Medium-Term Philippine Development Plan which stresses poverty reduction through equitable growth, rural development, and social sector investment, the Arroyo Administration seeks to achieve substantial progress as regards the status of poverty in the country. But despite these goals the country has not been successful in alleviating poverty (Henderson, 2002).

This same reality is the reason for the proliferation of piracy in the Philippines. The producers of films admit that they can no longer lower the prices of original discs due to the costs of production. And while they have not yet thoroughly adapted to new technology which will enable them to produce film less expensively, the case of high price for original discs will remain the same. Because of unaffordable prices of legitimate discs, the general public opts to buy the way cheaper products which are sometimes made even more convenient for them to avail.

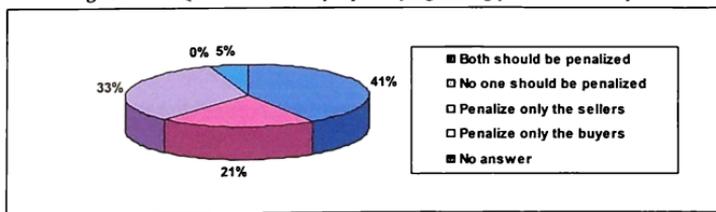
Interviews conducted with sellers of pirated discs in Quiapo confirm the truth of poverty as one of the root causes of piracy in the country. Firstly, as was stated earlier, people cannot afford the high prices of original discs. Legitimate discs costs around Php 250.00 – Php 400.00 depending on whether these are local or foreign products. Pirated

discs however cost only Php 25.00 for VCDs and Php 35.00 for DVDs. With these figures into consideration, it will really be more practical to buy pirated discs since there is a big difference in their prices.

Secondly, sellers of pirated discs do not have alternative source of income. One interviewee admitted that before selling pirated discs, she has been engaging in “5-6.” Another was from Mindanao who because of lack of opportunity decided to live in Manila and later on ended up selling pirated discs. One interviewee, though, had a previous source of income in line with cosmetics. However, she said that because the trend nowadays is pirated discs, she left her previous job to try her luck in the business of pirated discs. In a day, the net income can reach up to Php 1500.00. However, the lease for the place in Quiapo ranges from Php160,000 – Php 200,000 annually depending on the strategic location of the stalls.

For some, the lack of legitimate jobs can, to a certain extent, justify the business of illegitimate discs. However in a survey conducted, more intellectuals as well as low income earners suggests that sellers of pirated discs should be penalized. The graph below shows the replies of respondents on the question of who should be penalized.

Figure 4.1 -- Question: Should people buying/selling pirated discs be penalized?



The Figure 4.1 shows that most of the respondents who are intellectuals acknowledge that both the sellers and the buyers of pirated discs should be penalized.

Some 33 respondents however, singled out the sellers as the ones who should receive due sanctions. Among the reasons cited by those who answered “both should be penalized” are as follows:

Table 4.1 –Reasons cited for “both should be penalized”

It is a crime	21.9%
Both are responsible	12.2%
It is not fair to punish only one	7.3%
It is ethical to protect our artists	4.9%
Others	4.9%
No answer	48.8%

For those who answered “only sellers should be penalized”, there is a unanimous reason of which they all deemed that the sellers started the crime. As a matter of fact, in a separate survey conducted on low income earners, most stated that without the sellers no one will be enticed to buy pirated discs in the first place.

Of course, this is quite questionable because in the same way, it can be argued that without the demand for pirated discs, manufacturers will opt not to produce pirated discs since consumers are not interested in buying the product.

The results of the survey however do not mean that respondents are very much into protecting the intellectual property rights of artists and talents. In fact, discussions later on will prove otherwise.

General Perception of People in the Issues of Piracy and Artists' Protection

Piracy has been one of the issues recently seen in televisions and newspapers. With the rumored undertakings by the Optical Media Board in ensuring that the recently concluded Metro Manila Film Festival will not be attacked by pirates, the problem of piracy has elevated itself at a certain level needing attention.

The intellectual property right of artists and talents is one of the rights stepped upon by illegal manufacturers and replicators of original discs. There is a general perception that for a law to become effective and for people to accept it as vital and important to society, they should believe in what the law espouses. In a survey conducted, most intellectuals and even low income earners recognizes the intellectual property rights of artists and talents. The graph below will show the view of respondents with regards to intellectual property rights of artists and talents.

Figure 4.2 – Question: Do you believe that artist, composers, producers' works should be given protection from unfair exploitation by the public?

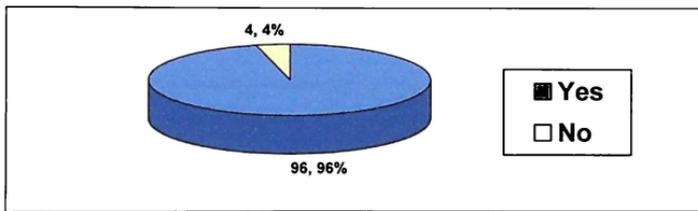
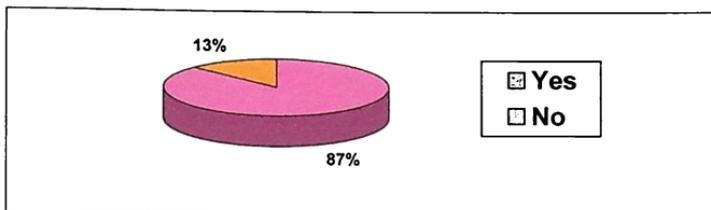


Figure 4.2 shows that more respondents believe that artists are entitled to have the authority to distribute reproduce their own works. This entails, as well, that unfair exploitation of their works is considered as illegal.

However, as was said a while ago, the results of the survey do not necessarily mean that people choose to stop themselves from buying pirated discs. In a survey conducted, the same people who answered “yes” to the question of artists’ protection also answered “yes” when asked if they buy pirated discs. The figure on the next page will illustrate this further.

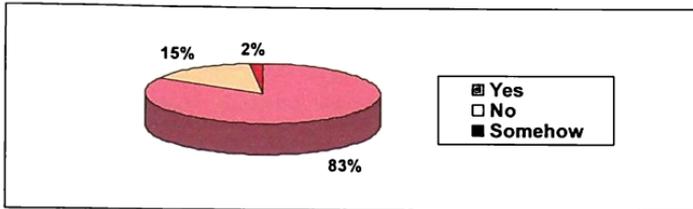
Figure 4.3 –Question: Do you buy pirated VCDs and DVDs?



This shows that despite the fact that respondents acknowledged that they believe in artists' rights, they still buy pirated discs. In the same case, while the same respondents agree that in one way or the other some people engaged in piracy should be penalized, they still purchase illegitimate discs for personal satisfaction. With this, it can be concluded that perception is different from actual action. In a nationwide survey conducted by the SWS last 2000 and 2002, it has been known that more people think that it is not okay to buy pirated discs. As was explained by Ms. Jeanette M. Ureta, survey data archivists of the Social Weather Station, questions like "is it okay to buy pirated discs?" does not mean that people who answered "no" in actuality do not buy pirated discs.

The same can be applied to the survey conducted for the purpose of this study. Contradictions may seem to have arisen with the answers of respondents. However, this is what is happening in our country. For elaboration, two questions from the survey will be analyzed. The questions that will be taken into study are the following: (a) Do you think piracy is a crime? (b) Do you buy pirated VCDs and DVDs? The next graph will show the disparity between the number of people who believes that piracy is a crime. With this presented, it will be seen that several contradictions were made.

Figure 4.4 – Question: Do you think piracy is a crime?



Going back to Figure 4.3, 87% answered that they do buy pirated discs. Given the next question of whether they believe that piracy is a crime, the some respondents had 83% answered “yes”. This shows that people consider piracy as illegal but they continue to buy pirated discs. Table 4.2 will show the reasons for this.

Table 4.2 Reasons for buying pirated discs.

Cheaper	97.7%
Can be watched repeatedly	63.2%
To have a copy of the film or music recording	43.7%
Missed theatrical release	35.6%
Less time consuming than going to movie houses	28.7%
It is a craze nowadays	3.4%
Others	10.3%

The topmost reason for buying pirated discs is still practicality. As OMB Head of Operations Dean Perez stated it is hard to combat the fact that pirated discs are really more affordable than original ones. Not to mention that discs are just hits for a short period of time. A movie will not forever be in demand and once a person have already watched the movie, more often than not, that person will not wish to have a quality copy

of the film unless it is a classic or one of his/her favorites. This is one reason why piracy is still rampant in the country.

OMB's Efforts and Activities

In an interview conducted with Mr. Manuel Nuqui, VP-Internal and Administrative Affairs of the Movie Industry Anti-Piracy Council, Inc, he stated that piracy will not be solved by catering to the whims of the illegal manufacturers. This was pertaining to the alleged “ransoming” of the Optical Media Board to ensure that the films of the recently concluded MMFF will not be pirated. A sum of Php 25,000 per title was asked by the pirates to guarantee that no pirated versions of the films will be produced while the movies were still being shown in theaters. For artists and producers it is unethical that a member of the industry itself will consider paying a ransom to these illegal manufacturers (please refer to informed consent in the appendix).

Chairman of the Optical Media Board Edu Manzano defended the Board with the justification that it is part of their intelligence efforts. Entrapment entails processes that should be carefully planned to make sure that lives of their agents will not be put at risk. He stated that they are not mere “onlookers.” He added that several arrests were done which included: an owner of a printing press, the operator of a VCD-burning center in Cebu, two pirates videotaping screenings of MMFF entries and selling them to mom-and-pop CD burning operations in Quiapo and two vendors (Bismarck, 2006).

It is up to the general public which side to believe. However, in this type of argumentations one thing is apparent. There is lack of coordination between and among institutions and agencies which should have been united in fighting piracy in the country. As Head of Operations Dean Perez stated, piracy is a well syndicated crime which

involves even smuggling. And as such, the status of piracy in the country cannot afford anymore bickering from the agencies which have been tasked to promote the rights of intellectual creators in the Philippines.

Political Will of the Arroyo Administration

It is very important that the Arroyo administration support the campaign of anti-piracy. However, it does not stop there. A sense of a strong political will should be present to boost the efforts done by the agencies which are authorized to fight piracy in the country. Pertaining to the other problems in the country, Senator Richard Gordon urged President Gloria Macapagal-Arroyo "to seriously show political will in order to end the political crisis in the country". The problem of piracy is no exception. The people buying, the people selling, the manufacturers, distributors will all take a step back when they see that the government is serious in its goals of fighting piracy. However, it can be said that the problem of piracy is not one of the priorities of the government. Although 20 % share from the Metro Manila Film Festival will be given to the Optical Media Board for its enforcements activities, Chairperson Edu Manzano admits that this is not enough.

The prioritizing of the Arroyo government of different issues other than piracy cannot be put in question. As we know, the country has been experiencing tremendous problems which include conditions of the poor, education, livelihood and the likes.

Summary

The chapter discussed several reasons why piracy in the Philippines has continued for decades. Generally, the reasons include the following: limitations within the Optical Media Board, politics behind the implementation of OMB's activities, the problems

encountered with the local government units, the condition of poverty in the country, the perception of people with regards to piracy and their recognition of artists' talents, the own efforts of the Optical Media Board, and lastly the political will of the Arroyo Administration.

Though, for the most part, poverty is considered the root cause of piracy nowadays. It is still important to consider that other factors contribute to the problem. By doing this, other things can be done or can be given attention while still trying to solve the problem of poverty in the country. So much work is still to be done. And this is acknowledged by Chairperson Edu Manzano. A decrease of six percent is far from being the solution to the problem as tons and tons of pirated discs are still being sold at Quiapo and even by vendors from every corner of the street.

CHAPTER 5

Conclusion and Recommendations

The international arena armed with the existing treaties regarding intellectual property rights has commanded strict observance of intellectual property protection. The Philippines being a signatory to some of these treaties should follow the standards set by the said treaties. Under the TRIPs agreement, new and stronger sanctions were imposed to stop piracy. The main concern of the proponents of the TRIPs agreement is the length of time given to developing countries to conform to these standards. The Philippines was no exception. The Philippine Congress recognized the need to immediately enact the Intellectual Property Code. Several benefits await the country once the passage of the IPC is complete. These are low tariff rates and the lowering of the Philippines from “priority watch list” to “watch list.”

Furthermore, the Videogram Regulatory Board which was then mandated to curb piracy was reorganized. The Optical Media Board was created under Republic Act No. 9239 to cope with the modern technological changes of the time. The scope of the Board was widened, dealing with all pirated optical discs covering the entire archipelago.

In answering the thesis question, how effective the actions done by the Optical Media Board are in deterring music and video piracy in the Philippines, several things will be looked at. It is obvious that piracy is still very rampant in the country. Quiapo is one of the most popular places for people who want to buy the cheapest pirated discs. However, until the present time, despite the efforts done by the Optical Media Board, Quiapo remains the hub of pirated optical discs. In addition, in almost every place, one would see vendors of pirated VCDs and DVDs. Again, with this as basis, it can be

concluded that piracy is still uncontrolled. To further understand why this is the case, a short description of the Optical Media Board is necessary.

Republic Act No. 9239 or the Optical Media Act reorganized the Videogram Regulatory Board. It was tasked to supervise the regulation and renewal of licenses and has the authority to conduct inspections and raids. To be able to achieve concrete results, the law incorporated penal sanctions in its provisions. The Board has continued confiscating and destroying pirated discs as what was previously done by the Videogram Regulatory Board.

In Republic Act 9239, it was stated that the Philippines made it a policy to protect intellectual property rights of intellectual authors. As such, there should be strict observance of these rights to ensure that intellectual authors will be encouraged to be more creative. In fact, with strict implementation of intellectual property laws, the ingenuity of a country's inventors and authors will be advanced. The high quality of products will be ensured as well since pirated materials will be eliminated. This is the theoretical framework used in this study.

The Philippines has been experiencing problems due to the non-observance of intellectual property rights. For example, the film industry before the heightened problem of piracy was able to produce around 250 films per year. However, due to losses caused by piracy, the average number of films produced per year was only about 60 films, many of which having sex-related stories. It can be seen here that producers are not encouraged to make more films. If they decide to do so, the quality of films is jeopardized. A producer will not invest in production design and effects since these things add a hefty cost to the production of the film. Without the assurance of getting their money back, or at least

breaking it even, the natural reaction would be to cut excess costs. As was stated by Mr. Manuel Nuqui, the movies which participated in the last MMFF have very excellent scripts. However, during the play of the final product, it was evident that the producers did not invest much on production design, thus, compromising the quality of the entire film.

Furthermore, people buying pirated discs experience the comparatively low quality of such products. Although some copies produced now are of better quality, the chances that the movie will stop anytime while being viewed are still highly probable. Some argue, though, that as long as it can be returned, there is no problem. However, in doing this, time and additional money will be used which should have been allocated for other more significant things. Moreover, in a survey conducted, 22 out of the 58 respondents answered that they prefer watching in movie houses than watching pirated VCDs and DVDs, because quality is sacrificed with pirated discs.

It is quite apparent that since the Philippines has not been strict in protecting the intellectual property of artists and talents, producers opt not to produce excellent films and the quality of discs available to the public is of low standard.

It is, however, quite hasty to assume that the Optical Media Board is the sole reason for the continuing problem of piracy. As was discussed in the previous chapter, several limitations have been experienced by the Board which were beyond their control. These are the budgetary constraints, manpower complement, politics behind the implementation of OMB's activities, the judicial system of the country, the actions of the local government unit, the general status of poverty, general perception of people

regarding the issue of piracy and artists' protection, and the political will of the Arroyo administration.

Finances and manpower are very important to ensure that the Board will be able to do the things that it should do. Although the OMB has been receiving additional funding from the Anti-Piracy Council, the costs of raids are really beyond the received funding from other agencies and the government. As for manpower, it was earlier stated that there are only 20 organic members of the Optical Media Board in the entire archipelago.

Since the Optical Media Board is part of the government, it is inevitable that politics will affect the activities of the Board. For one, the delayed passage of the Implementing Rules and Regulations of the Optical Media Act was due to the canvassing of the last national elections. As it can be remembered, it took quite some time to finish and finally resolve the proclamation of the new president.

The Optical Media Board has also experienced problems with the judicial system as well as the local government units. Both of these are independent institutions and cannot be ordered to follow the instructions of the OMB. Because of this, the Board cannot control the activities of both the institutions. The OMB has no power once the case is filed, leaving the authority to the judicial system. The local government unit, on the other hand, has the control over the place of its jurisdiction. This should have been an advantage for the OMB; however this is not the case. The local government units have not been very cooperative with the Board in its objective of stopping piracy.

Poverty is another reason why piracy cannot totally be eliminated. People opt to buy illegitimate discs because it is more affordable. Another factor is the political will of

the Arroyo administration. The current administration supports the anti-piracy campaign, however, the leadership lacks the political will needed to truly address the problem.

Indeed the Optical Media Board experienced problems which appear to be outside the domain of the Board. And that being the case, it would indeed be very difficult to secure changes. However, with its objective of eradicating piracy in the Philippines, the OMB definitely have several shortcomings. The Board itself made several critical mistakes in fighting the prolonged case of piracy in the country. The researcher, therefore, concluded that though some of the reasons why piracy cannot thoroughly be eliminated like poverty and the non-cooperation of the local government units cannot be controlled by the Board, there were other factors which should have been given more attention by the Board.

Information Campaign

It is crucial that people know the pros and cons of piracy. The survey conducted for the purpose of the study showed that people who buy pirated discs consider piracy as a crime but still continue to involve themselves in the activity. Moreover, 63% of the respondents answered that they do believe in the objectives of the Board in fighting piracy, but 87% of the respondents still buy illegitimate discs. This can be explained by the fact that the specific hazards caused by piracy are not truly known to the people. The general perception is that artists are robbed of their rights to protect their works from unfair exploitation. However, little emphasis is given to the low income earners working behind the camera. Because of piracy, less and less films are produced each year, leaving these people out of work.

Another information campaign that should be sustained is the promotion of the Optical Media Board itself. Although 76% of the respondents in the survey conducted knew of the said Board, the only activities of the Board they know of are raids and confiscations of pirated discs. Because of this, people are left thinking that the government is not serious enough in eradicating piracy since nothing is actually being done except mechanical operations of raiding illegal discs. Moreover, the general public cannot feel the dedication since they know that after consecutive raids, vendors still continue selling pirated discs.

Furthermore, even the sellers of pirated discs are not aware of the new agency tasked to solve piracy. In an interview with a vendor, she mentioned the actions of the Video Regulatory Board headed by Bong Revilla. In her words, "*Pag nandyan na ang VRB, tatakbo na kami.*" The Optical Media Board has been operating for more than two years and it should already be known to the public that it was established to handle the job of the defunct Video Regulatory Board.

Again, information dissemination is vital to ensure that the public knows what the agency is fighting for. And with this information, people will be able to help the government by disengaging themselves from buying these discs considering the detrimental effects this has on the economy and people from the industry.

Rigid Law Implementation

Republic Act No. 9239 and its Implementing Rules and Regulations authorize the Board to enforce penalties for offenses therein described. However, some of these sanctions are not followed considering the status of people to be penalized. As was stated in the previous chapter, Head of Operations Dean Perez admitted that for humanitarian

reasons those selling pirated discs are not asked to pay fines. The Board wants to apprehend the illegal manufacturers and producers themselves and these people are the ones they want to penalize, not the common peddlers.

This is not to say that this action is entirely wrong. Some can justify the deed by saying that they didn't have any other choice but to engage in this kind of activity since it is the only source of income of the family. However, if this kind of thinking will be adapted to any syndicate then truly there will be crimes left and right. It is good that the government thinks of the welfare of the vendors, however, if this continue, it will show the lack of fastidious will power on the part of the government in fighting piracy as leeway is always given to people who are engaging in this kind of business. Another way of explaining the situation will be to use this kind of thinking with sellers of illegal drugs. The government clearly disdains the use and the proliferation of illegal drugs as it robs the nation of a future. Taking the justification that the seller has no other way of generating money aside from selling illegal drugs, does not mean that he/she will be acquitted from the charges of drug pushing. The same goes for any poor individual engaging in any illegal activity.

This does not mean that what the Optical Media Board did was wrong. But it is not justifiable either. If everyone will do the same thing, then no one will be guilty of anything by just blaming poverty.

In addition, according to Head of Operations Dean Perez, there were illegal manufacturers who already got caught. However, after some time, these people were either acquitted or have been freed by the agencies that had custody. This is one great problem in the case of piracy. Reports of "big fishes" are rampant; but ask again in a

couple of months and these people mostly Taiwanese citizens have returned to their countries without being convicted of anything.

The public should know that actual cases have been filed and convictions made. This will help very much in projecting the image that the government is steadfast in its campaign of stopping piracy.

Furthermore, the Republic Act No. 9239 or the Optical Media Act espoused that the Board should issue SID or Source Identification Code. However, though not stated explicitly by the Head of Operations Dean Perez, the Board up to now has not been issuing the said codes. Rigid law implementation entails that the Board be able to follow and execute the provisions as these are deemed important by the lawmakers who passed the said law.

Change in People's Perception

This next recommendation is highly related with the process of disseminating information. The Optical Media Board admits that they cannot do it alone. Head of Operations Dean Perez explicitly said that people's initiative is needed. While the demand for this kind of product exists, manufacturers will naturally produce and provide these discs. The Filipino people after presented with the advantages and the disadvantages will decide whether a Php 35.00 VCD is worth the jobs lost due to piracy.

Coordination with Other Agencies

The Optical Media Board should coordinate more with other agencies to further improve their function. For one, the Board admitted that although they would seize thousands and thousands of discs, the next day the same amount or even more will enter the country from Malaysia, Indonesia, Vietnam, and Taiwan. Having said this, the action

done which costs thousands of pesos becomes futile as supplies from other countries are able to penetrate the country. Knowing this problem, the Optical Media Board should advance talks with the Bureau of Customs on how to enhance coordinating procedures which will allow the Board to know whether supplies of materials and machines for illegal manufacturing are brought in.

It is acknowledged that the Bureau of Customs is an independent entity by itself. However, this should not be a hindrance in the Optical Media Board's work of curtailing piracy. Talks and arrangements should be employed since both are agents of the government which are charged to do things for the government.

Another instance wherein lack of coordination was apparent appeared with the bickering of Leo Martinez, head of the Film Academy and the Chairperson of the Optical Media Board Edu Manzano. These offices together with the Anti-piracy Council should have been coordinating with each other regarding the current operations of each office. They should be helping each other fight this problem after all they are really the ones affected by the chronic problem of piracy in the country.

Alternative Jobs

Although this part has often been the cause of serious debates, it is still very important to cite the problem of lack of alternative jobs as one of the root causes of piracy. Of course, it is impossible to let the Optical Media Board handle this predicament. And it is understandable since it is not within their job description to provide alternative jobs for sellers of pirated discs. One of the vendors in Quiapo told us that if there were other jobs, other livelihood which the government could provide, she will stop selling

pirated discs. In her words *“siyempre ayaw din namin ng ganito, lagi kaming tumatakbo, delikado din naman.”*

Until the problem of poverty and lack of opportunity is sufficiently addressed by the government, it is very difficult to expect people to lean towards morally accepted jobs. Once families are put in a situation where survival is endangered, people can never be expected to follow all the laws.

Lessened Instance of Padrino System and Strict Prosecution of Cases

As was stated early on, there were rumors that the manufacturers are actually backed by the officials of the government themselves. If this was true, the problem or piracy will really be hard to solve. Aside from this, prosecution of cases to send the signal that the government is serious in deterring piracy should be espoused as well. The current situation lacks these strict law enforcers who can persecute cases of violation. As the discussion earlier revealed, there were several instances wherein “big fishes” were freed without being penalized. Because of this, it can be said that there is no strict observance of intellectual property rights.

To sum it up, the Optical Media Board has achieved substantial results like taking the Philippines from the “Priority Watch List” down to the level of “Watch List.” Considering the short time it has been operating, the Board did its job. However, a lot of things can still be improved as was earlier stated. The problem of piracy as seen in areas in Quiapo and Metrowalk is far from being over. Strict observance of intellectual property rights is yet to be realized.

The researcher though does not discredit the reality that several factors have contributed to the present status of piracy in the country. This is not the sole failure of the

Optical Media Board as factors like budgetary and manpower considerations, problems encountered with the local government unit and political will of the Arroyo administration are also present.

However, as the study proved, several factors are also lacking or have been overlooked by the Board to solve the problem of piracy. With consistent programs on information dissemination, rigid law implementation, change in people's perception and streamlined administrative procedures, a better observance of the intellectual property rights and thus lessening levels of piracy in the country will be achieved.

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- Republic Act No. 9239- "Optical Media Act of 2003"
- Implementing Rules and regulations of the Optical Media Act
- Deliberations – Committee Hearings
- Excerpt from the IIPA Special Recommendations, February 20, 1996
- Annual Report of the Optical Media Board 2004

Appendices

Appendix 1: Questionnaire- KII (Optical Media Board)

1. Basically, what is the scope and function of the Optical Media Board?
2. What have been the experienced problems that hinder the activities of the Optical Media Board? How does your agency cope with such problems?
3. What are the sanctions for selling and buying pirated videograms? Do people caught before still engage in selling pirated VCDs and DVDs after serving their penalty?
4. How does the agency deal with the perception of the public that pirated videograms are more preferable because they are cheaper?
5. Does the agency coordinate with other institutions, whether other government agencies or record companies, in deterring piracy? Or is the agency really solo in its activities?
6. Have there been talks with the record companies to reduce the price of original recordings to enable general consumption?
7. Piracy is a manifestation of lenient adherence to intellectual property rights, what is your view regarding the notion that strict observance of intellectual property rights is not for the Third World since majority of people living in developing countries cannot afford to pay royalties?
8. Do you consider your activities as leaning towards positive results with regards to deterring pirated VCDs and DVDs?
9. What do you think is the root cause why piracy cannot be totally eliminated?
10. How does the Board coordinate with the artists regarding the updates in piracy? Are there forums or regular meetings with the organization of artists in the Philippines?
11. Are there measures done by the OMB and the government to provide other means of livelihood to the sellers of pirated CDs?
12. What are the punishments if one is caught in a raid?
13. Were “big fishes” caught? If yes, what process took place to penalize them?
14. How exactly do pirated CDs and DVDs affect the music and movie industry?

15. How do you know which places you will raid now? Are there scheduling beforehand or does it depend on tips from your intelligence?
16. How did the Board ensure that the recently concluded MMFF films were not pirated? How was that possible?
17. According to the survey I conducted, many people believe that pirating discs is a crime however despite this they still buy pirated discs, what is your reaction towards this?

Questionnaire- (Retailers of Pirated Videograms)

1. Why do you engage in selling pirated videograms despite the efforts of the government to eradicate piracy in the Philippines?
2. When piracy was not yet rampant, what was your source of income?
3. What is your general perception of the Optical Media Board?
4. Have you encountered raids or operations of the Optical Media Board in its fight for piracy? What did you do?
5. What is your reaction when people say that piracy is just like stealing? How do you defend yourself when you hear such comments?
6. Is selling pirated videogram a good business in terms of profit-generation? How much is your profit per disc? How much is your initial capital?
7. Is selling pirated videogram your only source of income?
8. Do you agree that piracy should be legalized?
9. If the government will give you some other source of livelihood, would you consider abandoning selling pirated videograms?

Questionnaire- KII (Anti-Piracy Council)

1. How does piracy affect the Philippine movie industry?
2. How are the artists and other people behind the production of movies affected by piracy? Were there instances when workers have been fired due to this problem?
3. Approximately, how much money is lost annually because of piracy?
4. Is the Philippine Motion Picture Producers Association conducting its own studies with regards to piracy in the Philippines?
5. The film industry is one of the most affected industries because of piracy, what other measures have you taken other than those provided by law and initiated by the OMB to prevent the further aggravation of piracy problem?
6. Do artists and talents help by lowering their talent fees?
7. What are the stages in film production? What is the most costly of these all?
8. Are there any improvements with regards to theater attendance now compared to when the Optical Media Board was not yet established?
9. Are you coordinating with OMB to stop piracy in the country?
10. Do you think piracy has lessened now than before OMB was established?
11. What other sanctions do you think should be enforced to curb music and movie piracy in the country?

January 2005

Dear _____,

Warm Greetings!

I am a graduating student of the University of the Philippines Manila taking up BA Political Science. This semester, I am working on my undergraduate thesis about the effectiveness of the Optical Media Board in deterring music and movie piracy in the Philippines.

As part of my data gathering methods, I would have to conduct several interviews with resource persons who have vast knowledge on my chosen topic.

In this regard, I respectfully request your good office to please allow me to conduct an interview with you or anyone that you can recommend from your agency/institution that can contribute substantial data for my research. I would also truly appreciate if you grant me access to documents or reading materials that would aid me in my study and supplement the data for my thesis.

Hoping for your earnest and positive response,

If you have any questions, you may contact me at 3652704; 09275929030; 09223325774.

Thank you very much for your time.

Yours truly,

Jacqueline Rose B. Ong Pe
4th year BA Political Science
UP Manila

Appendix 2: Ethical Consent Form – Key Informant Interview and In-depth Interview

Good Day! I am Jacqueline Rose B. Ong Pe from the College of Arts and Sciences, University of the Philippines Manila taking up BA Political Science. For the completion of my undergraduate thesis, I am conducting a study on the effectiveness of the Optical Media Board in deterring movie and music piracy in the Philippines. In line with this, I would like to request an interview with you as to provide me with pertinent data regarding this topic.

This form will explain the nature of the study, and the orientation of the interview. May I ask that you read the entire form and sign if you agree with the terms written. If you have any questions regarding the study and the interview, please feel free to ask the researcher.

Basically, the study is about the proliferation of music and video piracy in the Philippines and the actions done by the Optical Media Board in fighting the causes of piracy. It also aims to determine whether OMB has been effective in its mission of putting off the threats caused by unregulated distribution of pirated VCDs and DVDs. Your permission to be an interviewee regarding this topic will be of great help in giving me information that cannot be obtained through literature review.

Being a key informant or an in-depth interviewee, you will be asked questions regarding the true situation of music and video piracy in the Philippines, the problems encountered in the implementation of the Copyright Law, and the overall evaluation of the programs and actions of the Optical Media Board. You are one of the 4 interviewees contacted for this research. The interview will take approximately 1½ hours. The date and time of the interview will depend on which time is most convenient for you. May I please ask that the course of the interview be recorded for verification and triangulation. A copy of the questions will be given to you a week or days before the actual date of interview. May I assure you that the information imparted will be held with confidentiality. Conveyed information will not be published for circulation.

Please sign here if you gave your consent to have an interview and agree with the terms written.


Signature over Printed Name

2 | 9 | 06

Date

Witness

Date

Appendix 2: Ethical Consent Form – Key Informant Interview and In-depth Interview

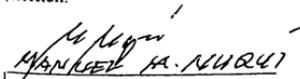
Good Day! I am Jacqueline Rose B. Ong Pe from the College of Arts and Sciences, University of the Philippines Manila taking up BA Political Science. For the completion of my undergraduate thesis, I am conducting a study on the effectiveness of the Optical Media Board in deterring movie and music piracy in the Philippines. In line with this, I would like to request an interview with you as to provide me with pertinent data regarding this topic.

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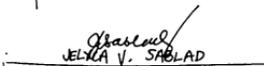
Basically, the study is about the proliferation of music and video piracy in the Philippines and the actions done by the Optical Media Board in fighting the causes of piracy. It also aims to determine whether OMB has been effective in its mission of putting off the threats caused by unregulated distribution of pirated VCDs and DVDs. Your permission to be an interviewee regarding this topic will be of great help in giving me information that cannot be obtained through literature review.

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Please sign here if you gave your consent to have an interview and agree with the terms written.


Signature over Printed Name

Date


Witness

Date

Kasunduan sa Pakikibahagi sa Isang Pananaliksik/ Pag-aaral

Magandang Araw! Ako po si Jacqueline Rose B. Ong Pe ng College of Arts and Sciences, University of the Philippines Manila kasalukuyang kumukuha ng kursong BA Political Science. Isang requisito sa pagtatapos ay ang “undergraduate thesis.” Ako po ay nagsasagawa ng isang pagaaral kung gaano ka-epektibo ang Optical Media Board sa pagpuksa ng pagpipirata ng mga pelikula at mga tugtugin sa Pilipinas. Dahil dito, hinihiling ko po na kayo ay makapanayam upang makakuha ng mga kinakailangang impormasyon na may kinalaman sa aking pagaaral.

Ang panuntunang ito ay ipapaliwanag ang kabuuan ng pananaliksik at ang mga katangian ng panayam. Hinihiling lang po na basahin ninyo ito ng buo at lumagda kung kayo ay pumapayag sa mga nakasulat dito sa panuntunan. Kung sakaling mayroong mga hindi maliwanag na bagay, wag po kayong mahiyang magtanong sa mananaliksik.

Ang pagaaral na ito ay tungkol sa paglaganap ng pagpipirata ng mga pelikula at tugtugin sa Pilipinas at ang mga ginagawang aksyon ng Optical Media Board upang masupil ang puno’t dulo ng problemang ito. Ang inyong pagpayag sa isang panayam ay lubos na makakatulong sa aking pagkalap ng impormasyong hindi makukuha sa mga libro.

Ang mga tanung po sa inyo bilang isang “key informant o isang in-depth interviewee” ay tungkol sa sitwasyon ng pagpipirata sa Pilipinas, ang mga problemang naengkwentro sa pagpapatupad ng Copyright Law, at ang pangkalahatang pagsusuri ng mga programa ng OMB. Kayo po ay isa sa apat na kapapayanamin para sa pananaliksik na ito. Ang panayam ay tatagal ng 1 ½ oras. Ang araw at oras ay depende sa kung kalian ang pinakamaluwag para sa inyo. Nais ko din po sanang hilingin na ang paguusap ay mai-record para sa pagkukumpirma ng mga impormasyon. Ang kopya po ng mga tanung ay ibibigay isang linggo bago ang panayam. Ang lahat po ng mapagusapan ay ituturing na “confidential” at ito po ay hindi ililimbag.

Maaaring lumagda lang po kung kayo ay pumapayag sa isang panayam.

Lagda

Petsa

Lagda ng saksi

Petsa

Appendix 3: Survey Questions

Dear respondent,

I am Jacqueline Rose B. Ong Pe, 4th year student from the College of Arts and Sciences, University of the Philippines Manila taking up BA Political Science. As a requirement for completion, I am conducting a study on the effectiveness of Optical Media Board in deterring piracy in the Philippines.

May I request that you answer the following questions honestly. Thank you very much.

Yours Truly,

Jacqueline Rose B. Ong Pe

Name (optional):

Age:

Occupation:

Civil Status:

1. Are you aware of the existence of the Optical Media Board headed by Edu Manzano?

Yes

No

1.a If yes, do you believe in their objectives of eradicating the problem of piracy in the Philippines?

Yes

No

1.b Based on what you know, what are the measures done by the Optical Media Board to fight piracy in the country? Cite as many.

2. Do you buy pirated VCDs and DVDS?

Yes

No why not? _____

2.a. If yes, please check your reasons for buying pirated VCDs and DVDS (pls. check two)

cheaper

less time consuming than going to moviehouses

can be watched repeatedly

it's a craze nowadays

to have my own copy of the film or sound recording

___ because I missed the theatrical release (moviehouses)
___ others pls. specify _____

2.b. How often do you buy pirated VCDs and DVDs?

___ once a month
___ twice a month
___ once a week
___ whenever I have money
___ others, pls. state _____

3. Are you aware that the Philippines has a Copyright Law?

___ Yes ___ No

4. Do you think piracy is a crime?

___ Yes ___ No

5. Would you prefer watching pirated VCDs and DVDs than go to moviehouses?

___ Yes ___ No

Why or why not? _____

6. Do you believe that the movie and music industry are at its lowest because of piracy?

___ Yes ___ No

7. Do you believe that artists, composers, producers' works should be given protection from unfair exploitation by the public?

___ Yes ___ No

Why or why not? _____

8. Do you think piracy has somehow lessened now than before?

___ Yes ___ No

9. Should people buying and selling pirated VCDs and DVDs be penalized?

___ Yes ___ No
___ penalize only the buyers ___ penalize only the sellers

Why? _____

10. Do you believe think OMB is effective in deterring piracy in the Philippines?

___ Yes ___ No

Magandang Umaga!

Ako po si Jacqueline Rose B. Ong Pe 4th year na estudyante sa Unibersidad ng Pilipinas Manila, kumukuha ng kursong BA Political Science. Para sa aking pagtatapos, ako po ay nagsasagawa ng isang pagaaral sa epektibong pamamahala ng Optical Media Board sa pagsugpo ng pamimirata ng VCDs at DVDs sa Pilipinas.

Hinihiling ko po na sana ay sagutin ninyo ng tapat ang mga sumusunod na mga tanung. Salamat po...

Lubos na Nagpapasalamat,

Jacqueline Rose B. Ong Pe

Pangalan (optional):

Edad:

Trabaho:

Civil Status:

Kasarian:

1. Alam po ba ninyo ang Optical Media Board na pinamumunuan ni Edu Manzano?

___ oo

___ hindi

1.a Kung oo, naniniwala po ba kayo sa kanilang layunin na sugpuin ang problema ng pamimirata sa Pilipinas?

___ oo

___ hindi

1.b Base sa inyong kaalaman, anu po ang mga hakbang na ginagawa ng Optical Media Board upang labanan ang pamimirata sa Pilipinas. (Magsabi ng kahit ilan)

2. Bumibili po ba kayo ng piniratang VCDs at DVDs?

___ oo

___ hindi, bakit hindi _____

2.a Kung oo, lagyan ng tsek (✓) ang inyong mga rason sa pagbili ng piniratang VCDs at DVDs (magtsek ng dalawa)

___ mas mura

___ mas mabilis kaysa pumuntang sinehan

___ pwedeng panuorin ng paulit-ulit

___ uso ito

___ para magkaroon ng sariling kopya ng pelikula

___ dahil hindi ko napanuod sa sinehan ang

pelikula

Appendix 4- Republic Act 9239 or the Optical Media Act

**Republic of the Philippines
Congress of the Philippines**

Metro Manila

Twelfth Congress

Third Regular Session

___o0o___

Begun and held in Metro Manila, on Monday, the twenty-eighth day of July, two thousand and three.

[REPUBLIC ACT NO. 9239]

AN ACT REGULATING OPTICAL MEDIA, REORGANIZING FOR THIS PURPOSE THE VIDEOGRAM REGULATORY BOARD, PROVIDING PENALTIES THEREFOR, AND FOR OTHER PURPOSES

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

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;

- c. 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 Section 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

SEC. 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

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.

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.

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.

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,

(Sgd.)**FRANKLIN M. DRILON** (Sgd.)**JOSE DE VENECIA JR.**

President of the Senate Speaker of the House of Representatives

This Act which is a consolidation of house Bill No. 5225 and Senate Bill No. 2586 was finally passed by the House of Representatives and the Senate on December 17, 2003 and January 13, 2004, respectively.

(Sgd.)**OSCAR G. YABES** (Sgd.)**ROBERTO P. NAZARENO**

Secretary of the Senate Secretary General House of Representatives

Approved: Feb 10 2004

(Sgd.)**GLORIA MACAPAGAL-ARROYO**

President of the Philippines

Appendix 5- Implementing Rules and Regulations of the Optical Media Act

RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9239, OTHERWISE KNOWN AS THE " OPTICAL MEDIA ACT OF 2003."

Whereas, it is the declared policy of the State to ensure the protection and promotion of intellectual property rights.

Whereas, the unregulated mastering, manufacturing, replication, importation, and exportation of optical media in all forms are inimical to economic growth and public interest.

Whereas, there is a need for the State to institute the means to regulate the manufacture, mastering, replication, importation and exportation of optical media.

NOW, THEREFORE, pursuant to Section 34 of Republic Act No. 9239, the following rules and regulations are hereby promulgated:

Title 1 – General Provisions Rule 1-Title

Section 1. Title. - These Rules shall be referred to as the Implementing Rules and Regulations of the Optical Media Act of 2003.

Rule 2 – Definition of Terms

Section 1. Definitions. - As used in these Rules, the following terms shall mean:

- (a) Act - Republic Act 9239 or the Optical Media Act of 2003;
- (b) Acquisition - the act of acquiring or procuring manufacturing equipment; parts and accessories and manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media;
- (c) Duplication – the act or business of reproducing analog or digital content in any recordable media through the use of optical or magnetic process, or any technical variation thereof, now known or to be known in the future. The term shall include "burning." Duplication in these rules shall refer to duplication for commercial purposes.
- (d) 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;
- (e) Exportation – the act or business of bringing out of the country optical media, manufacturing equipment; parts and accessories and manufacturing materials used or intended for use in the mastering, manufacture, or replication of optical media;

- (f) Importation - the act or business of bringing into the country optical media, manufacturing equipment, parts and accessories and manufacturing materials used or intended for use in the mastering, manufacture, or replication of optical media;
- (g) IP Code – Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines.
- (h) License – the authority granted by the Optical Media Board (OMB) to persons, establishments or entities registered with the OMB to engage in the businesses or activities enumerated in Section 1, Rule 1, Title II of these Rules. For the purposes of these rules, license shall also mean commercial license;
- (i) 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 or any technical variation thereof as may be determined by the Board;
- (j) 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;
- (k) Manufacturing Equipment – any and all equipment, machine, device, including parts and accessories thereof, now known or to be known in the future, intended or designed for the production or manufacture, mastering and/or replication of optical media, optical media masters, or production parts thereof, including but not limited to those listed in Schedule “A” of these Rules, or such others, as may be determined by the Board. For purposes of these Rules, optical disc writers and other blank media burners or any technical variation thereof, found or installed in personal computers, but not used for commercial purposes, shall not be considered manufacturing equipment.
- (l) Manufacturing Material – any material such as, but not limited to, those listed in Schedule “B” suitable for the manufacture of optical media;
- (m) Mastering – the act or business of producing a stamper made of glass, metal or other material, intended for the manufacture of optical media;
- (n) 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 laser or any such other means as may be developed in the future. The term shall include, but not be limited to those listed in Schedule “C”;
- (o) OMB – the Optical Media Board;
- (p) 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.
- (q) 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.

Rule 3- Coverage

Section 1. Coverage. - The authority of the OMB shall cover the entire territory of the Republic of the Philippines including the economic zones as defined in these Rules and in R.A. 7916.

Title II - LICENSING AND REGULATION

Rule 1 – Registration

Section 1. Registration. - Any person, establishment or entity shall, prior to engaging in one or more of the businesses or activities enumerated hereunder, register with the OMB:

- (a) Importation, exportation, or acquisition of optical media;
- (b) Importation, exportation, acquisition, sale or distribution of manufacturing equipment, parts and accessories and manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media;
- (c) Possession or operation of manufacturing equipment, parts and accessories;
- (d) Possession, acquisition, sale or use of manufacturing materials for the mastering, manufacture or replication of optical media;
- (e) The mastering, manufacture or replication of optical media; and
- (f) Offering to the public with intent to profit the use of optical disc writers and re-writers.

Section 2. Registration Fee. - Any person, establishment or entity applying for registration shall fill up the prescribed form and pay the corresponding registration fee which shall be fixed by the OMB.

Section 3. Effectivity and Lapse of Registration. - The registration shall be valid and effective for as long as the registrant shall apply for and continue to renew his license and shall lapse after one year from his failure to renew the same.

Rule 2 - Licensing

Section 1. Licensing. - Apart from the registration with the OMB, as required in the preceding Rule, any person, establishment or entity shall, prior to engaging in one or more of the businesses or activities enumerated in the preceding Rule, secure the appropriate commercial license or licenses from the OMB.

Section 2. Licensing Regarding Optical Media. - Every application for importation, exportation, or acquisition, of optical media, or for the mastering, manufacture or replication of optical media, shall include the following, and such other information, as the OMB may require:

- (a) In the case of audio content, the title of the album, the names of the featured recording artists and the title of each work recorded;
- (b) In the case of computer or entertainment software, the name of the software program and the name of the software publisher;

- (c) In the case of audio-visual content, the main title of the work and of each audio-visual work;
- (d) In the case of other works, such as literary or other multimedia works, the title of the work and the name of the publisher;
- (e) Any Source Identification Code (SID Code) that appears on each optical media;
- (f) Name and address of the consignor, and, if different, name and address of the seller;
- (g) Name and address of the consignee, and if different, name and address of the purchaser;
- (h) Total quantity of each title in optical media to be exported;
- (i) Total quantity of each production part title to be imported or exported; and
- (j) Estimated date of import or export.

Section 3. Licensing Regarding Manufacturing Equipment. - Every application for the importation, exportation, acquisition, sale, distribution, possession or operation of manufacturing equipment, parts and accessories, used or intended for use in the mastering, manufacture or replication of optical media, shall include the following, and such other information, as the OMB may require:

- (a) Make, model and serial number, if applicable, and description of the equipment;
- (b) Quantity of each piece of equipment to be imported or exported;
- (c) If the equipment is a mould, a signal processor or a laser beam recorder,
 - (i) whether each such piece of equipment has been modified to apply a SID Code, and
 - (ii) if so, the SID Code that each such piece of equipment has been modified to apply.
- (d) Name and address of the consignor, and, if different, name and address of the seller;
- (e) Name and address of the consignee, and if different, name and address of the purchaser; and
- (f) Estimated date of import or export.

Section 4. Licensing Regarding Manufacturing Materials. - Every application for the importation, exportation, acquisition, sale, distribution or possession of manufacturing materials, used or intended to be used for the mastering, manufacture or replication of optical media, shall include the following, and such other information, as the OMB may require:

- (a) Make, product code and description of the manufacturing materials;
- (b) Quantity of the manufacturing materials to be imported;
- (c) Name and address of the consignor, and, if different, name and address of the seller;
- (d) Name and address of the consignee, and, if different, name and address of the purchaser; and

(e) Estimated date of import or export.

Section 5. Licensing Fee. - The OMB shall issue commercial license or licenses to qualified applicants upon payment of a fee as fixed by the OMB.

Section 6. Surcharges and Penalties. - Surcharges and penalties, as fixed by the OMB, shall be imposed for late renewal of a commercial license.

Section 7. Conditions Precedent. -

- (a) The licenses issued by the OMB for the mastering, manufacture, replication, importation or exportation of optical media are conditions precedent for securing the necessary business permits, licenses or registration from the appropriate authorities.
- (b) The licenses issued by the OMB shall be a necessary condition for the release of any optical media, manufacturing equipment, parts and accessories, and materials intended for use in mastering and/or manufacturing optical media, from customs or economic zones exercising independent customs laws.

Section 8. Form and Term of Commercial License. - Every license shall be in a form prescribed by the OMB and shall be valid for a period of not more than three (3) years, and subject to such conditions and requirements as the OMB may impose.

Section 9. Automatic Cancellation of permits, license or registration. - 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.

Section 10. Amendment of Commercial License. - Upon meritorious grounds, the OMB may amend a license upon application made by the license holder in accordance with the Act or these Rules.

Section 11. General Terms and Conditions of a Commercial License. - Every license issued by the OMB shall, where applicable, be subject to the following terms and conditions:

- (a) The license holder undertakes that he shall comply with all requirements imposed by the OMB pursuant to the Act and these Rules;
- (b) The license holder undertakes that he shall 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 and produce such records and samples of optical media from each mastering, manufacturing or replicating, as well as duplicating line, as required by the OMB;
- (c) The license holder undertakes that he shall voluntarily allow inspection of his business premises at any time, with or without prior notice;
- (d) The license holder represents that he or, in the case of juridical persons, any of its officers, directors, managers, shareholders, or partners, has not been convicted by final judgment of any offense punishable under the Act, these Rules or any law relating to the protection of intellectual property rights;

- (e) The license holder represents that the application does not involve a place, location or premises where an offense punishable under the Act, these Rules or under any law relating to the protection of intellectual property rights has been committed: *Provided*, That the offenders have been finally convicted of such offense;
- (f) The license holder represents that he has not furnished the OMB with any false or misleading information in connection with any application for or renewal of a license.
- (g) The license holder undertakes that he shall not engage in the mastering, manufacture, replication or duplication, sale or distribution of any optical media containing intellectual property, except with authority or consent of the owner thereof, or his duly authorized representative;
- (h) Any violation of any of these General Terms and Conditions shall be a ground for suspension and/or cancellation of the license, and imposition of fines and other penalties, as may be determined by the OMB.

Section 12. Specific Terms and Conditions of Commercial License/s to Master, Manufacture, Replicate or Duplicate Optical Media. – In addition to the terms and conditions provided in the preceding Section, a Commercial License to Master, Manufacture and/or Replicate optical media shall provide that, prior to servicing any job order for the mastering, manufacture, replication or duplication of optical media by any customer with respect to any copyrighted content, the license holder shall verify that said customer is authorized to use said content, by performing steps including, but not limited to the following:

- (a) To require the customer to identify the copyrighted material and other intellectual properties to be used on the optical media ordered, or on any accompanying packaging thereof; and provide documentary evidence of the customer's authority;
- (b) In cases where the customer is unable to provide such documentary evidence, or there are circumstances relating to the order that may reasonably give rise to suspicion that the customer may not have been authorized, to confirm such authority by contacting directly the owners, or their representatives, of the copyrighted material and other intellectual properties to be used on the optical media ordered, or on any accompanying packaging thereof;
- (c) To ensure that the identity of the copyrighted material and other intellectual properties to be used on the optical media ordered, or on any accompanying packaging thereof corresponds with the information supplied by the customer;
- (d) To ensure that the customer's order shall not violate the terms of the authority or license granted to him if and when the license holder performs the mastering, manufacture, replication or duplication.

**Rule 3 - Grounds for Non-issuance or
Non-renewal of Commercial License**

Section 1. Grounds for Non-issuance or Non-renewal of Commercial License. - The OMB may refuse to grant a license, or to renew a license, upon any of the following grounds:

- (a) The applicant has failed to comply with any requirement imposed by the OMB pursuant to the Act and these Rules;
- (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 punishable under the Act or any law relating to the protection of intellectual property rights;
- (c) The application involves a place, location or premises where an offense punishable under the Act or under any law relating to the protection of intellectual property rights has been committed: *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.

Section 2. Period to Decide on Applications. - The OMB shall decide whether or not to grant or renew a license within fifteen (15) working days from the filing of the application. An application is considered filed when all requirements for the application have been submitted to the OMB.

Rule 4 - Grounds for Suspension or Cancellation of Commercial License

Section 1. Grounds for Suspension or Cancellation of Commercial 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 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;
- (b) 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;
- (c) When the license holder is in breach of, or is unable to comply with any of the conditions prescribed in the license;
- (d) When any of the grounds enumerated under Section 1, Rule 3, Title II is present.

Section 2. Voluntary Suspension or Cancellation of Commercial License. - The OMB may, *motu proprio*, suspend or cancel a license when requested by the license holder;

Rule 5 - Provisions Common to Licensing and Registration

Section 1. Separate Registration and Licensing. - Those engaged or intending to engage in more than one of the activities enumerated in the preceding sections 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.

Section 2. Conduct of Business in Different Locations. - No business activity registered with and licensed by the OMB for a specific place of business shall be conducted in any place and/or location other than that indicated in the license, without the prior written approval of the OMB.

Section 3. Display of License. - The registration and license issued by the OMB shall be prominently and conspicuously displayed at the designated place of business.

Section 4. Submission of Information. - To determine the qualifications and fitness of applicants for registration and/or license, OMB shall require the submission of such information, as the OMB may require.

Section 5. New or Change in Information. - The license holder shall, within fifteen (15) working days, inform the OMB in writing of any new information or change in the previously submitted information as required in the preceding section.

Rule 6 – Inspections

Section 1. Inspections. - The OMB shall, on the strength of Inspection Orders duly signed by the Chairman or his duly authorized representative, conduct inspections of commercial or business establishments or entities including those within the economic zones, engaged in the activities enumerated in Section 1, Rule 1, Title II of these Rules, to determine and enforce compliance therewith.

Section 2. Conduct of Inspections. - As and when warranted, said inspections shall be conducted by organic or deputized agents of the OMB or in coordination with other competent agencies of the government, at any time, with or without prior notice to the establishment or entity concerned.

Section 3. Employment of Reasonable Force during Inspections. - The OMB may employ reasonable force during inspections in the event that the responsible person or persons of such establishment or entity sought to be inspected evades, obstructs, or refuses such inspection. For this purpose, the agents of the OMB shall be considered agents of persons in authority;

Rule 7 – Preventive Custody

Section 1. Preventive Custody. - When there is reasonable ground to believe that a violation of the Act or of these Rules has been committed, is being committed or is about to be committed, the OMB shall take into preventive custody all optical media and/or material or equipment, including parts, accessories and paraphernalia subject of such violation for further investigation.

Section 2. Issuance of Receipt. - The OMB personnel or agent taking preventive custody of the properties referred to in the preceding section shall issue a detailed receipt to the owner or holder of said properties.

Section 3. Return of Property. - Properties taken into preventive custody shall be returned to their owner or holder within thirty (30) days from the date of the taking into preventive custody unless appropriate criminal or administrative complaint has been instituted against the persons or entities which appear to be liable for the offense or violation of the Act or these Rules.

Section 4. Due Process. - In appropriate proceedings, the owner or holder of the subject properties shall be afforded ample opportunity to prove to the OMB that said properties are not subject of any offense or violation of the Act or these Rules.

Rule 8 – Reportorial Requirements

Section 1. Keeping of Records. - All persons, establishments and entities engaged in the activities enumerated in Section 1, Rule 1, Title II of these Rules shall keep and maintain for a period of five (5) years true and complete records of all activities related to the conduct of business.

Section 2. Nature of Records relating to Manufacturing Equipment and Manufacturing Materials. - The records referred to in the preceding Section shall include the following, and such other matters, as the OMB may require:

a) Every purchase, lease, sale, disposal or other transaction relating to any manufacturing equipment, the import or export of which requires a license under these Rules, specifying the following:

- (i) make, model and serial number of the equipment;
- (ii) SID Code, if any, which the equipment has been adapted to apply;
- (iii) date and nature of each transaction;
- (iv) name and address of the party with whom the transaction was entered into;
- (v) if the manufacturing equipment had, at any stage, been imported or exported, the license application receipt number in respect of such import or export; and

b) Every purchase, lease, sale, disposal or other transaction relating to any manufacturing materials used in the manufacture of optical media, the import or export of which requires a license under these Rules, specifying the following:

- (i) make, product code or name;
- (ii) date of each transaction;
- (iii) name and address of the party with whom the transaction was entered into;
- (iv) if the manufacturing materials had, at any stage been imported or exported, the license application receipt number in respect of such import or export.

Section 3. Nature of Records relating to Job Orders for the Mastering, Manufacture, Replication or Duplication of Optical Media. - The records referred to in Section 1 shall include the following, and such other matters, as the OMB may require.

Every job order received by the license holder for the manufacture or duplication of optical media, stampers and/or masters shall be evidenced by the following records:

- (a) duplicate originals of Job Orders;
- (b) name and address of each Customer. In case the order is placed by a representative or agent, name and address of the principal;
- (c) job number(s) assigned by the license holder to the order.
- (d) full description of the content of the optical media or production part that has been ordered, specifying:

- (i) in the case of audio content, the title of the album, the names of the featured recording artists and the title of each work recorded;
 - (ii) in the case of computer or entertainment software, the name of the software program and the name of the software publisher;
 - (iii) in the case of audio-visual content, the title of each audio-visual work; and
 - (iv) in the case of other works, such as literary or other multimedia works, the title of the work and the name of the publisher.
- (e) date the order was fulfilled and the quantity of optical media or stampers and masters supplied in respect of each title.
 - (f) address to which the optical media or stampers and masters were consigned, together with copies of all shipping documents.
 - (g) information whether the optical media or stampers and masters were exported, and if so, the license application receipt number in respect of such export, unless this is not reasonably obtainable by the license holder.
 - (h) copies of all invoices and details of the customer's method of payment, including bank or credit card details, where applicable.
 - (i) copies of all documents supplied by the customer to show its authority to make the job order;
 - (j) record of all steps taken by the license holder to verify the claim by the customer that he is so authorized.

Every production undertaken by the license holder shall be evidence by the following records:

- (a) job number.
- (b) date of each production run and whether the production was of stampers and masters or manufactured optical media.
- (c) quantity of good copies of each optical disc title produced.
- (d) quantity of reject copies of each optical disc title produced.
- (e) quantity and title of optical media remaining in stock.
- (f) quantity, date of delivery and Source Identification Code or SID Codes of any discs or stampers and masters that were produced by a subcontractor, and the name and address of the subcontractor.
- (g) weight of reject discs produced.
- (h) weight of reject discs disposed of.

Section 4. Production or Submission of Records. - The OMB may, at any time, require, said persons, establishments and entities to cause the production and submission of such records to the OMB.

Section 5. Submission of Samples. - The OMB may, at any time, also require said persons, establishments and entities to submit samples of optical media and other products for forensic examination and investigation.

Title III - SOURCE IDENTIFICATION CODES

Rule 1 - Mandatory Use of SID Codes

Section 1 Adoption of IFPI Codes. - For purposes of these Rules, the OMB hereby adopts the Source Identification Code System devised by Philips Intellectual Property and Standards Office (PIPSO), and administered by the International Federation of the Phonographic Industry (IFPI), or such other acceptable standard as the OMB may, in the future, deem necessary.

Section 2. Mandatory Use of SID Codes in Manufacturing Equipment. - All mastering, stamping, mould equipment and other such devices, as may be determined by the OMB, shall bear, carry or incorporate a Source Identification Code (SID Code) which shall be assigned by the OMB. All persons, establishments or entities who shall import, export, acquire, possess, operate, sell or distribute the same shall comply or ensure compliance herewith.

Section 3. Mandatory Use of SID Codes in Optical Media. -Each and every optical disc, manufactured, mastered or replicated in and/or exported from the Philippines, shall bear the SID Code. All persons, establishments or entities who shall sell, trade, distribute, export or possess, for the purpose of sale, trade, distribution or export, optical discs manufactured, mastered or replicated in the Philippines, shall comply or ensure compliance herewith.

Section 4. SID CODE Specifications. - The specifications for the SID Code shall be as provided in Schedule "D".

Title IV – ADMINISTRATIVE OFFENSES AND PENALTIES

Rule 1- Offenses And Penalties

Section 1. Administrative Sanctions. - Without prejudice to the filing of criminal or civil actions in appropriate cases, the OMB shall file administrative complaints against and impose administrative penalties in the following cases:

(a) Closure of establishment, confiscation of manufacturing equipment, parts, materials or optical media products and/or a fine of not less than Php 300,000.00, but not more than Php 1,500,000.00, shall be imposed upon any person, establishment or entity who shall commit any of the following:

- (i) Engage in one or more of the businesses or activities enumerated under Section 1, Rule 1, Title II, without registering with and/or securing a license from the OMB. Provided, that, the conduct of any business activity in any place other than the place or location registered and licensed by the OMB, shall be deemed as engaging in the said business or activity without the necessary registration or license, as the case may be; Provided, further, that any person, establishment or entity who fails to renew an expired license within thirty (30) days from the date of expiration shall be penalized under subsection (j), or

- (ii) Employ fraud or misrepresentation or otherwise furnish the OMB with any false or misleading information in connection with any registration statement or application for or renewal of a license.
- (b) Closure of establishment, confiscation of manufacturing equipment, parts, materials or optical media products, cancellation or suspension of license and/or a fine of not less than Php 300,000.00, but not more than Php 1,500,000.00, shall be imposed upon any person, establishment or entity who, charged with the obligation to install, affix or adopt the SID Code assigned by the OMB, shall commit any of the following:
- (i) Fail to comply therewith;
 - (ii) Affix or install false, falsified, imaginary or unauthorized SID or other codes;
 - (iii) Deface, remove, erase, obliterate the SID or other codes on manufacturing equipment, parts or optical media;
 - (iv) Affix or install or appropriate the SID Code, and/or other codes that have been assigned by the OMB to another person;
 - (v) Having been assigned and authorized SID Code by the OMB, allow or authorize another person, establishment or entity to use, affix or install such codes in the latter's manufacturing equipment, parts or optical media products;
- (c) Closure of establishment, confiscation of manufacturing equipment, parts, materials or optical media products, cancellation or suspension of license and/or a fine of not less than Php 300,000.00 but not more than Php 1,500,000.00 shall be imposed upon any person, establishment or entity who, by himself, or through another, cause the duplication, 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.
- (d) Closure of the establishment, confiscation of manufacturing equipment, parts, manufacturing materials or optical media products, accessories and paraphernalia and/or a fine of not more than twice the value of the products produced but, in no case less than Php 500,000.00, shall be imposed upon any person, establishment or entity who, being licensed to engage in the duplication, mastering, manufacture or replication of optical media, knowingly renders the service 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. Provided, that for this purpose, any person, establishment or entity that is licensed by the OMB to engage in the abovementioned 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 in writing of such transaction within five (5) working days from receipt of the job order, furnishing to the OMB all material information thereof, as specified under Section 3, Rule 8, Title II;
- (e) Suspension of operations of the establishment for a period of not less than three (3) months, but not more than six (6) months, confiscation of manufacturing equipment, parts, manufacturing materials or optical media products, accessories and paraphernalia and/or a fine of not less than Php 100,000.00 but not more than Php 500,000.00, shall be imposed upon any person, establishment or entity who

shall evade, obstruct, or refuse or cause to evade, obstruct, or refuse any inspection by the OMB or any of its duly authorized agents or deputies, after being duly informed of the order to conduct such inspection.

- (f) Suspension of operations of the establishment for a period of not less than three (3) months, but not more than six (6) months, confiscation of manufacturing equipment, parts, manufacturing materials or optical media products, accessories and paraphernalia and/or a fine of not less than Php 100,000.00, but not more than Php 500,000.00, shall be imposed upon any person, establishment or entity who shall refuse to comply with a preventive custody order, or otherwise refuse, to surrender to the OMB for preventive custody any or all optical media and/or material or equipment, including parts, accessories and paraphernalia, after having been duly informed of the order for preventive custody.

- (g) Suspension of operations of the establishment for a period of not less than three (3) months, but not more than six (6) months and/or a fine of not less than Php 100,000.00, but not more than Php 500,000.00, shall be imposed upon any person, establishment or entity who shall:
 - (i) fail 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 business;
 - (ii) fail to produce or cause the production and submission of such records to the OMB within a reasonable period of time after notice, as and when required;
 - (iii) fail to submit samples of optical media and other products within a reasonable period of time after notice, as and when required.

- (h) Suspension of operations of the establishment for a period of not less than one (1) month, but not more than three (3) months, confiscation of optical media products accessories and paraphernalia and/or a fine of not less than Php 50,000.00, but not more than Php 100,000.00, shall be imposed upon any person, establishment or entity who shall knowingly possess optical media produced in violation of the Act and/or these Rules, for the purpose of sale, rental, distribution or any other commercial purpose or with the intent to profit. Possession under this section shall be deemed for “the purpose of sale, rental, distribution or any other commercial purpose” if the person, establishment or entity shall have in its possession of at least three (3) pieces of media containing the similar copyrighted content, or at least 6 pieces of media containing dissimilar copyrighted content.

- (i) Suspension of operations of the establishment for a period of not less than one (1) month, but not more than three (3) months, confiscation of optical media products, accessories and paraphernalia and/or a fine of not less than Php 50,000.00, but not more than Php 100,000.00, shall be imposed upon any person, establishment or entity who shall engage in the sale, rental, distribution, importation, exportation of, or any other commercial activity involving optical media that are in violation of this Act.

- (j) A fine of not less than Php 5,000.00, but not more than Php 50,000.00, shall be imposed upon any person, establishment or entity who shall fail to renew his commercial license within thirty (30) days from the date of expiration thereof.
- (k) A fine of not less than Php 1,000.00, but not more than Php 5,000.00, shall be imposed upon any person, establishment or entity who shall fail to prominently display the registration and license issued by the OMB at the designated place of business.

Section 2. For Subsequent and/or repeated offenses – Closure of the establishment, confiscation of manufacturing materials, equipment, parts, accessories and paraphernalia, cancellation of license and/or a fine not less than twice the amount prescribed for the offense.

Section 3. Determination of Administrative Penalties. - In imposing administrative penalties, the OMB shall consider the size of the operations of the offender, the value of the articles involved, and the period of the violation.

Title V - TRANSITORY PROVISIONS

Rule I- Regulation of Magnetic Media

Section 1. Application of these Rules to Magnetic Media. – Except as hereinafter provided, Title II of these Rules shall apply to the regulation of magnetic media. Where the phrase “optical media” occurs, the phrase “magnetic media” shall be substituted. All references to “manufacture”, “manufacturing equipment, parts, materials” are deemed deleted.

Section 2. Registration and Licensing. – In lieu of the provisions of Section 1, Rule 1 and Section 1, Rule 2 of Title II, any person, establishment or entity shall, prior to engaging in the importation, exportation, acquisition, or duplication of magnetic media, register with and apply for a license with the OMB.

Section 3. Administrative Offenses and Penalties relating to Magnetic Media. - Without prejudice to the to the filing of criminal or civil actions in appropriate cases, the OMB shall file administrative complaints against and impose administrative penalties in the following cases:

- (a) Closure of establishment, confiscation of duplicating equipment, including parts, accessories and paraphernalia and/or magnetic media products and/or a fine of not less than Php 300,000.00, but not more than Php 1,500,000.00, shall be imposed upon any person, establishment or entity who shall:
 - (i) Engage in the importation, exportation, acquisition, or duplication of magnetic media without registering with and/or securing a license from the OMB. Provided, that, the conduct of any business activity in any place other than the place or location registered and licensed by the OMB, shall be deemed as engaging in the said business or activity without the necessary registration or license, as the case may be; Provided, further, that any person, establishment or entity who fails to renew an expired license

within thirty (30) days from the date of expiration shall be penalized under subsection (j), or

- (ii) Employ fraud or misrepresentation or otherwise furnish the OMB with any false or misleading information in connection with any registration statement or application for or renewal of a license.
- (b) Closure of establishment, confiscation of magnetic media products, cancellation or suspension of license and/or a fine of not less than Php 300,000.00 but not more than Php 1,500,000.00 shall be imposed upon any person, establishment or entity who, by himself, or through another, cause the duplication of any intellectual property in magnetic media intended for commercial profit or pecuniary gain without authority or consent of the owner thereof.
- (c) Closure of the establishment, confiscation of duplicating equipment, including parts, accessories and paraphernalia or magnetic media products and/or a fine of not more than twice the value of the products produced but, in no case less than Php 500,000.00, shall be imposed upon any person, establishment or entity who, being licensed to engage in the duplication of magnetic media, knowingly renders the service 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. Provided, that for this purpose, any person, establishment or entity that is licensed by the OMB to engage in the abovementioned activity 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 in writing of such transaction within five (5) working days from receipt of the job order, furnishing to the OMB all material information thereof, as specified under Section 3, Rule 8, Title II;
- (d) Suspension of operations of the establishment for a period of not less than three (3) months, but not more than six (6) months, confiscation of duplicating equipment, including parts, accessories and paraphernalia or magnetic media products and/or a fine of not less than Php 100,000.00 but not more than Php 500,000.00, shall be imposed upon any person, establishment or entity who shall evade, obstruct, or refuse or cause to evade, obstruct, or refuse any inspection by the OMB or any of its duly authorized agents or deputies, after being duly informed of the order to conduct such inspection.
- (e) Suspension of operations of the establishment for a period of not less than three (3) months, but not more than six (6) months, confiscation of duplicating equipment, including parts, accessories and paraphernalia or magnetic media products and/or a fine of not less than Php 100,000.00, but not more than Php 500,000.00, shall be imposed upon any person, establishment or entity who shall refuse to comply with a preventive custody order, or otherwise refuse, to surrender to the OMB for preventive custody any or all magnetic media or equipment, including parts, accessories and paraphernalia, after having been duly informed of the order for preventive custody.

- (f) Suspension of operations of the establishment for a period of not less than three (3) months, but not more than six (6) months and/or a fine of not less than Php 100,000.00, but not more than Php 500,000.00, shall be imposed upon any person, establishment or entity who shall:
- (i) fail 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 business;
 - (ii) fail to produce or cause the production and submission of such records to the OMB within a reasonable period of time after notice, as and when required;
 - (iii) fail to submit samples of magnetic media and other products within a reasonable period of time after notice, as and when required.
- (g) Suspension of operations of the establishment for a period of not less than one (1) month, but not more than three (3) months, confiscation of duplicating equipment, including parts, accessories and paraphernalia or magnetic media products and/or a fine of not less than Php 50,000.00, but not more than Php 100,000.00, shall be imposed upon any person, establishment or entity who shall knowingly possess magnetic media produced in violation of the Act and/or these Rules, for the purpose of sale, rental, distribution or any other commercial purpose or with the intent to profit. Possession under this section shall be deemed for "the purpose of sale, rental, distribution or any other commercial purpose" if the person, establishment or entity shall have in its possession of at least three (3) pieces of media containing the similar copyrighted content, or at least 6 pieces of media containing dissimilar copyrighted content.
- (h) Suspension of operations of the establishment for a period of not less than one (1) month, but not more than three (3) months, confiscation of duplicating equipment, parts and paraphernalia or magnetic media products and/or a fine of not less than Php 50,000.00, but not more than Php 100,000.00, shall be imposed upon any person, establishment or entity who shall engage in the sale, rental, distribution, importation, exportation of, or any other commercial activity involving magnetic media that are in violation of this Act.
- i) A fine of not less than Php 5,000.00, but not more than Php 50,000.00, shall be imposed upon any person, establishment or entity who shall fail to renew his commercial license within thirty (30) days from the date of expiration thereof.
- (j) A fine of not less than Php 1,000.00, but not more than Php 5,000.00, shall be imposed upon any person, establishment or entity who shall fail to prominently display the registration and license issued by the OMB at the designated place of business.

Section 4. Subsequent and/or repeated offenses - Closure of establishment, confiscation of duplicating equipment, including parts, accessories and paraphernalia and/or magnetic media products, cancellation of license and/or a fine of not less than twice the amount prescribed for the offense.

Section 5. Determination of Administrative Penalties. - In imposing administrative penalties, the OMB shall consider the size of the operations of the offender, the value of the articles involved, and the period of the violation.

Rule 2 - Classification of Motion Pictures and Cinematographic Works For Home viewing.

Section 1. The function of classification for audience suitability of motion pictures and cinematographic works in optical media shall be transferred to the Movie and Television Review and Classification Board (MTRCB) on or before 31 May 2005.

Rule 3 - Registration and Licensing of Existing Businesses, Establishments or Operations

Section 1. Registration and Licensing of Existing Establishments. - All existing establishments or entities engaged in activities enumerated in Section 1, Rule 1, Title II, whether or not registered with or licensed by the Videogram Regulatory Board pursuant to Pres. Decree No. 1987, shall, within thirty (30) calendar days from the effectivity of these Rules, register with and secure the necessary licenses from the OMB.

Title V - Final Provisions

Section 1. Separability Clause. - If any section or provision of these Rules shall be held to be invalid, the remaining provisions shall remain in full force and effect as completely as if the part held invalid had not been included therein.

Section 2. Effectivity. - **These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation.**

Schedule "A"

List of Manufacturing Equipment for Optical Media

Direct Stamper Recording System,

DVD upgrade kits.

Electro forming equipment that make stampers,

Equipment for Coating Laser Sensitive Substance on Compact Disc or Recordable Compact Disc,

Equipment for spin coating glass, masters with a photo resistant layer

Equipment for spin coating optical media with lacquer coating,

Glass or polymer masters

Injection molding machinery,

Integrated optical disc replication lines,

Laser Beam recorders,

Metalizers for applying reflective layers to optical media,

Moulds and components thereof.

Signal processing system for Laser Beam Recorder,

Stamper or other metal parts (or parts made of other materials)

And/or other equipment, part, accessories as may be determined by the OMB

Schedule “B”

List of Manufacturing Material for Optical Media

Any material, such as, but not limited to, optical grade polycarbonate or polycarbonate substitutes with physical properties suitable for the manufacture of optical media. Suitability shall be measured by a melt flow index (MFI) which shall be determined by the OMB. Unless otherwise determined, polycarbonate or polycarbonate substitutes with MFI of not less than 45 grams per ten (10) minutes at 300 degrees Celsius at 1.2 kilogram load shall be considered as suitable as manufacturing material, for purposes of these Rules.

Schedule “C”

Types of Optical Media

CD (compact disc),

CD-A (compact disc digital audio),

CD-I (compact disc – interactive),

CD-P (compact disc – photo),
CD-R (compact disc recordable),
CD-ROM (compact disc read-only memory),
CD-RW (compact disc rewritable),
CD-WO (compact disc write once),
CVD (China video disc),
DVD (digital versatile disc),
DVD-RAM (digital versatile disc random access memory),
DVD-ROM (digital versatile disc read-only memory),
EVD (enhanced versatile disc),
LD (laser disc),
MD (mini disc),
SACD (Super audio compact disc),
SVCD (super video compact disc),
VCD (video compact disc),
or any technical variation thereof, now known or to be known in the future;

Schedule “D”

Technical Specifications of the Source Identification Code

The Source Identification (SID) Codes devised by the Philips Intellectual Property and Standards Office (PIPSO) and administered by the International Federation of the Phonographic Industry (IFPI), is adopted by the OMB, for purposes of these Rules.

Its technical specifications are as follows:

(a) The Mould Code

- Each Mould SID Code shall consist of the digits “IFPI” followed by a four or five digit code. The last two digits of the code are to be allocated by the license holder who shall

ensure that each mould under his control, including spare moulds, has a unique SID Code. The first two or three digits, as the case may be, will be issued by the OMB and shall uniquely identify the license holder.

Example: A Mould SID Code of "IFPI A01xx" may be issued by the OMB to an applicant for a license. The digits "A01" are unique to the license holder. The license holder must then use the last two digits to allocate a unique code for each mould. The code for the first mould might be IFPI A0100, the code for the second "IFPI A0101", and so on. Using alphanumeric digits consisting of the numbers 0 through 9 and the letters of the Western alphabet A through Z, excluding "I", "O", "S" and "Q", the license holder has the ability to allocate unique codes to 1,024 different moulds.

- The Mould SID Code shall be etched on the mirror block of each mould, so that the Mould SID Code is moulded on the read-out, or play surface of each disc during the manufacturing process.
- The Mould SID Code shall not be etched on any easily removable part, or applied to the other (stamper) side of the disc (see Fig.1, Schedule 1).
- The Mould SID Code shall be positioned at a radius of between 7.5 mm and 22 mm from the center of the disc.
- The Mould SID Code shall have a character height of between 0.5mm and 1.0mm.
- The Mould SID Code shall be etched to a depth of between 10 to 25 microns and shall be legible throughout the lifetime of the mould.
- The Mould SID Code shall read from left to right when viewed from the read-out, or play side of the disc (see Fig.1, Schedule 1).
- The digits "IFPI" shall be in upper case characters and may have either a linear or a radial layout.

Additional Requirements for High-Density Optical Disc Formats (E.g., SACD, DVD)

- The Mould SID Code shall not be placed in an area that obscures the Mastering SID Code, or any user defined characters.
- The Mould SID Code shall be imprinted on all substrates whether containing valid programme content or not, including blank discs and recordable discs.
- The Mould SID Code shall not be imprinted in the clamping area.
- The Mould SID Code must be readable from left to right when viewed from the outside

surfaces of the disc.

- Overprinting of the Mould Code for decorative purposes is permissible on a high density optical disc only.

(b) The Mastering, or LBR, SID Code

- Each Mastering SID Code that is issued will consist of the digits “IFPI” followed by a four, five or six digit code commencing with the letter “L”. A license holder will be issued a batch of sequential codes and must allocate a unique code to each separate Signal Processor or Laser Beam Recorder, depending on which piece of mastering equipment has been modified to apply the SID Code, under his control.
- The Mastering SID Code shall be added to the matrix band of the master during exposure on the Laser Beam Recorder. All subsequent stampers and masters (including mothers and stampers) and all discs manufactured from that master shall then bear the Mastering SID Code.
- The Mastering SID Code shall be positioned at a radius of between 18.0 mm and 22 mm from the center of the disc.
- The Mastering SID Code shall have a minimum character height of 0.5 mm.
- The Mastering SID Code shall be located in a metallized region of the disc.
- The Mastering SID Code shall be legible without magnification.
- The Mastering SID Code shall read from left to right when viewed from the read-out, or play side of the disc (see Fig.1, Schedule 1).
- The Mastering SID Code shall be installed in either the firmware of the Laser Beam Recorder (i.e. the software that forms an intrinsic part of the machinery and is not readily accessible by the operator of the facility) or embedded in the system controller (i.e. the signal processing system that controls the operation of the LBR) in such a way that the operator of the system is not able to alter the code.
- It is recommended that the space allocated exclusively for the Mastering SID Code (determined by the user and LBR supplier) shall consist of an arc of 30°. The Mastering SID Code shall be clearly separate from other features.

Additional Requirement for High-Density Optical Disc Formats (E.g., SACD, DVD)

The Mastering SID Code must not be obscured by the stack ring.

Variations for Different High-Density Disc Formats

- **For the single layer, single side disc:** If the dummy side of the disc is made from a scrap program disc, it shall bear the SID Code, even if not metallized.
- **For the dual layer, single side disc:** The Mastering SID Code must be recorded for both Layer 1 and Layer 0. At least one of the Mastering SID Codes (for either Layer 1 or Layer 0) must be clearly visible.
- **For the single layer, double side disc:** The Mastering SID Codes must be recorded on both sides of the disc. It is desirable that both Mastering SID Codes are clearly visible, but it is acceptable if the code is obscured due to restrictions of the printed area.

Fig.1: Cross-section of an Optical Disc

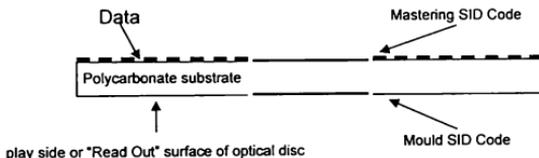


Figure 1
(flat view of an optical disc)



Figure 2

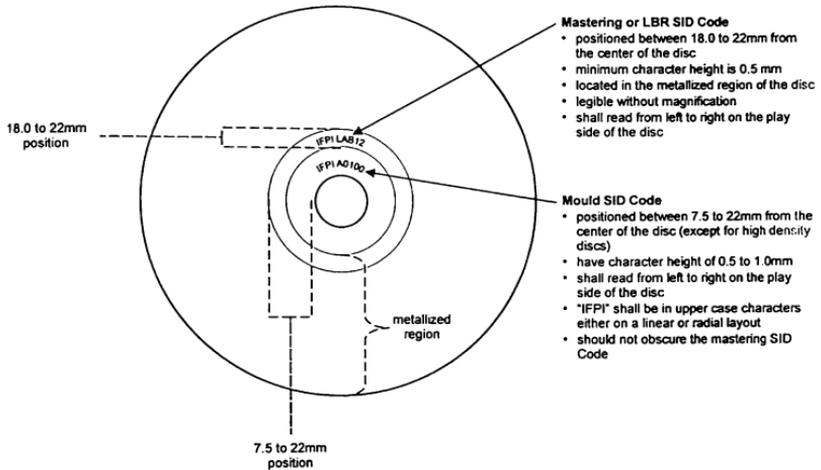


Figure 3
(play side of an optical disc)

Appendix 6: Congress Committee Hearings on Intellectual Property Rights

- Committee on Trade and Industry Joint with the Committee on Economic Affairs dated February 14, 1996
- Bicameral Conference Committee (Committee on Trade and Industry) dated June 2, 1997

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MR. AMADOR. (continuing) ... the copyright system in the Philippines and the changes that we'll have to make in the light of our adherence to the WTO-TRIPS agreement.

A copyright is the protection that the law extends to the creator of literally, artistic and scientific works. This is in contrast to the protection that the law gives to so-called industrial property rights like trademarks and patents. Those are industrial property rights because they have industrial application.

Well, a copyright if you reverse that, it's the right to copy. Copyright is essentially just the right to copy. If you are a novel, if you produce a bill, software, if you create a software called a software program, then you are a creator. Okay, literary or an ethnic work. And therefore as a creator you have the right to reap benefits of the product of your labor, your literary. And so the law gives you the rights to copy, exclusive right to copy or reproduce to perform your works. If others do it, if they copy it without your permission, if they reproduce or if they perform your work without your permission, then they are committing infringement, violating your rights and have the right to sue them.

HON. ROXAS. Is there a time period for this or what you just pointed like 40 years or 50 years after it becomes public domain.

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MR. AMADOR. A copyright is effective for the lifetime of the creator, for as long as you live and for 50 years after your death. If you wrote the book today, you have that copyright while you live.

HON. ROXAS. My estate will have it for 50 years.

MR. AMADOR. Yes. So, even if you are gone, your heirs retain the right to copy or authorize others to copy and to profit from your works. And this is the protection that the law extends to literally works like books, songs, wines, musical works, and scientific works.

HON. ROXAS. What scientific works?

MR. AMADOR. Well, like technical drawing, that's a form of expression also.

HON. ROXAS. Well, ... industrial purpose?

MR. AMADOR. No. It is protected as a technical drawing but may well have an industrial application also in the sense that if you reduce that drawing into an actual product or application, then the product itself may have industrial application. But as a drawing for instance...

That is a right like any other property. Copyright is a right like any other property. Therefore, if you are the author, you can sell it, you can use that, exploit it, others to use it for a fee. So, it's like any other property. You can transfer it. You can even make it, you

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can also ...

HON. LEDESMA.

You can cede it.

MR. AMADOR. Yes. And also make it part of your will in your disposition of your will because it is like any other property.

HON. ROXAS. This description of property right with respect to copyright is it the same as trademark and patent. It's like any real estate, you can sell, ..

MR. AMADOR. Yes, Sir. We have had a system of copyright protection in the Philippines for a very long time, dating in fact, a Spanish law of intellectual property of 1879. And then we had Republic Act No. 3134 which was enacted in 1924. And presently our subsisting copyright law is Presidential Decree No. 49. This was promulgated during the martial law years in December 1972. At the time of its promulgation, it was probably one of the most advanced copyright legislations among small nations like ours in the sense that we had advance provisions recognizing that copyright is protected from the moment of application, it also recognized that a work like a computer software is also protected when at that time there was still some disputes as to whether it should be protected by copyright or whether it should be protected at all or whether it should be protected by copyright or whether it is being protected under the patent law. But at that time we were so advanced we provided that a computer

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software is protected by copyright. Since 1972 there have been many technological advances and developments that we make in the field of patents, as Director Sapalo mentioned, but even in the field of copyright that we have rendered most of the provisions of the whole copyright law outmoded and outdated. For instance now, we have, we talk of not only of computer software, we talk of CD ROMS, musical works, we talk of encyclopedias embodied on CD ROM, the whole range of, you know, a 45-volume encyclopedia embodied in an interactive medium like CD ROM. It combines not only the text, it gives you even moving pictures, moving images, gives you sounds, music, sample of excerpts of music. We also have data bases. These are matters that were not anticipated when we promulgated and enacted Presidential Decree No. 49. Now, also we have the so-called rental rights. We are well aware that laser disc or beta tapes are being rented publicly, so that is a matter that should belong exclusively to the copyright owner. This is again a new development, not considered when we promulgated the old Presidential Decree No. 49. And these new developments combined with our present adherence to the GATT-WTO, GATT and TRIPS agreement require us again to make or enact adjustments and amendments of our copyright law for the purpose of complying with our treaty obligations. And

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these developments that I mentioned like protection of
data bases, the protection of the so-called rental right,
the copyright proprietor, this and other developments
are embodied in the proposal
with our

... have that or a
... legislation. Presidential Decree
... which is the so-called Refraining Law. You may
have been aware that some textbooks, American or foreign
textbooks that are being used in our schools for purposes
of classroom instruction are being reprinted locally
and sold at much lower prices because they are reprinted
locally. This is being done under Presidential Decree No.
285. This allows the reprinting of these books for the
limited purpose of classroom instruction as supposed to be
only for textbooks. This will not cover all forms of
literary works. But while we have this law, we have been
criticized....

(DS SONIA L. ZURITA TOOK OVER)



MR. AMADOR. (Continuing). . . criticized for having such a law without - which is essentially a violation of the author's copyright. Even if we pay under that law a certain percentage of royalty to the copyright proprietor. Their objection has been, their observation of has been, and criticism has been that we have not actually adhered to certain provisions of the Bern Convention that is a convention on copyright. We have not adhered to certain provisions that would allow us to implement a system like this, yet we are doing it while we had not adhered to those specific provisions.

HON. ROXAS. What are those provisions?

MR. AMADOR. This is so-called appendix for developing countries. It recognizes certain special circumstances that would allow a developing country like ours to implement a system of printing and licensing. Essentially, P.D. 248, 285 is like that, but this is unilateral and it does not observe the conditions under this appendix. So we have been criticized for that.

HON. LEDESMA: And it says here in the position paper of the Bureau of Patent that House Bill 6130 seeks to address this.

MR. AMADOR. Yes, in the sense that we will be repealing Presidential Decree 285, but we recognize that we need reprinting. So we have to - what we propose to do, what that bill proposes to do is to enable the Philippines

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to adhere to those provisions of the Bern Convention that would allow us to implement a system like that, reprinting.

HON. ROXAS. The same cost as we're paying now?

MR. AMADOR. It will probably be higher in the sense that we will have to approximate what Director Sapalo said as a fair economic value.

HON. ROXAS. Can we just ask the Secretariat to request from the DTI and the DECS some information with respect to the budgetary allocation for textbooks. The largest purchaser of books is the national government. So if we pass this into law, what will happen to let's say '97-'98 School Year, assuming that we can no longer be able to avail of P.D. 285 and will now be complying with 6130 and its presumably higher cost for the textbooks.

HON. LEDESMA. May I add also. Can we ask the Secretariat also if they can if it's possible to find out what percentage of the books that the DECS purchases are of local origin and are reprinted.

MR. AMADOR. I might also mention that while may I proceed?

HON. LEDESMA. Go ahead.

MR. AMADOR. I might also mention that while as I said earlier, copyright protects the authors of literary, artistic and scientific works, the proposed Copyright Law contains more than the usual or more than what we provided for under the old Copyright Law as exceptions to copyright)

Because it is recognized by even the Bern Convention that certain acts can be accomplished for certain specific purposes without violating an author's copyright, like broadcasting for purposes of teaching. You may be well aware that the Department of Education and Culture has the so-called long distance education program since because of the - dictated by the lack of classroom facilities and the like. They are I think trying to extend the value of education through broadcasting, television broadcasting or radio broadcasting, so this will be an exception.

HON. ROXAS. Allow me, Sir, to eventually cite something specific - let's take a play. Let's say west side story. It's protected by copyright. Now, if west side story, a song - let's say Maria Song, a west side story. If that is played on the radio, a fee is paid to whoever owns it.

MR. AMADOR. Ideally, Sir, yes. That is a so-called performance right. If you have a record, you have the right to collect royalties not only from the producer who sells it for profit, but also to broadcasting stations that play out your music, your composition.

HON. ROXAS. Presumably, they license a local manufacturer, distributor here and they allow the local distributor to then charge accordingly. There is a commercial relationship as between the owner and the - let's say WEA Records or whatever record company we have

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here. What about the CCP, part of its Dulaang whatever program presents the west side story. Do they have to pay under current law?

MR. AMADOR. Yes. Because that is a performance of the work.

HON. ROXAS. What about if it is the UP School of Dramatic Arts, do they have to pay?

MR. AMADOR. It would have to depend on whether the public-- the performance of the work is for profit, if you charge admission fee.

HON. ROXAS. Yes, they charge admission.

MR. AMADOR. Yes. They must pay.

HON. ROXAS. What about if it is the Kulasi National High School in Capiz? Do they still have to pay? Under current law.

MR. AMADOR. Yes, if you charge admission fee.

HON. ROXAS. What is this you're talking about this education, there are certain exceptions if you charge.

MR. AMADOR. Yes. But in education we don't charge. What I'm saying is, under this exception, yes. It's for purposes of classroom instruction. You don't charge anything other than the normal, you know, tuition fee or the like, but if for a specific performance of a work, you charge an admission fee.

HON. ROXAS. Excuse me, the charging of the admission fee, that's the trigger. It's not the earning of profit.

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MR. AMADOR. Yes.

HON. ROXAS. It's the charging of admission fee.

MR. AMADOR. May I just say that under the old Presidential Decree No. 49, that is not - the right of public performance is not explicitly recognized. But the Supreme Court upheld that such a right exist for authors and creators of literary and artistic works. What we have done in the proposed Copyright Law is to explicitly recognize it by providing explicitly that there is such a right of public performance. This has been ...

HON. ROXAS. You mean a right to charge for public performance?

MR. AMADOR. Yes.

HON. LEDESMA. Okay. Corollary to what he was - from his point of reasoning, I'd like to go a little of tangent. What happens nowadays, you know, there's a lot of experimental theater and stuff like that. What happens say for example west side story is now adopted. Let's say adopted into say Tagalog, and two questions. What happens if it is adopted in its entirety or secondly, if it's adopted with variations at what point during its adoption can it no longer be considered as the original work but a new work, new literary or artistic work. What happens in cases like that?

MR. AMADOR. The first part, Sir, is easy to answer but the second part, you know, drawing the line it's

a very difficult problem in Copyright Law. Let me just say that copyright also protects, also includes the right of adaptation. If you are the author, you have the right to -- if you wrote a novel, you have the right to write a screenplay based on that novel. That is your right because that's another market, you know, where you can earn profit out of your intellectual labor. That is the right of adaptation. If you translate it, that's also another aspect of copyright. You have the exclusive right of translation because that would serve to disperse your work among the greater market. So, if translation is a violation of copyright, you must first obtain the consent of the author. Assuming you obtain -- or assuming you did not obtain the consent of the author but just adopted some portions of -- what did you say -- it was a west side story or something, but not in its entirety...

x x

(DS PRECIOSA BALDONAZA TOOK OVER.)



MR. AMADOR. (continuing) entirety and you adopted it in Filipino. It's a very difficult question in copyright law, when it constitutes a copyright infringement or a form of so-called fair use because a copyright law recognizes that certain uses of the works or portions of the work will not constitute copy infringement if it is for a fair use.

HON. ROXAS. Assuming that a creator feels that his rights have been infringed, to whom does he run? To you?

MR. AMADOR. Yeah.

HON. ROXAS. Who do you run to when he goes to you?

MR. AMADOR. He has to go to court. That's under our present law and even under the proposed bill.

HON. ROXAS. Let's say I'm the author of the Ascension then now UP Theater does it, I feel that I want to assert my rights. In what way, do I go to the Regional Trial Court?

MR. AMADOR. Yes.

HON. ROXAS. And what?

MR. AMADOR. Sue for copyright infringement.

HON. ROXAS. When do you come in?

MR. AMADOR. Meaning, what, Sir?

HON. ROXAS. The office? The Bureau of Patents Trademarks and all the branches ...

MR. AMADOR. No, the Bureau of Patents and Trademarks does not administer, does not administer copyright.

HON. ROXAS. Who administers copyright?

MR. AMADOR. The National Library. There is a Copyright Section there in the National Library that administers the Copyright Law.

HON. ROXAS. So, the aggrieved creator will first run to the National Library before filing suit presumably, diba?

MR. AMADOR. Well, if he will probably do that. He doesn't have to do that. He will probably do that only if he wants to obtain a certificate of registration. He may have registered it although that is not required, that is optional.

HON. ROXAS. Ah, it's optional.

MR. AMADOR. Yes.

HON. ROXAS. In other words, a new creation somewhere else in Czechoslovakia need not be registered here, I mean somebody can see it there, bring it here, copy it and still be liable for infringement?

MR. AMADOR. Yeah. Because copyright is protected from the moment of creation without any formality requirement, without any registration requirement. So, all you have to do or that foreign author has to do is that he is the author and that the work is his original. He created it original, nobody else, he did not copy it from anybody else.

HON. RECTO. In the music industry, the Yellow Band, one performer wrote the music and the other performer registered it with the National Library, but the original work was actually done by the other member, but one registered it. And when they parted ways and one now would for commercial purposes produce an album with the same song. The other one now who registered it or who did not register it with the National Library but the real supposed to be the real creator of the piece, how could you show that this work is actually his?

MR. AMADOR. Yes, Sir. The copyright registration certificate that the National Library issue is just a prima facie proof. It's not really a conclusive and final proof of ownership. In that situation, simply because the other one is not really the author or creator obtained a copyright .. It doesn't mean that he is inclusively the owner. And the actual copyright owner and the author of the work can still have that registration canceled.

MON. LEDESMA. Korte na maglalabanan d'yan, in other words?

MR. AMADOR. Yes, Sir. May I just mentioned in relation to the question earlier that it is about a foreign author, we adhere to the Bern Convention adopts the so-called national treatment. Meaning, we must extend the

same kind of protection that we extend to our own nationals and other nationals of the Bern, of the member countries of the Bern Convention. So that in that situation if the foreign author is a national of a member country of the Bern he will be given the same protection. In the same manner that a Filipino author whose work has been infringed in another country member of the Paris Convention would be entitled to the same protection of law.

HON. RECTO. Is there a time frame in which that we have to pass let's say such proposal such as this to be in conformity with our multilateral agreement?

MR. AMADOR. Mr. Chairman, it's January 1, 2000.

HON. RECTO. So, we have to pass it by January 1, 2000.

HON. ROXAS. We're informed it's March this year.

MR. AMADOR. On the other hand, we have to, especially in copyright, comply with our bilateral commitment in the United States which actually mentioned that the Executive Department would exert efforts to have this passed last December.

HON. ROXAS. Excuse me, Sir. You mentioned that this deadline of December 1995 or originally June '95 and December '95 and now March '96 is not as a function of WTO, it is a bilateral obligation. I think we have ... two different agreements.

HON. RECTO. Old bilateral agreement with

the US.

HON. ROXAS. I understand but the presentation to us is that it is as a function of our obligations under WTO. which it is not.

MR. AMADOR. Yes, we just leave it to the WTO.

HON. ROXAS. Yes, what is the obligation under WTO?

MR. AMADOR. (inaudible) provisions of TRIPS agreement by January 1, 2000. On the other hand, there are many private sectorial groups who have manifested interest to have this passed.

HON. ROXAS. There may be very legitimate reasons why it should be passed also earlier. I am just saying there is misrepresentation ... because we are made to understand it is being pushed because supposedly of a WTO and it will ... and we'll lose all our market access under WTO, etc., etc.

MR. AMADOR. No, no, Mr. Chairman, there is no misrepresentation.

HON. ROXAS. I'm not saying you're the one misrepresenting. I'm just saying that there are many many notices to us that we must pass this because of WTO obligations and the you're telling us that under WTO, the deadline is January 1, 2000. So, this deadline of March 1996 is under some consideration and some other agreement we might have.

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HON. RECTO: .. Are they very similar, the
bilateral agreement to the US and with our agreement in
WTO? Any provisions very similar?

MR. AMADOR. Yes, hindi ko na msalaala ito.

HON. ROXAS. Net, net. what are the areas, in other
words, given existing law and assuming passage of this
certain law, what would be, as a practical matter, areas
where we received the greatest... as a function? You
mentioned something about medicines and other things might
now be really more expensive.

(Informal discussion)

HON. ROXAS. Is that a practical approach?

(DS SONIA L. ZURITA TOOK OVER)



HON. ROXAS. (Continuing). . . practical approach?

MR. SAPALO. It's very difficult to say, Sir.

HON. RECTO. In line with that question, what would be the advantage to us if we pass this immediately, prior to the Year 2000 let's say for example?

MR. SAPALO. The Philippines is enjoying at present the so-called a very low tariff for our I think garments to the United States, our exports to the United States under the so-called GSF system which is voluntarily given by the United States to developing countries. And of course, under the so-called United States Special 301 Statute under which we were before 1992 placed in the priority watch list but after the Bilateral Agreement, the Navarro-Cantor Agreement was reached in 1993 the Philippines was lowered to the watch list category. Under this statute, they could impose economic sanctions in the event they view that we are not providing adequate protection for their ...

HON. ROXAS. So this March deadline, this Bilateral Agreement that you talk about is the Navarro-Cantor '93 Agreement?

MR. SAPALO. Yes, Sir. They will have a review I guess of this, the level of protection we are granting. As of April 30 they will make another decision as to which countries will be placed in the watch list or in the priority watch list.

HON. ROXAS. We can go back to my additional

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question. What are the areas that you feel will have the greatest changes or impacts because of the passage of this law?

MR. AMADOR. In the entertainment industry definitely I think the proposed Copyright Law I think will bring about significant improvement in the enforcement of entertainers' rights.

HON. ROXAS. Or creator's right...

MR. AMADOR. Yes, Sir, but probably the impact is greater in the entertainment area than in any other field. Because we have I think more entertainers than authors and...

HON. ROXAS. Just to pursue that point, how is that implemented, you mean all of these creators will now hire lawyers to watch over whether their product is actually performed...

MR. AMADOR. No, Sir. They have voluntary organizations, they have organizations like the Filipino Society of Composers, Artists and Publishers. This is a group associated with similar organizations around the world that administers the rights of Filipino performers, artists, not only abroad but here. Under their arrangement, the PHILSCAF, it's so called PHILSCAF here, administers the right of foreign authors, meaning for every public performance of a musical work, a musical composition in a hotel, in a T.V. station, they are supposed to monitor this

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and those who performed this work are supposed to pay PHILSCAP on behalf of foreign authors. in the same manner Filipino authors and artists and performers are protected abroad.

HON. ROXAS. So PHILSCAP is the collecting, implementing, supervising, guarding.

MR. AMADOR. Yes. They don't really have to go through to lawyers, they can administer their rights by themselves. In fact, Sir, even under the proposed copyright law will recognize the existence - we now recognize the existence formally of such a society for the purpose of administering performing rights of Filipino artists and authors.

HON. ROXAS. And that is all - meaning, if this society or this entity performs its function carelessly or without much vigor, we are under no obligation to do anything as a government because that is a - that's their arrangement. So everytime now a song is played, theoretically expenses will increase in the entertainment industry. Everytime a song is played....

MR. AMADOR. Yes, Sir, but what is an additional expense to this establishment would be an additional income for the performers, the artists, the performers, the entertainers in the sense that..

HON. ROXAS. To the extent that these songs are created by a foreigner that it would upward migration of...

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So entertainment to their area, pharmaceuticals and drugs, books...

MR. SAPALO. I guess it will not really be - it will not produce a substantial impact in pharmaceuticals because the compulsory licensing system is hardly availed of today.

HON. ROXAS. So they are already voluntary arrangement.

MR. SAPALO. Yes, maybe.

HON. ROXAS. So books, entertainment.

MR. SAPALO. On the other hand, the existing laws already are adequate insofar as software industry except that the penalty is very low. That's the only thing that is very - sticks like a sore sound, very low penalty.

HON. LEDESMA. It's not a deterrent in other words.

MR. SAPALO. Yes.

HON. LEDESMA. What about this - one of these in the emerging industry is like the cartoons - that problem. We're producing now local - we're doing a lot of the art work in the country.

HON. RECTO. Any other questions?

HON. ROXAS. I have another question. The Navarro-Cantor '93 Agreement refers to all three bills or just the 6130?

MR. SAPALO. All three. Patents, trademarks and copyright.

HON. RECTO. May we have the final remarks from our

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guests?

MR. SAPALO. The important element that we want to - the objective basically in passing these bills will be to create a certain positive impression, perception that we are providing adequate protection to our intellectual property rights. So, foreign investors will not hesitate to come and bring their money here. So that one is one reason why we would like to avoid being placed in that priority watchlist, because once we are there, investors will look at us as country where they cannot get the right protection they need for their intellectual property rights.

HON. RECTO. With that, in behalf of the Committee on Economic Affairs, we thank you for coming over and briefing the committee and its members regarding the three House Bills and probably we'll be inviting you again in the future when we have to discuss the specific provisions of the three bills.

HON. ROXAS. We appreciate the interest of the Committee on Economic Affairs, and only to add that, in fact the bills are lodged to the Committee on Trade and Industry...

MEETING WAS ADJOURNED AT 3:22 P.M.

NOTE: The meeting was not formally adjourned.

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So that would be the nature of the provisions of this proposed legislation -- an updating, an adaptation of our laws to modern-day practices, Mr. Speaker, your Honor.

MR. DAMASING. The same is true, your Honor, with the Copyright Law. You just made the changes to make the said law attuned to the present conditions of the times, but most of its provisions are also incorporated in this House Bill No. 8098.

MR. ROXAS. That is correct, Mr. Speaker, your Honor.

MR. DAMASING. I am asking these questions, your Honor, because I am thinking of jurisprudence by virtue of decisions of the Supreme Court. Because if most of the provisions of these three laws are incorporated in this House Bill No. 8098, that would mean that the jurisprudence resulting from decisions of the Supreme Court will still be applicable if these provisions under the old laws are incorporated in this House Bill No. 8098 -- to make that clear.

MR. ROXAS. That is correct, Mr. Speaker, your Honor. The committee as well as its legal staff took pains to ensure that none of the provisions herein or none of the additions to account for modern-day practices will in any way contravene the existing jurisprudence or existing precedents that have been already adjudicated, Mr. Speaker, your Honor.

MR. DAMASING. One last question, your Honor please. We hear of pirating of tapes, whether it be involving

movies, films and songs. Under what category will this pirating of tapes come?

MR. ROXAS. Under copyrights, Mr. Speaker, your Honor. What is protected in the tapes is not so much the tape itself but the contents or the creative -- the story, the acting, the movie that is contained in the tape, Mr. Speaker, your Honor.

MR. DAMASING. All right. The present Copyright Law has a penal provision that would penalize people who would pirate songs, films, movies, and so on, and so forth. Is that correct, your Honor?

MR. ROXAS. That is correct, Mr. Speaker, your Honor.

MR. DAMASING. Can we be informed, since the present Copyright Law has penal sanctions, if there has been already convictions in courts regarding people who had pirated films, songs, through just mere copying of the tapes without permission from the owners thereof?

MR. ROXAS. I am informed by the technical staff that, yes, there have been convictions, in particular a case filed by Warner Bros., the owners of a movie, when they discovered that their movie was being replicated without the proper permissions, Mr. Speaker, your Honor.

MR. DAMASING. I think that is very common, your Honor. Right now, if you go to some shops ... /cja

MR. DAMASING: Some shops that are renting out tapes or films even in the provinces you can already obtain a copy even before the film is shown or while the film is being shown in Manila. Ordinarily it would take one or two months before the films shown in Manila would reach the provinces. But right now simultaneously with the showing of these films in Manila, we can already obtain these tapes right from stores even in the provinces. Are there no monitoring being done by our government agencies concerned in order to protect property rights?

MR. ROXAS: Yes, Mr. Speaker. Your Honor, there are monitorings that are occurring but sadly the budgetary allocations for this activity is very much lacking so there is indeed a proliferation of this activity. The Videogram Regulatory Board is the agency that is overseeing this practice of renting out the betamax or the tape movies, Mr. Speaker, Your Honor.

MR. DAMASING: Well, Your Honor, I am not trying to criticize those who are renting out parity tapes in the provinces and even in the cities outside of Metro Manila because they are already there. I mean it is being provided them by sources in Manila so I think you cannot blame the people in the provinces who are just making business out of these tapes which are coming from Manila. But at any rate, Your Honor, my interest here is just to show that if only there is enough monitoring to be done, I

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the Gentleman from Leyte, the Honorable Apostol was in the process of completing his interpellation. I ask that he be recognized, Mr. Speaker.

THE DEPUTY SPEAKER (Mr. Perez, H.). The distinguished Chairman of the Committee on Justice, the Gentleman from the Second District of Leyte is recognized.

MR. ROXAS. Mr. Speaker, before the Gentleman from Leyte begins, may I also make of record that upon consultation with the Chairman of the Committee on Rules, the Committee on Trade and Industry requested for the assistance of Congressman Neptali "Boyot" Gonzales as a Member of the Committee on Rules so that he may address questions of a legal nature, Mr. Speaker, Your Honor.

THE DEPUTY SPEAKER (Mr. Perez, H.). The manifestation is noted.

MR. ROXAS. Thank you.

MR. APOSTOL. So, Mr. Speaker ...

THE DEPUTY SPEAKER (Mr. Perez, H.). The Gentleman from Leyte may proceed.

MR. APOSTOL. May I continue with my interpellation, Mr. Speaker.

THE DEPUTY SPEAKER (Mr. Perez, H.). The Gentleman may proceed.

MR. APOSTOL. Mr. Speaker, before I continue with my interpellation, may I be allowed to read the Editorial of *The Manila Chronicle* dated November 17, 1996, found on page 4 and to quote: "Intellectual property rights - The United States

December 05, 1996

6:00 p.m.

seems to be upping the ante on the matter of intellectual property rights.

US Ambassador Thomas Hubbard, in a letter to Trade and Industry Secretary Cesar Bautista, warned that the Philippines may be reverted to the US "priority watch list" if it failed to enact a bill protecting intellectual property rights this year.

"If for some reason," the US envoy said, "the legislation is not passed, there will be considerable pressure on the (Clinton) administration to move the Philippines to the priority watch list."

If placed on the priority watch list, the Philippines could lose the duty-free privilege enjoyed by many Philippine exports to the US, the country's largest trading partner.

The Hubbard warning is precisely the sort of thing that gives the idea of "regional economic cooperation," exemplified by the forthcoming APEC Summit, a hollow ring. It definitely leaves a bad taste in the mouth." If this warning is precisely the sort of thing that gives the idea of "regional economic cooperation," exemplified by the forthcoming APEC Summit, then it is a hollow ring.

"If this signifies anything, it is that the world's only political and economic superpower will brook no opposition to its dominance of world trade, thanks to the likes of Bill Gates," Microsoft owner and billionaire many times over because of exorbitantly priced computer software in use worldwide.

What the Hubbard warning amounts to, it seems to us, is arm-twisting and bullying of the most blatant sort that directly contravenes the spirit of APEC.

~~CONFIDENTIAL~~ *John*

Which moral high ground does the US position stand on?
Americans pirated British intellectual property rights at will
from the 18th to the 19th century without paying a cent to
British authors...

Paul

000513

December 10, 1996

6:05 p.m.

(PO-Mr. Perez, H.)

MR. APOSTOL. ... to British authors. Japan pirated American copyrighted works, patents and trademarks at will in the 50s while resurrecting its battered economy. Taiwan freely copied American works -- even whole encyclopedias and technical books -- as it built up its internal economic capacity in the 50s and 60s. Big American companies are busy right now having plant varieties -- even human genes, as in the human genome project, if we're not mistaken -- from Third World countries patented. What this will amount to later on is that the very same Third World countries from which these plant varieties were taken would have to pay royalties to the American firms to be able to fully utilize these for their own development. The Americans would call this respecting ingenuity and invention. Filipinos would call this frying us in our own fat.

We are not suggesting that we throw all rules out the window and disregard intellectual property rights conventions which we signed years ago. We are suggesting instead a two-tier policy that would allow us to use intellectual property rights -- such as computer softwares -- without having to pay exorbitant sums that end up in the pockets of totally unconscionable and ruthless big businessmen like Bill Gates.

By all means allow our medical students access to reasonably-priced, locally-reproduced medical textbooks, our engineering students to afford technical books without

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draining their parents' pockets, our music students to appreciate foreign works without paying an arm and a leg for copies of copyrighted music.

At the same time, we should amply protect local inventions, trademarks and copyrighted works from the grubby hands of unscrupulous and greedy foreign entrepreneurs.

This, we believe, is a realistic and pragmatic policy that will allow us to develop our own economy at our own pace without backing down to undue pressure from the rich industrialized nations.

Respect intellectual property rights? We're all for it. But first we'll have to keep our dignity, if we want others to treat us with respect.

May I know, Your Honor, if this bill is in response to the threats of the Americans?

MR. ROXAS. Mr. Speaker, Your Honor, the extant measure is certainly not in response to these threats. The extant measure was processed by the Committee on Trade and Industry taking into account separate other bills that [they] were filed with the committee beginning in August of 1995, in the beginning of the 10th Congress, certainly before the specter of APEC and all of these other editorials were published. Mr. Speaker, Your Honor, the intent of the bill, of the committee, as well as the authors is to indeed provide protection for the intellectual rights of Filipinos while at the same time

realizing that for us to obtain protection for our own intellectual properties, we likewise must provide the same protection for the intellectual properties of others.

MR. APOSTOL. So the position of the sponsor is that we are not bowing to the Americans.

MR. RUXAS. Mr. Speaker, Your Honor, the position of the committee and of the sponsor is that this bill or the passage of this bill is in the interest of the Filipino. This is in our own national interest to the extent that it may in certain instances coincide with the interest of other nations, whether that be the U.S. or others is irrelevant. We believe that this is in the interest of the Filipino and that is why we are sponsoring the measure, Mr. Speaker, Your Honor.

MR. APOSTOL. All right, let us go to the interest of the Filipinos. Under our existing laws, before a foreigner or a foreign corporation or juristic person can file a case for violation of patent or copyrights they must have either registered their patent in the Philippines or they must have a representative in this country. Under Section 54 we have removed ...

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MR. APOSTOL. ... Under Section 34, we have removed this provision. May I know why we are not protecting our own people?

MR. GONZALES. Mr. Speaker, Section 34 is practically a reiteration of what was already provided under R. A. 165. In fact, Mr. Speaker, under the Corporation Code, a foreign corporation not doing business in the Philippines may also sue on isolated transaction, and even without this proposed amendment, it is a recognized exception and as jurisprudence had already settled this that the patents law allows such a situation, and following the principle that a specific law governs over a general law. So, this is actually not a new provision but only a reiteration of an established jurisprudence, Your Honor.

MR. APOSTOL. Mr. Speaker, Your Honor, it is not easy to study this bill because this bill is entitled: "An Act Amending the Patent Trademark and Copyright Laws" and yet we do not know what were amended and what were not amended. In fact, even the repealing clause mentions the laws being repealed and all being amended, so how can we study this kind of bill which is very thick and we do not know which portion of the copyright law, the trademark law, the unfair competition is amended.

(PO - Mr. Perez, H.)

RESUMPTION OF SESSION

At 6:45 p.m., the session was resumed.

THE DEPUTY SPEAKER (Mr. Perez, H.). Session resumed.

MR. ABUEG. Mr. Speaker.

THE DEPUTY SPEAKER (Mr. Perez, H.). Majority Leader.

MR. ABUEG. May I ask for the recognition of the Gentleman from Iloilo, the Honorable Narciso Monfort, who wishes to interpellate.

THE DEPUTY SPEAKER (Mr. Perez, H.). The distinguished Gentleman from Iloilo is recognized.

MR. MONFORT. Mr. Speaker, will the honorable sponsor answer some few questions?

THE DEPUTY SPEAKER (Mr. Perez, H.). He may do so, if he so desires.

MR. GONZALES. Gladly, Mr. Speaker.

MR. MONFORT. Mr. Speaker, honorable sponsor, the amendment of this House bill has a noble purpose but I found out that the question here is the implementation. Your Honor, it is the implementation. For example, our police officers and other law enforcers are ignorant, not knowledgeable of such laws. Is there any way in the bill that we can seek to address this inadequacy of implementation of our law enforcers?

MR. GONZALES. Well, the implementation of -- that is more of a police enforcement, Mr. Speaker, and while we

value the observation of the honorable Gentleman but for us to provide a provision in the law that will also cover police enforcement of the same might constitute a violation of having different subject matters under one heading, Mr. Speaker.

MR. MONFORT. Because if we will not provide, say, in one way or the other maybe training or of that sort, this bill will be just a paper tiger bill if we will not do that because many enforcers do not know about this. And sad to say that in government intensified campaign against infringement of patent, trademarks and copyrights, there are unscrupulous businessmen, local and foreign, that are in syndicated operations. I would like to know from the sponsor if any provisions to that matter had been provided here.

MR. GONZALES. Well, firstly, Mr. Speaker, I do understand the things that the Gentleman is talking about because this Representation had been a legal practitioner before his election to this august Chamber. And basically, Mr. Speaker, insofar as infringement of trademark or copyright, there were some problems insofar as this area is concerned like laser disc, tape copies of laser disc imported from the United States. And our enforcement agencies have encountered a lot of difficulties in enforcing the copyright law because some entrepreneurs have advanced the notion or the theory that the copyright could

not legally have envisioned the inclusion of laser disc or VHS because during that time that this law was enacted they were not yet in existence at that time. So a lot of legal issues have cropped up because of this that has affected the police enforcement insofar as violation of copyright law is concerned. But that particular issue may be laid to rest, Mr. Speaker, because under the copyright portion of the proposed bill, the proposed bill had already included the rental of the said copyrighted work as being included copyrighted artistic work. . . .

(PO. - MR. PEREZ: (H.)

MR. GONZALES. ... artistic work. Mr. Speaker. So, this bill would, in effect, help police enforcers in the implementation of the law, as you have said a while ago.

MR. MONFORT. Mr. Speaker, Your Honor, I am afraid -- I would like to address more on clothing also, the fake use of trademarks on clothing -- so, I am afraid because of that faking of the trademarks in clothing and now we can protect that.

MR. GONZALES. There is no really ... the proposed bill had improved on the previous trademark and service mark law. And there are specific provisions of the proposed bills which are merely a reproduction of previous provisions existing under the Trademark and Service Mark Law. And those clothing which the honorable Gentleman has stated on which protected marks or trade names or trademarks are being used are also included as a ground for civil and criminal infringement, Mr. Speaker. So, we have the same protection as before. But I do understand the observation of the honorable Gentleman that the problem lies insofar as police enforcement is concerned. Perhaps, as you have observed a while ago, a seminar or should this proposed bill become a law, then anyway, we have enough period to conduct necessary seminars, to extend to police enforcement agency technical knowledge of the bill that will surely help them in implementing and enforcing the law, Mr. Speaker.

MR. MONFORT. Your Honor, Mr. Speaker, in one of the papers I have read, it says there another cause, cause of this fake product is the alleged flip-flapping of the government authorities as well as the judiciary in the interpretation and implementation of laws on copyright, trademarks and patents. Said interpretation, they brought it to the Court of Appeals, bring it to the Supreme Court. One example cited by foreign and local authorities is the case of jeans trademarked Lee, L double e, which is registered in the U.S. and other countries and considered as one of the earliest American jeans brand and listed as second largest jeans brand in the world and stylistics Mr. Lee, the Philippine version. So, that is what I mean.

MR. GONZALES. Yes, we understand that cases, those are exceptional cases, Mr. Speaker, the Lee case, the Hickock case, and some authors, commentators and academicians have really criticized the Supreme Court for coming out with those rulings. And, in fact, many commentators and authors of commercial laws, including Trademark Law, have come to the theory that the exceptional circumstances surrounding the Lee and Hickock cases should be considered and, therefore, that decision of the Supreme Court in those cases should be treated as mere exception and not as a general rule. Otherwise, if we will fully implement the decision of the Supreme Court in those cases, then it will really defeat the purpose of the Trademark

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HON. ALBANO: Okay.

PRESIDING OFFICER ROCO: If everybody is happy with that, we can close on that.

HON. ALBANO: Okay. Let's move to the next.

PRESIDING OFFICER ROCO: The royalty is another discussion. Let me present lang our problem, ha.

HON. JAVIER: That's my proposal. You know, Mr. Chairman, that's my proposal. I have no problem with that. If you want to amend that as contained in the draft, I have no problem with that.

PRESIDING OFFICER ROCO: Could we just--I'm grateful for the position of Congressman Javier. But let me just explain why. When you put a limit to royalty payments and, after removing the distinction between international and domestic, what do you do? Here, napapaboran initially the Filipino. But if they can get better royalty, if there is a competitive world outside - in Thailand, put it at six, they will not give you. Worse, when the Filipino is the one licensing, you are stuck with five. Supposing tayo ang makaimbento ng napakagaling na ano man yan---

HON. ANGARA-CASTILLO: We can get more.

PRESIDING OFFICER ROCO: We can get more. Very rare, ha. Very rare. But let us not tie our hands. Yun lang ang sinasabi ko diyan, otherwise, eh, di put back--tinanggal ni'yo kasi ang distinction between international and,

BICAMERAL CONFERENCE COMMITTEE
Committee on Trade and Industry
June 2, 1997/ Jerry/ III-B

domestic. If you put back the international and the
domestic, then I can understand why you want to limit...

-DS AGNES BUSTAMANTE TOOK OVER-

Handwritten signature or initials, possibly 'to' or '10', written in black ink.

PRESIDING OFFICER ROCO. (Continuing)... limit but it will be considered incriminatory under the World Trade Organization. Parang you will be effective, hindi ba?

HON. JAVIER. Yeah.

THE PRESIDING OFFICER. So ganoon. So kung okay kay Ex we just remove the ceiling. Don't put a limitation and then we bargain. Ang gagaling mag-bargain ang mga abogado rito. Hindi ba makinabang naman sa attorney's fees.

HON. ALBANO. Any reaction?

HON. JAVIER. Wala na ho.

HON. ALBANO. Okay. So, how should we read now with all the ...(unfinished)?

PRESIDING OFFICER ROCO. Ah, the technical guys can just ano. There is a phraseology under the old law iyan, hindi ba? Bahala na kayo. Wala akong phraseology. How will it look? Puwede ba-iyon? Ah, it becomes power of the director if we remove that. In the draft it is no longer here but I wanted to call attention to it because it affects contentious issue. Wala na talaga dito. We just gave the authority to them. Then bahala na kayo.

Yes, please.

HON. TEVES. Your third issue is on the effectivity. Can we discuss another issue before we go into that?

HON. ALBANO. Yes, yes.

**Pirates on Board: An Assessment of the Effectiveness of
the Optical Media Board in Deterring Music and Video
Piracy in the Philippines**

Undergraduate Thesis

Ong Pe, Jacqueline Rose B.

2002-00593

Prof. Tayag

PS 199

October 13, 2005

Introduction

The Philippines has been included in the United States Trade Representative's Priority Watch List of intellectual property violators. Reports have shown that the Philippine movie industry has been losing millions and millions of pesos due to the proliferation of unregulated and pirated VCDs and DVDs.

Quiapo and Greenhills are but two of the most popular places for purchasing very affordable pirated videograms. One will be amazed at the sight of enormous patronizers haggling to get the cheapest price possible. With pirated CDs, people can watch the films repeatedly, catch the craze caused by telenovelas without waiting for the television channels to put them on air, and enjoy a higher value for their hard-earned money. Who wouldn't be enticed? Leisure for a cheaper price. Furthermore, complaints of low quality pirated CDs are now being eliminated with the existence of CDs, especially DVDs, that are of good quality.

However, the Optical Media Board has been very firm in its fight against piracy. This research will discuss the effectiveness of the programs and campaigns of the board in fighting piracy in the Philippines. With this, the researcher will provide concrete reasons or factors contributing to the effectiveness or ineffectiveness of the Optical Media Board in its function of eradicating violations of intellectual property rights.

Research Question

How effective is the Optical Media Board in deterring music and video piracy in the Philippines?

Sub-questions

1. What is the Copyright Law?
2. What is the Optical Media Board? What are its functions and actions?
3. What is piracy? How is it manifested in the case of selling and buying of VCDs and DVDs?

Objective

To study how effective is the Optical Media Board in deterring music and video piracy in the Philippines

Specific Objectives

1. To discuss intellectual property rights and the Copyright Law
2. To study the Optical Media Board as to its structures and functions
3. To assess the effectiveness of OMBs deterrence of pirated VCDs and DVDs as measured by indicators of the status of piracy in the Philippines, strong sense of compliance, and efforts done by OMB
4. To give recommendations on how to enhance the OMB's implementation of its function of regulating the production and sales of videograms

Tentative Answer/Hypothesis

The continuous proliferation of pirated videograms is enough evidence that the Optical Media Board has not been successful in its endeavor of curtailing the problem of piracy. People still take the issue lightly with indications that more and more people are enjoying the hype of cheap leisure. There may be several reasons that contribute to the lingering problem of piracy in the Philippines. First is that people are not made aware of the consequences that goes with piracy. There may be advertisements that expose the losses in business and movie industry; however, the general perception is that artists, producers and other people affected by piracy are already multi-billionaires and are continually profiting from the business. A loss of this kind is rather, as viewed by many, negligible on their part. Second, since people are still purchasing these discs, pirates produce even more copies of pirated CDs. Though raids are done by the government, particularly the Optical Media Board, piracy itself is not deterred as vendors and retailers continue on with their operations after the exit of the officials.

Third, the target of raids is only the small dealers. The owners of the machines, that is big time dealers, time and again were able to avert the law. There were cases where factories and

manufacturing establishments continued on with its operations.

The problem of piracy has come a long way. It has been a cycle. The source of the problem has never been truly shaken thus it continues to disturb the country.

Review of Related Literature

The researcher reviewed books, articles, internet materials, and republic acts that were deemed necessary to better understand the concept of law; intellectual property rights and its components; intellectual property law; piracy; and evaluation research. In addition, the role of globalization in the evolution of intellectual property rights in developing countries was looked into. The Copyright Law as specified in the Intellectual Property Code of the Philippines will be the main source of information for the specifications of intellectual property in the Philippine context. Furthermore, republic acts establishing the different agencies designed to eradicate piracy in the Philippines were delved into as well.

Developing countries or the Third World in this time of globalization have been contending to function in an international arena wherein technology is very advance. P. Ebow Bondzi-Simpson in the book *The Law and Economic Development in the Third World* (1992) stated that the first and third world are divided on the basis of economic growth. In the quest for economic development, Simpson asserted that the political and economic schemes employed should be for the benefit of the citizens of the state. The law is defined as an instrument through which development in all its dimensions may be pursued. A law is considered authoritative if there is certainty as to what body will carry out the rights, obligations and entitlements. In addition, the nature or content of the rights, obligations and entitlements should be validated and be made certain. One prerequisite of the successful enforcement of a law is the allocation of powers to institutional bodies to execute the provisions of the schemes. Limitations, however, occur when political orders are illegitimately forced, apathetically supported or externally controlled.

The Idea of Law (1987) by Dennis Lloyd provided for two starting points taken to explain the very nature of law. The first view is that law was made in order to achieve social harmony. In addition, this type suggests that man is basically born evil and that no social progress can be attained without a guiding law. On the other hand, another view espoused that man is actually born innately good, but due to sin man became inept in handling his affairs with harmony with other men. The book discussed as well the nature of compliance. Subjects obeying a law may do so because of different reasons. Some reasons cited by the author include authority, charisma, traditional domination, legal domination, force, and force in international law.

Jeremy Phillips and Alison Firth in their book *Introduction to Intellectual Property Law* (1990) defined intellectual property as having two sides. First is the colloquial description which encompasses all things which originate from the use of human brain. This includes ideas, inventions, poems, designs, microcomputers and the likes. The other side rather focused more on intellectual creators' rights upon that property. Phillips and Firth, moreover, manifested that intellectual properties are enjoyed in the products of the mind. Therefore the word "property" is used because an individual or group of individuals asserted rights and powers enjoyed by one over another's work. Once a manufacturer acquired a patent on a certain innovation, he has the power to use such invention

Another view was manifested in the book of P.Ebow Bondzi-Simpson, *The Law and Economic Development in the Third World* (1992). Simpson also provided two conceptual views of intellectual property rights. The first as "public goods or free goods" and the other as "private property." The author's position is that intellectual property is not property right in the same sense that authors and creators will have the sole power over their ideas and inventions. Rather, the book acknowledges the existence of a social contract wherein grants of limited monopoly to the author will be made and in return, the author will allow the general public to have access to his work. This view of the social contract was also cited in the book *Proceedings of the Lecture-Forum on the Intellectual Property (IP) Code* (1998). It was stated that the intellectual property system balances two interests, and these are the rights of the intellectual creator to his/her work and the right of the public to have access to such work. Trevor Black, another concurring author, in his book *Intellectual Property in Industry* (1989) affirmed that the IP system should meet the

needs and requirement of groups. Such groups include manufacturer of goods or artifacts, creators of works, materials or ideas, and the consumer.

Furthermore, Simpson criticized the view that intellectual property rights as solely a public good and the assumption that intellectual property rights as exclusively a private property. These stances are the very reason why, as the book suggests, division between the North and the South with regards to IPR structuring occurred.

The South, generally views IP as a public good, thus it rationalizes the need for a more lenient intellectual property law. This assumption, however, tends toward a moral-driven concept rather than an economic one. It recognizes that knowledge is a common property in which all should benefit. The North, on the other hand, believes that IP is a private property and as such should be protected by a strict intellectual property law. As Edwin Mansfield commented "Intellectual property rights must be respected to provide a fair return to the private investors who take the substantial risks involved in developing and commercializing a new technology. Unless such returns are forthcoming, the incentives for inventive and innovative activity will be impaired, to the detriment of all nations, rich or poor."

Intellectual property laws are utilized to protect the rights of inventors, authors, and creators. In *Introduction to International Law* (1990) by Phillips and Firth, they asserted that in its traditional sense, intellectual property laws safeguarded owners by grants given by the state of an exclusive exploitation of that which is derived from the use of the human brain. Intellectual property laws encourage the creation of thoughts, ideas, systems and inventions and at the same time gives premium for these to be disclosed and generally to be beneficial for everyone. Some argued that to be genuinely protected, one should just keep the idea to himself. However, keeping such will not allow that idea to be commercialized.

There are five ways in which the intellectual property law can benefit the owner of intellectual property. These are absolute monopoly of the market, qualified monopoly, the monopoly of use of one's personal creation, compulsory license and unfair competition. Absolute monopoly is the right of the owner to stop other people from employing the property

within the limits governed by the law. Qualified monopoly is a situation wherein the owner cannot ultimately stop other persons from using his idea or invention as a basis for that person's own creation. The monopoly of use of one's personal creation is the right in which the owner can stop other people from copying but cannot stop others from exploiting an identical work produced independently.

Furthermore, compulsory license is the right to use a property by everyone who wishes to do so. In a way, the owner is forced to surrender the control of the property. But in return, those who want to use the creation are compelled to pay the owner. Unfair competition philosophized that grants of monopoly should be dispensed with because in the end establishment of monopolies are not commercially utilized. The solution is for the elimination of activities that prejudices the creator by rendering them unlawful.

Authors, Simpson and Adeyinka gave justifications for a strict observance of intellectual property rights. *The Law and Economic Development in the Third World* (1992) by P. Ebow Bondzi-Simpson enumerated several perceptions with regards to a more lenient intellectual property rights and repudiated these arguments. These were not blatantly said by developing countries, but trends towards these thoughts were manifested in international debates. The author did not adhere to the things cited. As a matter of fact, he rejected this kind of reasoning. It was said that weak protection saves the country's money. This is because the state will not bother paying huge sum for royalties. Moreover, the general public will be able to afford the product. Secondly, because it is widely viewed that the sole beneficiaries of a strict intellectual property law are the foreign suppliers, having a weak protection can be assumed as promoting the domestic and national industry. Furthermore, adoption of foreign technology will be made more possible since it prevents foreigners from asserting his right as the one and only provider. Lastly, because all of these are made possible, it is taken that weak protection decreases the level of dependency of developing countries on developed countries.

Simpson readily gave his stand regarding this matter. He stated that developing countries' notion that mere copying will promote the domestic industries should be given a second look. He added that weak protection will not automatically lower the level of technological dependency

rather it only allows recycling of ideas not giving premium to the creativity and ingenuity of its local inventors and authors. In addition, it was also pointed out that pirate copies are more often than not more inferior than the original on the basis of quality. For cases like piracy of videos and music, it can do little or no harm to the purchaser of the product. However, in areas such as in the pharmaceutical arena, piracy of drugs can have very serious effects. A slight error can cause losses of lives of many people as what happened in Nigeria.

Alex G. Adeyinka in his article "Intellectual Property Rights in Developing Countries: Nigeria's Copyright Decree, 1988" stated that the benefits of having a weak intellectual property law are only short term. In the long run, countries having this kind of rules will eventually experience intellectual bankruptcy also called "brain drain." In addition, continuing employment of a lenient law for intellectual property will be detrimental for the country's economy as multinational enterprises (MNEs) will condemn them for disengagement from the strict observance of IPR. For Adeyinka, developing countries should rather take the opportunity to seek alliances of mutual benefits with the MNEs since the latter control the know-how needed to help developing countries.

Furthermore, Alex G. Adeyinka added that the negative effects of weak protection are apparent. Among these are problems of domestic piracy, and problems wherein the local industrial base is not conditioned to think in terms of protection. The Nigerian government changed its Copyright Law due to the pressures exerted by the MNEs and the intimidation imposed by the United States to adopt reciprocal trade measures.

Globalization is a key ingredient in the imposition of strict IPRs. During the General Agreement on Tariffs and Trade Uruguay Rounds, participants debated upon the need for an agreement on intellectual property. *Trade Related Aspects of Intellectual Property Rights: A Concise Guide to the TRIPs Agreement* (1996) by Michael Blakeney laid down the provisions of the TRIPs agreement. He defined the minimum standards of intellectual property rights protection, the nationals benefiting from the agreement, effect of existing intellectual property conventions, most favoured-nation treatment, technology transfer, and the public interest considerations. Delving more into the technology transfer, Article 7 of the agreement says that

the “objective of the protection of the intellectual property right is the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and technological knowledge and in a manner conducive to social and economic welfare and to the balance of rights and obligations.” However, such objective, according to some analysts, remained goals that have never been realized.

Martin Khor, author of the article “TRIPs Agreement and the WTO’s Crisis of Legitimacy” (2001), asserted that several developing countries have insisted on including IPR in the agenda. Khor gave several disadvantages to the pursuance of the TRIPs provisions. These are the increased price of consumer prices including medicines, the high costs needed to pay for royalties, and the phenomenon of biopiracy. The latter meant having developed countries patent the research and knowledge originally from the South. Because of these problems, there were demands that flexibility be given to countries in implementing the rules of the agreement. The balance and mutual advantage of producers and technological knowledge affirmed by the Article 17 was challenged by Martin Khor. The monopolistic profit of the IPR holders geared the “should be balanced” system away from the public interest. He added that though developing countries are the ones mostly affected by the agreement, even developed countries have experienced the detriments of its provisions.

“Review of the TRIPs Agreement: Fostering the Transfer of Technology to Developing Countries” (2003) by Carlos Correa argued that the technological growth even after the ineffectivity of the agreement has widened. Strict intellectual property rights rather than inspire development will only limit the access to technological innovations. Correa cited the views of professors, economists and different organizations which took the same stand on the damage done by a severe inflexibility of IPRs. UNDP Human Development Report 1999 stated, “The relentless march of intellectual property rights needs to be stopped and questioned. Developments in the new technologies are running far ahead of the ethical, legal, regulatory and policy frameworks needed to govern their use. More understanding is needed –in every country– of the economic and social consequences of the TRIPs agreement.”

The laws concerning intellectual property rights in the Philippines have undergone revisions. Esteban B. Bautista in his lecture on the salient features of the decree on the intellectual property compiled in the *"Proceedings of the Lecture-Forum on the Intellectual Property Rights of the University of the Philippines under the Intellectual Property Code (1998)"*, discussed the important changes and innovations introduced by P.D. No. 49 in relation to the former Copyright Law, RA 3134. In another lecture also found in the same book, Susan D. Villanueva discussed the Copyright Law as defined in the Intellectual Property Code. Because P.D. No. 49 did not anticipate tremendous changes and innovations, the adoption of the Intellectual Property Code was deemed necessary. The IPC is the current code providing protection to intellectual creators and author.

Susan D. Villanueva in her lecture on intellectual property laws on copyright in the Philippines defined copyright as was specified in the IPC. Copyright shall consist of the elusive right to carry out, authorize or prevent the following acts: (a) reproduction of the work or substantial portion of the work, (b) dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work, (c) first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership, (d) rental of the original or a copy or an audiovisual or cinematic work, (e) public display of the original or a copy of the work, (f) public performance of the work; and (g) other communications to the public of the work. Elaboration of the scope and limitation of the copyright law and the remedies of the copyright owner were also tackled by the lecturer.

Intellectual Property Patent and Trademark Laws of the Philippines (1995) provided for the act creating the Videogram Regulatory Board or P.D. No. 1987. Among the stated reasons for the creation of such body include the proliferation and unregulated circulation of videograms which have been detrimental to the operations of moviehouses. The movie industry was also cited as one business that is gravely affected by the unregulated activities of videogram. In addition, it was made clear that to be able to achieve national economic recovery, there is a need to ensure that businesses including the movie industry will be protected by the government against unfair distribution of works.

Republic Act No. 9239 provided for the reorganization of the VRB to Optical Media Board. Unlike the broad functions of the Video Regulatory Board, the Optical Media Board focuses mainly on the proliferation of unregulated and pirated CDs, VCDs, and DVDs. The board also has the capacity to give license and registrations for the legal exploitation and use of intellectual properties.

The problem of piracy in the Philippines has been rampant even at the time of President Fidel V. Ramos. In the International Intellectual Property Association (IIPA), it was said that the Philippines has been included in the United States Trade Representative's Priority Watch List. An article released by the Motion Picture Association on the actions done by the Optical Media Board asserted that removal of the Philippines from the watch list is still a major concern. However, Chairman Edu Manzano added that more crucial is the long-term benefits obtained from the creation of a healthy business environment that encourages our local creative industries to produce more intellectual property works.

The researcher also deemed it necessary to review the concept of "evaluation" as the study to be done deals with assessing and evaluating. In *Evaluation: A Systematic Approach* (1993) by Peter H. Rossi and Howard E. Freeman, evaluation research is defined as the systematic application of social research procedures for assessing the conceptualization, design, implementation, and utility of social intervention programs. The reading tackled the history of evaluation research, the growing demand and need of such in the contemporary world, and the flexibility in the adoption of evaluation methods. Basically, steps of evaluation are as follows:

1. Specify, select, refine, or modify project goals and evaluation objectives
2. Establish standards/ criteria where appropriate
3. Plan appropriate evaluation design
4. Select or develop data gathering methods
5. Collect relevant data
6. Process, summarize, analyze relevant data
7. Contrast data with evaluation standards or criteria
8. Report and feedback results
9. Assess cost-benefit/ effectiveness.

To summarize, intellectual property is viewed differently by various authors. It is regarded by some as everything which encompass the use of the human brain. Another posits it to be a public good in which case the consumer should be given access to the property. Contrary

to this is the view that IP is a private good which is inclined to benefit more the intellectual creator rather than the consumers. However, another view gives a more reliable definition for IP. It is considered as a social contract wherein the creator gains monopoly but, because of this, consumers are allowed to use the product. The views of developed as well as the developing countries were presented giving justifications for their respective arguments.

All the concepts, terms, ideas reviewed by the researcher were necessary to fully understand the study at hand. It is important that the researcher be made aware of general concepts regarding the topic to allow wider scope of comprehension. It is essential that the two sides of intellectual property be discussed and analyzed to acquire greater knowledge in dealing with the study. Furthermore, with the information gathered, the researcher will have more background hence more leverage in asking questions to the interviewee and survey respondents. Although interviews with experts in OMB will be done, it is imperative that the basic functions and power of the office is already known to the researcher, thus a review is indeed indispensable.

Moreover, the different laws and republic acts that were reviewed as they will provide the researcher a preview of the provisions that should be implemented by the Optical Media Board. Aside from this, the reasons behind this enforcement were given by analyzing the contents of the laws and republic acts.

Theoretical Framework

Intellectual property is a legal definition of inventions, ideas, and artistic works that encompass the use of human brain. As such, owners of intellectual creation have a right to utilize their products and thus have legal protection. The difference occurs as to whether intellectual property be regarded as a public or a private good. Intellectual property as a public good tends to benefit the consumers more while IP as a private good is more advantageous for the intellectual creator. There is, however, another view that will be used for the purpose of the study at hand. P. Ebow Simpson in his book *The Law and Economic Development in the Third World* (1992) regarded intellectual property rights as a social contract; he stated that both intellectual producer and consumer will benefit with a strict implementation of the intellectual property laws. With this, the intellectual owner will be given monopoly or remuneration for his invention while the

consumers will be given access to these creations. This type allows both parties to fully utilize the products. Furthermore, with strict implementation, Simpson stated that the creativity and ingenuity of a country's inventors and authors will be advanced. Furthermore, the quality of the products that will be available for public consumption will be of high standard as pirated materials will be eliminated totally.

There are five ways by which the intellectual property law can provide protection for holders of the intellectual property. The right of the owner of the IP to stop other people from utilizing his work is called the absolute monopoly of the market. In this case, the creator has the power to thwart others from copying the idea. Furthermore, even if another person was able to come up with the same idea independently as was embodied in the intellectual property, the owner of the first patent has the right to prevent him from utilizing the idea. This owner exhibits great power over the market especially if the consumers actually want to purchase or use his invention. In this scenario, no person can be allowed to patent subject matters already dubbed as intellectual property. Thus, another person who has exhaust his efforts to develop a similar subject matter independently from that of the owner's work, will not be able to reap any benefit as long as the patent for the original holder is still in effect. However, a different case will apply if the person conceives and uses the invention even prior to the date of which the patent was granted. In such situation, the person can continue enjoying the utilization of the invention (Phillips and Firth, 1990).

On the other hand, the qualified monopoly gives absolute monopoly but with one major qualification. The author cannot prevent other persons from using his work as a basis for that person's creation. This is also known as "reverse engineering." This type of protection was designed to avert possible detrimental impacts of having a single dominant monopoly, thus damaging competition, scientific research and consumer choice (Phillips and Firth, 1990).

Another kind of protection is the monopoly of use of one's personal creation. In such case, the holder of the intellectual property can stop other people from copying the work produced by him. Yet, the holder of the IP cannot actually prevent another person who conceived the same idea to utilize his similar creation of which was produced independently. It is indeed

possible that several persons come up with the same idea and creation. If this happens, it is most likely that the first creator will be given the right since notions that other persons copied the works of the first creator exist (Phillips and Firth, 1990).

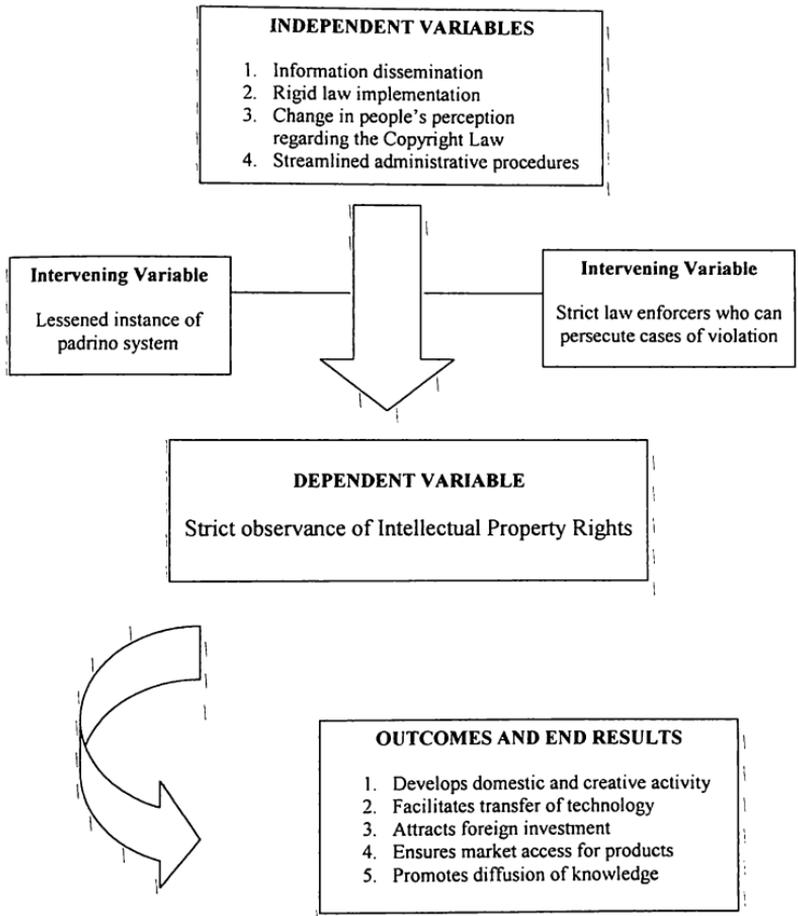
Compulsory licensing can detract from the notion of protection. It is because this type of safeguard relinquishes the control of the holder over his intellectual property. The good point about this, though, is its economic or monetary remuneration. Compulsory licensing allows everyone to use the creation or invention as long as a sum of money will be given back to the owner (Phillips and Firth, 1990). The last type of protection which is unfair competition is not usually employed. This type does not deal with any grant of monopoly but rather it renders activities prejudicing the ability of the intellectual property creator to acquire a fair profit unlawful (Phillips and Firth, 1990).

Copyright laws provide protection to authors against plagiarism of his intellectual property. It is an infringement to copy a work of an intellectual author without his permission to do so. It should be noted, though, that the copy should emanate from the original protected work. The act of copying can be done direct or indirectly, partially or completely (Phillips and Firth, 1990).

Strict observation of intellectual property rights was propagated by the Trade-related Intellectual Property Rights adopted to further consolidate and put into action the concept of globalization. The Third World has been criticizing the provisions of the agreement arguing that poor countries cannot afford to pay huge royalties to authors. Furthermore, since developing countries have the perception that only foreign firms and companies will benefit from a strict intellectual property, a lenient implementation of the law will automatically be favorable for the local industries. This is however, repudiated by P. Ebow Simpson asserting that strict intellectual property laws should be seen as a helpful guide in achieving a more productive and creative society. Domestic inventors will be given much protection and thus much incentive to continue and allow ingenuity to manifest within the country.

For the purpose of the study, the researcher will take strict observance of intellectual property rights as the theory to be followed. The study involves the need for a more intensive implementation of intellectual property laws to totally eliminate the causes of piracy which up to now haunts the producers and artists of the movie industry.

Conceptual Framework



Strict observance of intellectual property rights is viewed as the desired effect which is also the dependent variable. To be able to achieve this, several independent variables were cited. These are information dissemination, rigid law implementation, change in people's perception of the Copyright Law, and streamlining administrative procedures of registering patents, trademarks and copyright. It is essential that the general public be aware that the Copyright Law exists. Thus, the government should ensure that the provisions, especially the pertinent ones, be made known to the people. Moreover, since there already exists a sound law protecting the rights of intellectual creators, rigid law implementation should consequently be pursued. For the protection of the rights of composers, singers, artists and producers, the Optical Media Board has been enshrined to make certain that the problem of music and movie piracy will be solved. The existence of such an agency, though, is not an assurance that the crime will be eradicated. It is important that the law be enforced consistently and uniformly.

Furthermore, the public should be made aware of the detriments that are connected with non-observance of intellectual property rights. Changes of old perceptions regarding piracy should follow as well. Lastly, the government should streamline administrative processes and procedures of registering patents, trademarks and copyright. Smooth course of registering should be developed to give inventors and creators an incentive to disclose their innovations to the public. Once all of these are achieved, a higher probability that the dependent variable which is strict observance of intellectual property rights will occur.

With intervening variables, like lessened instance of padrino system and strict law enforcement, independent variables cited above will ultimately lead to the strict observance of intellectual property rights. The padrino system which is a well-known norm in the Philippines can stop the continuous flow towards observance of intellectual property rights. Once "palakasan, pakiusapan, and kai-kaibigan" is stopped and the concept of equality before the law is espoused, then there will be no excuse for rigid implementation of the law. Secondly, employment of law enforcers who can do their jobs well without having any ulterior motives can also lead to proper observance of the law.

With these intervening factors, the dependent variable can readily be achieved once the independent variables are guaranteed. The end results of strict observance of the intellectual property code include the following: development of domestic and creative activity, facilitation of transfer of technology, attraction of foreign investments, ensured market access for products, and diffusion of knowledge and information for the development of the nation. Because people are given incentives or grants for every intellectual creation, more will be encouraged to develop and enhance their creativity. This creativity will later on yield innovations that are needed by the nation to compete with other countries, technology-wise. In addition to this, the consumers will generally have more choices as new products will be made available for consumption. Market access is achieved because the intellectual creator was encouraged to disclose his idea for the benefit of all. Foreign investments entering the country will also follow since foreign businesses see the place as conducive for hatching new ideas and thoughts. Of equal importance are the diffusion of knowledge and information for the development of the nation and the transfer of technology.

In the end, with proportionate intellectual property rights, both the intellectual creators and consumers will attain respective positive gains from the utilization of the intellectual property.

Definition of terms

- ❖ IP Code- Republic Act No. 8293 also known as the Intellectual Property Code of the Philippines (from RA No. 9239)
 - an act prescribing the intellectual property code and establishing the intellectual property office, providing for its power and functions, and for other purposes
 - provides the law on patents, licensing, trademarks, service marks, trade names, and copyright

- ❖ 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 laser or any such other means as may be developed in the future. (from RA No. 9239)

- ❖ Optical Media Board- created under RA No. 9239 which reorganized the Videogram Regulatory Board (from RA No. 9239) with the following functions:
 - lo Evaluate qualifications of any individual, establishment or entity to engage in the mastering, manufacturing or replicating of optical media
 - lo Conduct inspections by itself or in coordination with other agencies
 - lo Apply for or obtain search warrants from any court of law, or take into preventive custody, with reasonable ground, any equipment which are used in violation of the Copyright law
- ❖ License- the authority granted by the Optical Media Board to establishments or entities registered with the OMB to engage in the business of mastering, manufacture, replication, importation or exportation of optical media (from RA No. 9239)
- ❖ 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 (from RA No. 9239)
- ❖ Copyright- is the right of the owner of the intellectual property in a work to prevent others from reproducing his work or material without his permission (Black 1989, 182)
- ❖ Piracy- unauthorized use of patented or copyrighted work (Webster 1990)
- ❖ Author- is the natural person who has created the work (from IPC, Part IV)
- ❖ Effectiveness – causing or capable of causing a desired or decisive result in use of force or in operation (Webster 1990)

❖ Effectiveness of Copyright Law implementation

Indicators:

- (A) Decrease in the production of pirated VCDs and DVDs as shown by statistics
- (B) Decrease in the consumption of pirated VCDs and DVDs as shown by statistics
- (C) Strong sense of compliance – people not buying pirated VCDs and DVDs
- (D) Extensive efforts by the Optical Media Board realized, sporadic actions no longer

executed

Research Design

A matrix shows the kind of data needed, its sources and technique of data gathering as well as the analysis. The researcher will use both the qualitative and the quantitative approaches to determine the effectiveness of the Optical Media Board in deterring music and movie piracy in the Philippines. Data gathering techniques will include library research, surveys and key informant interviews. Literature review will be used to acquire the data regarding the history and contents of Copyright Law as part of the Intellectual Property Code. Furthermore, this type of data gathering will also be espoused to get the basic information about the Optical Media Board, including its history, membership, functions, and programs.

To compare the change of piracy status in the Philippines, statistics will be obtained from the National Statistics Office and from the Optical Media Board. Statistical data will include the current situation of piracy of VCDs and DVDs in the Philippines and the status of piracy before the adoption of the Intellectual Property Code as well as before the establishment of the Optical Media Board. This statistical data will further be backed up by key informant interview. Two experts from the Optical Media Board will be interviewed as to the nature of the board's work and the actions done to fight piracy in the country. (Please see list of questions to be asked in Appendix 1 as well as the informed consent forms in Appendix 2)

Surveys will be utilized to code the general public's perception regarding the Copyright Law and the treatment of piracy as a crime. There will be 200 respondents for this and coding for themes will follow. After this, meta analysis will also be done which will combine all findings in

an integrated fashion. Generally, respondents will be concentrated in the Metro Manila area. To support the data gathered, statistics will be gathered from prominent statistical organizations. Moreover, articles having this topic will also be used to further give strength to the data gathered.

Because of the sensitivity of the matter to be discussed, the researcher will employ casual interviews with the sellers and retailers of pirated videograms. The researcher will focus more on Quiapo and Greenhills area since these places are the most prominent centers for pirated CDs. Ten interviewees for each place will be conducted with questions ranging from the benefits of having piracy to their perceptions of the Optical Media Board. For ethical purposes, consent for an interview should be secured from the interviewees. They will be given ethical consent forms to ascertain that they agreed to impart information to the researcher. In return the interviewees will have the guarantee that all things shared will be highly confidential and will not be published.

When all of these is done, careful analyses based on conceptual framework and hypothesis will be made to come up with a supported conclusion on whether the Optical Media Board is effective or not in its efforts to deter music and movie piracy in the Philippines.

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<u>DATA NEEDED</u>	<u>SOURCES</u>	<u>TECHNIQUES IN GATHERING DATA</u>	<u>ANALYSIS</u>
1. history and content of the Copyright Law	<ul style="list-style-type: none"> ❖ Intellectual Property Code ❖ Secondary materials 	Literature review	Content analysis
2. current situation of piracy of VCDs and DVDs in the Philippines	<ul style="list-style-type: none"> ❖ Statistics from NSO ❖ Statistics from OMB 	<ul style="list-style-type: none"> ❖ Literature review ❖ Key informant interview 	<ul style="list-style-type: none"> ❖ Content analysis ❖ Coding for themes
3. situation of piracy of VCDs and DVDs before the adoption of IPC	<ul style="list-style-type: none"> ❖ Statistics from NSO ❖ Statistics from OMB 	<ul style="list-style-type: none"> ❖ Literature review ❖ Key informant interview 	<ul style="list-style-type: none"> ❖ Content analysis ❖ Coding for themes
4. situation of piracy of VCDs and DVDs before the establishment of OMB	<ul style="list-style-type: none"> ❖ Statistics from NSO ❖ Statistics from OMB 	<ul style="list-style-type: none"> ❖ Literature review ❖ Key informant interview 	<ul style="list-style-type: none"> ❖ Content analysis ❖ Coding for themes
5. perceptions of the public regarding the Copyright Law and piracy in general	<ul style="list-style-type: none"> ❖ Statistics ❖ Primary material 	<ul style="list-style-type: none"> ❖ Literature review ❖ Survey 	<ul style="list-style-type: none"> ❖ Content analysis ❖ Coding for themes
6. History and functions of the Optical Media Board	<ul style="list-style-type: none"> ❖ Republic Act No. 9239 ❖ Secondary materials ❖ Primary material 	<ul style="list-style-type: none"> ❖ Literature review ❖ Key informant interview 	<ul style="list-style-type: none"> ❖ Content analysis ❖ Coding for themes

Scope and Limitation

This study focuses primarily on music and video piracy in the Philippines. The researcher will gather first hand information from sellers and buyers of pirated VCDs and DVDs in the area of Quiapo and Greenhills. These two places are well-known spots for cheap pirated videograms. In fact, people from different social brackets go to these places to buy the cheapest music and movie videos.

The research will delve into the provisions of the Copyright Law as provided for in the Intellectual Property Code of the Philippines. The nature of works protected by the Copyright Law will be defined as well. Furthermore, the owner and the limitations of Copyright will be discussed. The rights of performers, producers or sound recordings and broadcasting organizations will also be given emphasis. In addition to the elaboration of the Copyright Law, the office that enforces and implements that law will also be given attention. The Optical Media Board's composition, structure, powers and functions will be included as well. Since piracy is the problem that is to be eliminated, the nature of piracy will have to be identified. Moreover, its manifestation in the Philippines will be explained thoroughly.

In the process of completing the study, the researcher will encounter several limitations. The researcher will have to interview sellers of pirated VCDs and DVDs. However, it is only the retailers and not the actual producers that will be contacted. In addition, only those retailers who are willing to give their stories can be used as a source of information. Because the act of piracy is considered as a crime, it is possible that the interviewees will withhold some information that they deem will affect their activity. Aside from interviews, surveys will also be conducted. There will only be 200 respondents. These samples are too few to make generalizations. The researcher, though, will find credible statistical organizations that have conducted similar survey as that of my study. This is to validate the data gathered in the surveys done. Moreover, different instances or circumstances may be the case in other areas outside Quiapo and Greenhills. The sampling of the places to be considered was done purposively; these two places are two of the most visited and most popular venue for obtaining pirated VCDs and DVDs.

The major source of the programs of the Optical Media Board is basically from the human resource of the board itself. Thus, it is likely that the agency will give only the good side of its programs to make a pleasant impression to the general public. To solve this, the researcher will have to review records, studies, researches and evaluations regarding the functions and actions of the Optical Media Board. This will be carried out to give credibility to the study at hand. Aside from all of these, time constraint can also be a limitation since too many data should be gathered to satisfactorily complete the study. Time management, though, will strictly be observed by the researcher.

Relevance

Advertisements of anti-piracy have been launched by the Optical Media Board to publicize the immense injury done by piracy to local movie producers and artists. The OMB has been branding people who continuously buy pirated videograms as either a thief or an accessory to the crime of theft. However, as can be seen at almost every street, there are still many vendors persistently selling these "illegal" videograms. In 1997, piracy in the Philippines accounts for estimated losses of about 3 million US dollars in music, 22 million in motion pictures, 56.7 million in business application computer programs, 26 million in entertainment software, and 70 million in books (IIPA Special Recommendations, 1997) In fact, since the late 1990s, the International Intellectual Property Association included the Philippines in its watch list of intellectual property rights violators.

Though the government has been trying to protect the creation of intellectual authors from undue and unfair exploitation, present circumstances reveal that such efforts are not exactly enough. In 2003, the Videogram Regulatory Board was reorganized to better suit the needs of addressing music and video piracy in the Philippines. However, as reports have shown, agencies like the VRB now OMB, National Bureau of Investigations, and others have been faced with crucial hindrances like lack of funds to support their programs. With this, the possibility of pirated discs entering the Philippines is still highly probable. Excerpt from the IIPA Special 301 Recommendations dated February 20, 1996 revealed that pirated cassettes and discs from the Middle East have entered the country without much obstruction by the Philippine Custom.

Furthermore, reducing the level of piracy is hard to achieve because the activities of pirates are rather sporadic.

As we can see, piracy has dominated the market of the Philippines. Despite the actions espoused by the government and its agencies, the proper law implementation is still yet to be realized. The effectiveness of OMB in solving the problems of music and video piracy will be assessed and recommendations on the things that should be done to achieve greater compliance will be given. If piracy will continue to haunt movie and recording producers, there is a possibility that in the end all that will be left are low-quality films and recordings.

As the study is being conducted, views of the buyers as well as of the sellers will give the other side of the story. Despite the efforts of OMB in suppressing piracy, producers as well as consumers continually engaged in distributing and consuming pirated VCDs and DVDs. The reasons behind will be used in assessing the need for rigorous intellectual property rights. Many have argued that intellectual property rights are not for the Third World, as majority of the people does not have the means to acquire the properties.

The Philippines has gone through several revisions of the Copyright Law and reorganizations of the agencies in-charge. However, the perceived problem still lingers with no manifestations that it will be eradicated soon. The root cause is to be brought out to the open to achieve the solution to the long-before problem of piracy.

CHAPTER 2

Piracy, IPR, Copyright Law: a Digest of the Evolution of IPR and Copyright Law with the Existence of Piracy in the Philippines

Intellectual property rights, together with its components, have been one of the agenda in the GATT Uruguay Rounds, thus, the creation of trade related intellectual property agreements. The TRIPs agreement provided that "Members shall accord the treatment provided for in the agreement to the nationals of other Members". Generally, this agreement imposes that each member should treat nationals of other members with no less favorable treatment as to its own nationals with regards to the protection of the intellectual property. The TRIPs agreement is just one proof that the spread of globalization has permeated the entire system of the world (Blakeney 1996, 40).

According to former Charge' d' Affaires Darryl Johnson, strong adherence to the agreements in intellectual property protection is critical to encourage investments and entrepreneurship in the Philippines.

Nature of Globalization

Globalization has ^{planted} ~~taken~~ its roots with the introduction of new inventions which later on led to the Industrial Revolution. The long, tedious hours of working with little efficiency was changed altogether with the emergence of power-driven machines (Ramos 2003, 15). As Thomas L. Friedman puts it, globalization is driven by "computerization, miniaturization, digitization, satellite communication, fiber optics and the Internet" (Friedman 1999, 8). This technological revolution called for a greater emphasis on re-engineering and higher investments. Aside from technological revolution, there was also a change concerning information. Both these

transformations paved the way for firms, investment, production and organization in the context of globalization (Albuo 1998, 23). It can be stated that global firms are actually a network of firms which are less hierarchical, more collaborative, less narrow and more flexible.

Oppositions to Globalization

Opposition to globalization hinges on their criticisms on its effects on growth and equity. Arguments of unemployment, worsening inequality and constraining countries independently pursuing growth has been some of the detriments of globalization (Albuo 1998, 28). The World Bank together with the International Monetary Fund became the most powerful and influential economic actors through the adoption of the structural adjustment programs. Not long after, the World Trade Organization was established to implement the rules of world trade set at the GATT Uruguay Rounds Agreement (Bello 1998, 48).

During the years 1985-1995, Thailand was considered by the World Bank as the world's fastest growing economy. However, in 1998, Thailand's growth rate declined by 5 percent. As a matter of fact, the banking industry was in crisis. The market seems to be booming but in actuality this was not because of the increased purchasing power but because of the excessive credits. Farmers made their complaints and concerns known to the government as they have seen that the development that should supposedly include all has left the Thai countryside behind. Many developing countries have been opposed to globalization precisely because of this idea. Urban industrial development has been achieved at the expense of agriculture and countryside. Poverty has become a rural phenomenon. In addition, there were also inequalities in the cities. In the period 1975-1990, the income share of the richest 20 percent of the population rose from 49.3 percent to 59.3 percent, while the income share of the poorest 20 percent declined from 6.1 percent to only 4.1 percent (Bello 1998, 50)

It is ironic that despite the North being the proponent of globalization, there have been evidences that its application has caused some detriments to their economy as well (Bello 1998, 51). The mix policies of deregulation, liberalization, reengineering and restructuring of the firms and breaking of the labor movement resulted in increased redistribution of income towards the upper class

Globalization and the TRIPs Agreement

Another factor of globalization arose from the new set of international rules accorded in the TRIPs Agreement that took effect on July 1, 1995. These heightened global producers' benefits with regards to their creation. Stronger sanctions were included to stop piracy and violations against intellectual property rights. A notable part of the agreement allowed the inventors and creators to have rights to the financial gains of ^{their} work. Many have countered the advocates of the anti-TRIPs agreement saying that without effective protection, there will be no inventors and artists who will be willing to share their works in countries where piracy is a business. In fact they argued that it is not only the foreign investors that will be decapitated with the emergence of piracy since the local distribution channels are also affected (Selected readings 1994, 27).

One of the major concerns of the proponents of the Trade-related Intellectual Property Agreement is the length of time given to the developing countries to conform to the Uruguay Rounds agreement. The International Intellectual Property Alliance reports that more than 75 percent of accounted piracy is from the developing countries and other Asian countries. As such, nations should conform to the internationally agreed norms for the security of intellectual property rights.

The rules of the Berne Convention were incorporated in the TRIPs agreement. ^{They} It aimed at protecting literary and artistic works. The agreement ^{was intended} ~~accorded~~; "Protection extends for the duration of the life of the author plus 50 years, and includes rights of translation, reproduction, public performance, broadcasting, adaption and arrangement, and rental. In the case of sound recordings, this level of protection is up from 25 years (Selected readings 1994, 28).

The agreement clearly states, as well, that members should accord the same treatment to other members and signatories of the agreement. By this, it meant that there shall be no less favourable treatment with regards to the implementation and protection of intellectual property rights. Protection is defined to include "matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed".

In Article 7 of the TRIPs Agreement, the mutual advantage of both producers and users of technological knowledge is the utmost objective. As such, the agreement allows the employment of appropriate measures to prevent restraint in trade or hinder international transfer of technology. This provision has been earlier manifested in the Transfer of Technology Code promulgated under the UNCTAD. Article 8 which deals with public interest considerations permit member countries to amend their laws as long as the changes are still in compliance to the provisions of the TRIPs Agreement.

Copyright and Related Rights under the TRIPs Agreement

The provisions provided for in the Berne Convention were adopted by the TRIPs Agreements with several amendments. Article 9.2 states that "copyright protection shall extend to expression not to ideas, procedures, methods of operation or mathematical concepts as such." Thus, to be able to acquire a copyright, it should be fixed in a material form. The Berne

Convention thus included "every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, ^{free include} such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature, dramatic or dramatico musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works; works of drawing, painting, architecture, sculpture, engraving, and lithography; photographic works; works of applied art; illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science "

In addition, translations, adaptations, arrangements of music and other alterations are considered as original works. Also accorded the same status are encyclopedias and anthologies which are collections of literary and artistic works. The justification behind this is that selection and arrangement of contents signify intellectual creation

The rights of authors as stated in the Berne Convention includes exclusive right to authorize reproduction, translation, authorization of public performance, rental rights, prohibition of bootlegging or the unauthorized recording of a live performance.

History of the Philippine Intellectual Property Code

The Philippines is a signatory to several international treaties and conventions that deal with intellectual property. These are Convention Establishing the World Intellectual Property Organization (1980), Paris Convention for the Protection of Industrial Property (1965), Budapest Treaty on the International Recognition of the Deposit of Microorganisms for Purposes of Patent Procedure (1981), Berne Convention for the Protection of Literary and Artistic Works (1951), International Convention for the Protection of Performers Producers of Phonographs and Broadcasting Organizations (1984), and Agreement on Trade-Related Aspects of Intellectual

Property Rights. With this, it can be seen that the Philippines has included the protection of intellectual properties as a goal that should be given attention. As a matter of fact, the 1987 Constitution explicitly mandates that the State shall protect intellectual property.

In 1947, the realization of a protecting law for intellectual properties was established. Republic Act No. 165 "An Act Creating a Patent Office, Prescribing its Powers and Duties, Regulating the Issuance of Patents and Appropriating Funds Therefore" was passed June 20, 1947. This allowed the creation of an office where all records, books, drawings, specifications, and other papers and things pertaining to patents shall be safely kept and preserved (RA 165 1947) Aside from this, it provided for the organization and operation of patents, inventions patentable, application for patent, issuance of patent, terms and cancellation of patent, and penalties and other infringement.

The Presidential Decree 1987 first defined the legal and illegal boundaries of video usage. Some said that this decree was extremely onerous leaving the video operators in a losing end. However, much was given to the producers of the film who during this time have been experiencing great losses. Copies of the movie were circulated even before the film was actually shown in theaters. Because of this came the establishment of the Video Regulatory Board or the VRB (Dacanay 1986, 14). The Board which took several revisions in the end was changed into the Optical Media Board or the OMB with Edu Manzano as the chairperson.

As early as 1987, legal sanctions have been employed to curtail film piracy. The Philippine Federation against Copyright Theft or the PFACT headed by Rico V. Domingo has devoted functions to stop and preserve the film industry against video piracy (San Juan 1987, 28). This organization was able to conduct raids and file cases of copyright theft. The problems occurred with the convictions of these cases. According to Atty. Domingo, convictions were hard

to come by because of several factors. First is the lack of information about film piracy issues and complexities on the part of the government agencies concerned. The second concerns the irregularities in the pursuit of court processes, such as the dropping out of witnesses, and the disappearance of evidences. And the last is the lack of public support (San Juan 1987, 13).

In 1997, the Philippine Congress passed Republic Act No. 8293 or the Intellectual Property Code which sought to give protection to all intellectual property creation. Aside from this, provisions in the code conformed to the terms of the Berne Convention as this is obligatory as being a member of the World Trade Organization. The need for new rules and sanctions were justified by the immense development in technology which made it easier for pirates to violate the intellectual rights of authors (HB 322).

Certain amendments in the Intellectual Property Code were passed to cope with the emergence of internet piracy in the Philippines. Among the amendments include reproduction to mean copying in part or in whole whether temporary or permanent without authorization. In addition, "communication to the public" meant any communication to the public to include broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite.

As was mentioned earlier, the Intellectual Property Code was promulgated in conformity with the Philippine's multilateral agreements. According to the 1997 deliberations of the IPC in the committee level, the time frame given by the World Trade Organization to comply with international agreements was January 1, 2000. Aside from this, the Philippines should comply to the bilateral commitment made with the United States with the need to pass a new intellectual property code in December of 1995 (CommitteeHearing, 1996).

According to the deliberations, the Philippines will receive several benefits once the Intellectual Property Code will be passed earlier. These are low tariff for the garments exported to the United States and the lowering of the Philippines from the “priority watch list” to “watch list” of intellectual property violators. The Navarro-Cantor Agreement in 1993 allowed for this change of watch list category. However, this same agreement could impose economic sanctions in the event that the Philippines be deemed lax in providing protection to intellectual creators (Committee Hearing, 1996).

Evolution of the Copyright Law in the Philippines

The first applicable law with regards to the rights of the authors and inventors was the copyright protection under the Spanish Law. After the Spaniards ceded the Philippines in the Treaty of Paris, the country’s law on copyright was molded under the influence of the American Copyright Law.

On March 6, 1924, the Philippine Legislature enacted its very own law on copyright. Even the first deliberated copyright law of the Philippines, Act No. 3134 which was entitled “An Act to Protect the Intellectual Property” was patterned after that of the United States. Several years after, it was amended with the name “The Copyright Law of the Philippine Islands.” Under this law, it provided who will be given the ownership status of the intellectual creation. It also laid down the specific works that will be protected by the said law. In addition, the exclusive rights of the owners were enumerated with the following as examples. printing, reprinting, translating, and exhibiting among others. Once the terms of the law are not observed, the Copyright law also provided injunctions and infringements for the violators. The Director of the Philippine Library and Museum was given the authority to receive the fees subjected to the office (Copyright Law, 1946). During the martial law Presidential Decree No. 49 was

promulgated which became one of the most advanced copyright laws among small nations. This was recognized since there were provisions acknowledging the protection of the intellectual property from the moment of its application. The law also included computer software under the protection of this copyright law. However, technological advancements have proven that the existing law on copyright during that time was already outdated and outmoded (Committee Hearing, 1996). Recent developments have included the need for a revised law to cope up with progress. The emergence of CD-ROMs and the rental rights were not anticipated by the proponents of P.D. 49.

Later on, the Philippines enacted Republic Act 8293 "Intellectual Property Code of the Philippines." The code was divided into the following parts: the intellectual property office, the law on patents, the laws on trademarks, service marks, and trade names, and the law on copyright. The next discussion will deal more on the law on copyright as this is the law that will be taken into consideration with the study of movie and music piracy in the Philippines.

Part IV of IPC: Law on Copyright

In the latest Copyright Law, derivative works like dramatizations, translations, collections of literary and artistic works were given more emphasis ^{with them} as ~~they are given~~ a specific section in the code. It should be noted that such works are protected as ^a new work. Thus, subsisting copyright shall not be used against the new author of the new intellectual creation (Commercial Laws of the Philippines RA 8293, 1998).

The latest code included ^a terms applicable for works of architecture, reproduction of published work, reprographic reproduction by libraries, reproduction of computer programs, importation for personal purposes, and moral rights (Commercial Laws of the Philippines RA 8293, 1998).

~~The~~ separate chapter on the law of copyright gives due regards to the rights of performers, producers of sound recordings and broadcasting organizations. As the law provided, performers' rights include the right of authorizing the broadcasting and other communication to the public of their performance and the fixation of unfixed performance. They shall also have the right of authorizing direct or indirect reproduction of their performance as well as the first public distribution of the original copies of their performances. The rights granted shall be maintained and exercised up to fifty years after his death (Commercial Laws of the Philippines RA 8203, 1998).

The amended Copyright Law of the Philippines has ~~been furnished to deal~~ with the fast changes in technology. As such, it was made to curtail piracy and protect the intellectual creators from copying, utilizing and exploiting his or her work without due authorization.

The Video Regulatory Board

The establishment of the Video Regulatory Board exposed the adverse effects of piracy in the country. In the ~~preamble~~ ^{word} ~~clause~~ ^{no guarantee} of the PD 1987, ~~it~~ ^{are} cited that the theater attendance has declined by 40 percent. Because of this, more than 75,000 families and 500,000 workers of the movie industry were under serious threat of unemployment. The VRB has had several defense mechanisms against the illicit business of piracy. One of its first measures is the registration of videogram establishments and the affixation of the VRB seals on legitimate tapes and discs (San Juan 1987, 13). It also conducted inspections, raids and closures to unregistered and unlicensed video shops (San Juan 1987, 28). Despite the actions done by the VRB, it was still hindered by several problems that were experienced by the board. The organization lacked the funds as well as the personnel to fully utilize and put into actions the plans of the board. Because of the low wages of the personnel, reports have shown that they were easily enticed to take bribes from

illegal operations (Jimenez 1994, 5) Excerpts from the IIPA Special 301 Recommendations dated February 20, 1996 acknowledged the lack of resources for the operations of the VRB, NBI and other offices that dealt with piracy. It also asserted that a declaration by the government of intellectual piracy as a top priority is not enough. There should be tangible actions and results to ensure that inventor and artists were well compensated.

Former Chairperson of the Video Regulatory Board Ramon "Bong" Revilla, Jr. also stated that meager budget allotted to the board was never enough to topple the national problem of piracy. As such, the board has been depending on volunteers and special teams to help in conducting raids (Villanueva 2003, 30). However, even though raids were done regularly, concrete results were not achieved since the people caught were not convicted of anything. As a matter of fact even foreign investors have been encouraging piracy by settling cases out of court. Moreover, Bong Revilla admitted that the laws against intellectual piracy should be improved (Varona 2003, 18).

The IIPA has identified deficiencies in the previous Copyright law in the Philippines. Among the revisions that were included were as follows: (1) repeals the book compulsory reprint license, P.D. 285 (2) increase the term of protection for sound recordings, cinematographic and audiovisual works, newspapers and periodicals to international standards (3) increases criminal penalties including fines and jail terms (4) extends rental rights to producers of sound recordings (5) appears to protect US performers against unauthorized fixations of their performances or "bootleg" (IIPA, 1996)

As of 2001, 60 percent of the entire recording industry has been controlled by pirates. A slash in the number of record companies proved that great losses were experienced by them. In 1996, there were 32 recording companies and come 2002 there were only 12 of them. According

to former Videogram Regulatory Board Chairperson Atty. Lualhati Buenafe, the government lost P450 million in revenue to pirated VCDs (Angel 2002, 36). Reports have shown that in the year 2000, the software industry in the country lost about \$27.1 million and about P1.4 billion in revenues as a result of 61 percent piracy rate. Some P170 million has also been taken from the government in taxes.

Piracy

Piracy in the film industry is a case wherein a party produces the copyright work without the permission of the author. There are several forms of piracy in the film industry. First is the "lagare" which happens once the movie is shown in theaters. After the projection of the first reel is completed, it will be transported to another movie house where it will also be shown. Another type is the film-to-tape transfer wherein someone will borrow the thirty-five or seventy millimeter cinema prints and convert it to a *umatic* video. Once this is sold in the market, the copy is what is now called ~~by~~ the bootleg copy or pirated film. Furthermore, tape-to-tape transfer also exists. It was said that one reason for the rampant duplication of films is the nature of copying. It is very easy to duplicate a tape needing only a video recorder and another tape. The sales of the tapes can also be a form of piracy. Pirated discs and tapes may appear to be packaged in the same way as the legitimate ones as pirates create more and more innovative ways to avert recognition (Domingo 1997, 138).

Moreover, video taping of the programs and movies in the television is another violation. The fifth form of piracy is the interception without authority of a commercial user's satellite signals. Lastly is the free transmission or the exhibition of pirated materials by cable systems (Domingo 1997, 139).

The United States Embassy organized the Intellectual Property Rights Roundtable 2 to discuss issues with regards to intellectual property. Initiatives done by the Intellectual Property Office and the Optical Media Board were commended as piracy in the Philippines has already been lowered. The IPO has been coordinating with the court system to establish IP courts in Manila. In addition, interagency coordination has been one of the agenda of intellectual property bodies (IPR Roundtable2, 2005).

In ~~the~~ late 2004 and 2005, the Philippines ~~has~~ launched the single largest seizure of optical discs. Different industries were subjected to great losses due to copyright piracy. In 2004 alone, the motion pictures lost approximately US\$33M followed by the lost acquired by the recording and music industry with US\$20M (IIPA Special Report, 2005)

Pirated optical discs from Malaysia, Thailand, China, Taiwan, Hong Kong, and Indonesia have been harmful to the local market especially the local industries. The very low prices of these discs compete with the high prices of original discs. Naturally, people will choose to ~~stick~~ ^{buy} with the ones that are affordable.

The usual notion of piracy is that it is illegal and seems bad, to almost everyone considering the long term outlook. The entertainment industry has ~~aired~~ ^{given its voice} its voice regarding the detrimental effects of piracy ~~to~~ ⁱⁿ the film and music production. However, alternative views have been cited which should still be given ~~much~~ ^{more} study. Proponents of this argument stated that before the problem of piracy became rampant, the film and recording companies were very exploitative when it comes to charging the consumers. But now, because of the very challenging competitors, these production companies do not have much of a choice but to lower their prices to make them more affordable for consumers. The proponents also made clear that this does not mean that the

producers were at a loss but rather they just reduced their profits with the corresponding lowering of prices (Torre, 2006)

Perceptions of the General Public with regards to Piracy

The public is divided as to the advantages and disadvantages of piracy. This issue has been quite controversial with the proof that even internet fora have this as its subject. With this means, people voiced their opinions on the nature of piracy and the ways to treat this kind of problem.

Piracy is a product of the unrelenting problem of poverty. People opt^{ed} to purchase cheaper discs due to the fact that these are the only ones they can afford. Original discs, for some, are not at all practical since the in a month or so, the popularity of the song or movie will die down. Aside from this, buyers of the pirated version view watching films as “wants” and not “needs” and as such they should not be occupying a huge part of their income. For some, piracy is a source of survival. It is bread and butter for those selling the pirated discs. As a seller from Quiapo admitted, “*Ito lang ang aming pinagkakakitaan, dati ang trabaho ko lang ay 5-6.*” This reality, according to some, justifies the need for this type of business to continue, illegal as they seem to be. Piracy was able to bridge the gap of the rich and the poor as technology was made accessible even to the poorest sectors of the country. The minimum wage of an ordinary person cannot at all afford lavish spending for ~~the~~ ^{more} quality time with the family. The production of a cheaper alternative allowed greater worth for the money they had worked hard for. As was stated a while ago, the status of the economy and the practical side of piracy can not only justify but also enticed ^{people} to buy these discs. Take for example, the students who ~~we~~ ^{are} most of the time the ones engrossed with music and movies. This group relies mainly on their parents for financial support and as such cannot afford too expensive discs.

Another perception of the public which makes piracy justifiable is the notion that it is the artists and talents that are the only ones affected. This therefore will not be too burdensome for them since they are already rich and their families can afford a few millions slashed from their bank accounts. In addition, the film producers also were deemed as greedy cheaters. Thus, cheating cheaters is not at all bad and illegal.

Of course, there is always the other side of the coin. There are those who view that piracy is immoral and illegal whatever perspective would be used to look at it. "Live within your means, *kung wala ka nang pera 'wag kang bumili.*" This is one argument that was ~~extended~~ ^{given} by those who view ~~that~~ ^{that} intellectual property rights ~~is~~ ^{are} intellectual property rights. If everybody will choose to buy pirated discs then there will be no more worthwhile films and music industries that will be able to produce the commodity. In turn, those workers and employees working behind the production of these films and music will be put out of jobs since the management cannot accommodate too many staff and employees.

They also rebut the argument that those who produce legitimate discs should lower the price of original discs to be able to meet the quality of life of the people. Film production, for one, costs a lot of money. As Mr. Manuel Nuqui, ^{the} president of the Philippine Motion Picture Producers Association puts it, you cannot totally lower the costs because of the technology available presently (refer to informed consent). The producers association, he added, is doing ~~everything~~ ^{four acts in the industry} and is now studying how to lower the costs of production, which is getting into the mainstream style of movies using the digital technology. In short, lowering the price of the original discs with the same level as that of the pirated discs is quite impossible with the current technology since the business of piracy need not go through the stages of production since what they already have is the finished product.

Modern technology, as one who ^{CV} provided input ^S in the forum said, "Modern technology can partly be blamed. Computer equipped with CD/DVD can copy hundreds of original CDs. Mr. Nuqui attested to the truth of this matter as well. He stated, "Advance technology, *maganda nga sana*, but sometimes it hampers some people. Unlike in the past, it used to be in betamax and VHS. Now, with advanced technology, *sa discs na maeenhance pa nga nila e*. you can just produce one disc and it will multiply. Its either you have the replication device or a simple burner."

Furthermore, the makers of movies, for some, are entitled to whatever price they dictate for their product which is due to the combined efforts of hundreds of production and creative people. Once the film producers and the industry ^{themselves} feel that people cannot afford their products, then that is the only legitimate time that they can lower their prices. They argued that the producers should decide for themselves whether to make their products more affordable or not. Piracy should not be used to strangle the producers to lower the prices of original discs.

Piracy and its Existence

Too much leniency, non-implementation of sanctions, and lack of educational background are some of the many reasons why piracy continues to exist. Republic Act No. 9239 also known as the Optical Media Act of 2003, imposes imprisonment of at least three years but not more than six years and a fine of not less than five hundred thousand pesos but not exceeding one million five hundred thousand pesos to those who will engage in the importation, exportation, acquisition, sale and distribution of, or possess or operate manufacturing equipment, parts and accessories without the necessary licenses from the OMB. However, interviews with sellers of pirated discs showed that there were no fines or imprisonment ~~that the OMB imposed~~

by the OMB

Rather, they just confiscate the pirated discs and destroy them afterwards. This may be the reason why sellers continue to engage in this kind of business. Moreover, the profits can really sustain a family. The interviewees in Quiapo gave a rough estimate of the earnings they acquired. This is approximately P1500 as their net income. ^{day (?)} The computation of the payment for the place however, is not yet included in the deduction. The lease of the place is per year with a payment of P160,000 to P200,000 depending on the strategic location of the stall. For the VCDs, the profit can range from P1.00 to P2.00 while for DVDs it is P5.00. The profit per disc may be small but there are many discs sold per day which make the profit really significant.

The Filipinos need to be educated with the advantages and disadvantages of piracy with regards to the economy and businesses in the country. People know so little about the effects of the said illegal business and as such rely on their short term justifications and reasoning.

Piracy laws and implementation

Poverty cannot justify theft, as one commented "It is their intellectual property right." It is a challenge to side with either one since both have their contentions that are really worthwhile. But for the purposes of this study, the researcher will side with treating piracy as a crime that needs to be eradicated to ensure that the film and music industry will be revived thus preserving our culture in the form of arts.

The Optical Media Board has been designed to deal with piracy in the country. A thorough study of the structure and the functions of the Board will be discussed in the following chapter.

*Please summarize
what this chapter
was able to achieve*

→ discuss the optical media board as to its functions and structures

CHAPTER 3

The Optical Media Board: A Discussion on its Funding, Structure, Functions, Problems and Limitations

With the advent of fascination for optical discs, sales of VHS tapes have begun to decline. The proliferation of CD-Rom drives and VCD players caused the trouble-free way of replicating discs with tolerable quality. By the year 2000, it is very noticeable that legal companies were overtaken by the pirated discs sold in every corner of almost every place. It is not only the discs that were pirated, illegal VCD players from China also flooded the market. Thus there was a need to change the VRB law which cannot accommodate the latest developments in technology (Annual Report of OMB, 2005)

Republic Act No. 9239 also known as the "Optical Media Act of 2003" reorganized the Videogram Regulatory Board. It has become the policy of the State to ensure that the protection and promotion of the intellectual property rights will be strictly observed (RA 9239). Thus, it is but necessary that the regulation of replication, manufacture, mastering, importation and exportation of optical media be given due attention. Piracy as is the case where unauthorized people engage in these activities hampered economic growth and public interest.

The Optical Media Board is under the Office of the President and its authority covers the entire territory of the Republic of the Philippines. According to the Optical Media Act of 2003, the OMB will be composed of four ex officio members and five regular members who will be appointed by the president. The ex officio members will come from the Department of Trade and Industry, Department of the Interior and Local Government, Department of Finance and Intellectual Property Office. The five regular members will be composed of three representatives from the private sector, one from the consumer protection and one representative from the academe. The Chairperson will be appointed by the president while the vice chairperson will be

elected by the members of the Board. The chairperson and the regular members will hold office for a term of three years unless removed sooner by the president (RA 9239).

The Chairperson who also takes the position of the Chief Executive Officer (CEO) has the following functions as provided by the Optical Media Act of 2003: (1) execute and administer the policies, decisions, orders, resolutions and the rules and regulations issued by the Board; (2) 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; (3) direct and supervise the operations and the internal affairs of the OMB; (4) submit an annual budget to the Board for its approval; (5) 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; (6) perform such other powers and functions as may be authorized by the Board or the President. The Executive Director will assist the Chairperson in the operations of the Board (RA 9239).

Funding of the Optical Media Board

The fund of the Optical Media Board is given as part of the budget being disbursed by the government. The government gave the Board a target, and with that target comes a corresponding budget. In the interview conducted, it was made known that the Board was tasked to achieve results beyond the capacity of the agency. Mr. Dean Perez added that piracy is no longer a small industry; in fact smuggling is already involved in the problem. Of the P80M that was asked by the Board, the government only granted P20M for the entire operations all over the archipelago (Interview Perez, Feb.9, 2006).

According to Mr. Manuel Nuqui, President of the Motion Picture Anti-Piracy Council, their organization has been giving and donating financial assistance to the previous Video *is in the agency*

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Regulatory Board and to the present Optical Media Board. They do this in recognition that the Board does not have the capabilities to act accordingly given the budgetary constraints (Interview Nuqui, ^{1c}Feb.2, 2006).

Powers and functions of the OMB

The Optical Media Board currently with Eduardo Manzano as chairperson has the power to evaluate and substantiate the capabilities of individuals as well as groups to engage in the replication, mastering, and manufacturing of optical media. It also supervises the regulation, granting and renewal of licenses with the authority to conduct inspections whether in coordination with other government agencies or not. Aside from this, it can obtain search warrants and can confiscate optical media devices or machines used in violation of the intellectual property rights. The Optical Media Board adopts a system of Source Identification or SID codes which will be given to persons, establishments or entities licensed by the OMB (RA 9239).

The Optical Media Act also provided for penal provisions. In determining the sanctions that will be imposed, the court will consider the size of the operations of the offender, the value of the articles involved in the violation, and the period of violation. The implementing rules and regulations of the Optical Media Act gave OMB the authority to close the establishment, to confiscate the pirated goods being sold and/or to impose fines upon individuals and entities that shall be caught violating the provisions of the Optical Media Act. It can also suspend the operations of the establishment according to the length of time prescribed in the IRR (IRR of RA 9239).

Actual actions and tangible results of Optical Media Board

The Optical Media Board has three divisions namely the licensing department, the inspection and intelligence department and the legal services department. For the year 2004, the licensing department was able to accomplish the following:

PROJECTS	February 2004 - February 2005
A. Licensing Unit	
Newly Registered/Licensed Establishments	285
Licenses Renewed	1,236
Total No. of Licensed Establishments (Video)	3,006
B. Registry Unit	
Commercial Permits issued	2,641
Special Commercial Permits issued	263
Import Clearances issued	356
Recordation of Titles	24
Hologram Labels Issued	2,704,146
Verification Labels	1,783
Total processed	597,804
C. Classification Unit	
Videograms Reviewed and Classified	1,686

Amuse?

For the inspections and intelligence division, the following were done for the year 2004.

PROJECTS	February 2004 - February 2005
A. Retail Raids	
Total number of inspection orders served	1070
Total number of optical discs seized	2,056,623
Total value of optical discs seized	102,831,150
B. Search Warrant Operations	
Total number of search warrants served	108
Total number of optical discs seized	639,686
Total value of optical discs seized	31,984,300
C. Plant Inspections	
Plant visits conducted	9
Total number of plants with SID Codes	6
Total number of lines inspected	24
Total number of DVD lines inspected	6
Total number of mastering machines inspected	5

Amuse?

For the legal services division, these were achieved for the year 2004:

PROJECTS	February 2004 - February 2005
A. Administrative Complaints Processed:	
Total number of administrative complaints	937
Total number of administrative cases Resolved	936
Total number of administrative cases pending	1
B. Prosecution of Violation of P. D. 1987	
Criminal Cases Initiated	0
Preliminary investigations pending as of February 2005	9
Preliminary investigations resolved	0
Total number of preliminary investigations pending as of February 2005	9
Criminal cases pending before the RTC	77
Criminal information filed before the RTC	0
Criminal cases decided	2
Criminal cases appealed	0
Criminal cases resolved with finality	2
Total number of criminal cases pending before RTC	75
C. Prosecution of Violation of R.A. 9239	
Criminal Cases Initiated	2
Preliminary investigations pending as of February 2005	2
Preliminary investigations resolved	0
Total number of preliminary investigations pending as of February 2005	2
Criminal cases pending before the RTC	0
Criminal information filed before the RTC	0
Criminal cases decided	0
Criminal cases appealed	0
Criminal cases resolved with finality	0
Total number of criminal cases pending before RTC	0

Annex 7.

Aside from licensing, registration, inspection, raids and filing of administrative and criminal cases, the Optical Media Board has been busy during the first few months of its existence with the formulation of the Implementing Rules and Regulations of RA 9239 or the Optical Media Act. This was very important since it will be the leverage that will give the Board the coverage as well as the clear means and sanctions to be able to fight piracy all over the country. With the passage of the IRR, the Optical media Board was able to work more readily as the provisions of the said IRR was sufficient in the daily dealings of the Board (Annual Report of OMB, 2005)

As reports have shown, the OMB has been very active in raiding known establishments selling pirated optical discs. As a matter of fact, approximately 600,000 discs were confiscated and destroyed during the December 8, 2004 operation conducted in Quiapo. Test buys were made by the team in the said operation; and in the actual raid there were 80 search warrants served. The operation was deemed successful in that there were no acts of violence that transpired. The Chairperson of the Optical Media Board himself talked to the Muslim and Christian sellers to pacify them (Annual Report of OMB, 2005).

Another concrete example of the actions achieved by the Board is the closing down of Virra Mall in Greenhills. The management of Greenhills decided not to allow any marketing of pirated optical discs with the reopening of the mall. The fact that the Board has conducted several raids during the last quarter of the year has discouraged the vendors and the people who are engaging in the selling of pirated discs to renew their lease in the said establishment. Furthermore, the new stalls planning to sell optical discs in the newly renovated mall shall first go to OMB for accreditation and to ensure that the goods being sold are legitimate.

The confiscated discs were publicly destroyed and the scraps of plastic were sold and recycled. Last January 2005, thousands and thousands of pirated discs were destroyed in the office of the Optical Media Board in Quezon City. Different agencies were present to witness the said pulverizing of illegitimate discs. General Avelino Razon of the PNP-NCRPO and General Marcelino Franco of the Special Action Forces were among the distinguished guests in the said event (Annual Report of OMB, 2005).

With the intelligence reports from Indonesia, the Board was also able to give information to the Bureau of Customs to intercept an Indonesian Airplane containing fifteen (15) boxes of pirated DVDs. Because of this interception, the Manado-Davao route was exposed which made

the transfer of DVDs from Jakarta to Quiapo difficult. This resulted in some changes in the supply chain of Quiapo for cheap DVDs coming from Indonesia. After several months, the Board revisited Davao City acting on intelligence reports that piracy has started again in the area. With the help of Davao Customs Police, a total of approximately 8,500 film and music discs were confiscated. The two couriers who violated RA 9239 were brought to Davao City ^{1.C. 2} Prosecutor's Office (Interview Perez, Feb.9, 2006).

It is the aim of the Board to eliminate piracy by seizing the activities of the so-called "big fishes." In October 2004, search warrants were served on behalf of Playstation. In the said raid, the OMB confiscated 70 boxes with an estimated 284,400 discs of different games, softwares and MP3s. One example of the games found in the raid is the "Anito"; this is the first all-Filipino PC game developed by an all Filipino company. Though the international market has raved the product because of the well thought of game, local market has not been very responsive to the all Filipino product mainly due to piracy. "Anito" has won the "Innovation in Audio" award in the 2004 Independent Games Festival in San Francisco, California. However, it was pirated in the Philippines within the first few months of its release in the country. Instances like this should pave more way for measures to eradicate piracy in the country (Annual Report of OMB, 2005)

Moreover, as was stated early on, renewal of licenses is also part of the work of the Board. In the year 2004, the OMB inspected replicating facility that failed to renew its license and found that such was engaging in illegitimate activities.

Aside from raids and inspections which deal with the already existing pirated goods, the Board also prevents the marketing illegally made optical discs. The chairperson of OMB published a notice entitled "A Warning to Bazaar Organizers, Vendors, and the General Public"

which aims to stop the mere thought of selling pirated discs in flea markets or “tiangges” during the Christmas season. The Board also publishes their estimated loss in the music, software, video, and movie industry due to the proliferation of piracy in the country.

As the level of piracy increases, it gradually became a nationwide problem. As such, the Optical Media Board surveyed places even outside of Metro Manila. Though faced with financial constraints, the Board in as much as possible does the best that they can to lower the level of piracy even outside urban areas. For areas which they cannot directly attend to like for example, Cotabato, Basilan, and Sulu, the Board coordinates with the local government units to help them in solving the spreading of pirated discs (Interview Perez, Feb.9, 2006). I.C.

As technology improves, so does the advancement and the easier way of pirating discs. The Board should be updated with the different styles and strokes being employed by the pirates. To be able to meet this requirement, the Board attends seminars to update them with the latest ways to detect pirated softwares and other kinds of optical discs. Regional conferences were also graced by members of the Board to impart and learn as well the techniques and intelligence of Indonesia, Malaysia, Thailand, Taiwan and other countries from the Southeast Asia. The current proof which authenticates that a disc is original is the Source Identification (SID) Code. With this code, the Board will know from what company the disc originated. Ideally, the legal manufacturers of optical discs in the Philippines will be given the SID Code by the Optical Media Board (Interview Perez, Feb.9, 2006). I.C.

Actions in Cooperation with other Agencies

Piracy is a problem that affects thousands of lives as jobs were lost and industries were endangered from bankruptcy (Annual Report of OMB, 2005). Because of this, the Optical Media Board admitted that they cannot do it alone. Several agencies have been part in their quest for the

solution that will totally eliminate the causes and roots of piracy in the country. As the Philippines is included in the watch list of America as one of the most exploitative countries when it comes to intellectual property rights, it is not only the Optical Media Board that has been alarmed with the sanctions that goes with this status (Interview Perez, Feb.9, 2006).

The Optical Media Board has been coordinating with various agencies like the Intellectual Property Office, the Department of Trade and Industry, PARI, and Motion Picture Anti-Film Piracy. For the actual enforcements the National Bureau of Investigations, with the CIDG and the PNP are helping with regards to security and maintaining a level of order in their operations. In addition, there are representatives from the Integrated Bar of the Philippines, local music and movies, artists and talents, software industry, academe and consumer groups. Ex officio members from Department of Trade and Industry, Intellectual Property Office, Department of Interior and Local Government, and Department of Finance are also included.

International Organizations with the same objective of deterring piracy were also supportive of the achievements of the Board. As a matter of fact, Mike Ellis, Senior Vice President and Regional Director for Asia-Pacific of the Motion Picture Association said, "The public destruction of a million pirated discs sends a very clear message that piracy is a crime and will not be tolerated. Piracy has a direct impact on jobs and revenues in the local film production and distribution industries, and it costs society in terms of lost tax revenues and lost investment opportunities. In short, it hurts the Philippines and it hurts the Filipino people." He added that the simple ways such as warning bazaars of the sanctions with the selling of pirated discs give the Board increased credibility in trying to solve the propagation of piracy. In addition, the head of Regional Enforcement of the International Federation of the Phonographic Industry Robert

You'll signed a pact with the Optical Media Board giving the Board unlimited access to the forensic laboratories in London (Annual Report of OMB, 2005).

The OMB cannot continue on with their functions without the assistance of the different local government units. As was already stated earlier, provinces which are very far from the main office and which are considered as "hazardous" for a given span of time cannot be visited and revisited by the Board. As such, they just coordinate with the local government to deputize and help them in lowering the levels of piracy in their respective areas. This is very important since the local governments really hold the leadership of a certain city or province. Thus, the level of assistance and sincerity on the part of the local government can greatly improve the status of piracy (Interview Perez, Feb.9, 2006). ^{IC.}

Intelligence is one of the assets of any institution who wants to counter an illegal act. The Optical Media Board's intelligence was bale to hand them tons and tons of pirated discs ^{with} in just one interception. Although the Board has no control of the Bureau of Customs which sometimes fails to stop the entrance of pirated discs in the country from Malaysia, Indonesia, Taiwan and other Southeast Asian countries, informants and intelligence agents give tips on the whereabouts or the storage warehouse of the said illegal goods. Just recently, the Board was able to intercept a truck full of pirated discs. According to OMB Head of Operations Dean Perez, the total worth of the discs confiscated amounts to approximately P10M. He explained though that it should not stop there. The actions should be continuous since a confiscated 100,000 discs today will be followed by a new production of 300,000 pieces the next day.

The Board is very much open in giving lectures and talks about piracy especially as requested by students. In fact, the Board has been supportive of student advocacies. Students of the Junior Philippine Institute of Accountants staged a week long anti-piracy events which

included two concerts, a motorcade, film screening, exhibit and CD sale. As information dissemination cannot be all given by the Board it is important that concerned groups be able to engage in the same activities to inform the public of the hazards that piracy can bring.

Problems Encountered by the Optical Media Board

Piracy is not an easy problem to solve. And the Optical Media Board is not a "superman" ^{who} ~~that~~ can stop the problem with only almost three years of existence. Piracy is a well syndicated problem; it is already powered and operated with the influx of high technology which made it even harder for the members of the Board to cope up with. One of the gravest problems is the fact that one can burn as many copies in his/her condominium, apartment, and other types of residence. With this, it is really hard to distinguish and raid manufacturers since there is no definite place wherein replication is done. As Mr. Manuel Nuqui affirmed, high technology made it easier for pirates to reproduce thousands and thousands of copies by just using a simple computer burner. Mr. Dean Perez admitted that the Board only has 20 organic members that will inspect and raid establishments all over the archipelago. Thus, he added that the Board really lacked the manpower that is needed to do its job efficiently. The Board cannot hire since they are still holdovers from the previous Video Regulatory Board.

Although they have counterparts that help them in their operations, still this is not enough. There were instances as well that these agencies were not as cooperative as they should be. Another major factor faced by the Optical Media Board is the budgetary constraint. The Board has to pay for porters which were tasked to collect the pirated discs and segregate them afterwards according to the classifications instructed by the Board. Thus, they should wait until the government can give them the financial assistance needed to conduct raids and inspections.

Another aspect that proves to be a problem is the non-compensation of the Board's members and employees. People who were very active in the operations of the Board were not even given hazard pays considering the risks that they encounter every time they face enraged sellers of pirated optical discs. When asked whether there were inside information leaks as to the operations of the Board, Head of Operations Dean Perez said many agencies are involved in an operation. There are porters, agencies like NBI, PNP, and the CIDG. It is not proper to say that the leak comes from the Board itself since there are many agencies that go with OMB in conducting raids and inspections. Indeed, there should be just investigations in this issue.

Another problem is the scope of the office; Republic Act 9239 provided that the authority of the OMB shall cover the entire territory of the Republic of the Philippines including the economic zones. With this very big scope, it would be an arduous task to prioritize the places that its members should visit considering the limitations it has on manpower and finances. The Board is also mandated to secure the practice of intellectual property rights in game softwares as well. Unlike the Video Regulatory Board which most of time focuses on videograms, the Optical Media Board has additional clients which it has to cater to (RA 9239).

With the said considerations, the next chapter will criticize, analyze and assess the actions and the limitations of the Optical Media Board in deterring music and movie piracy.

*Please briefly summarize
& then introduce
the next chapter.*

CHAPTER 4

An Assessment of the Factors which Curtail the Actions of the Optical Media Board from Detering Piracy

There is a need for a sense of government effectiveness and efficiency to satisfy the general public ^{expectation} regarding government performance. As it is often said, efficiency and effectiveness mean “doing right things rights” (Mendoza, 2000). It is the objective of this paper to assess with ~~great objectivity~~ the actions done by the Optical Media Board in its tasked job of eradicating piracy in the country. In doing this, several factors ^{will be discussed} ~~will be discussed~~ ^{which} ~~that~~ have been very crucial in the Board’s actions. Among the things that will be taken into consideration are the limitations within the Board itself, the politics behind the implementation of its activities, the local government unit, the cultural values of the Filipinos, the general perception of people with regards to piracy, OMB’s actions, and the political will of the current administration.

Limitations within the Optical Media Board

As was already mentioned in the previous chapter, the Optical Media Board which has been tasked by the government to solve the problem of optical piracy in the country has been facing chronic problems usually battled by government agencies. For one, the agency has limited resources to finance all the raids that they should be doing. There were instances, as a matter of fact, wherein information from their intelligence ^{has} ~~has~~ not been useful as there was no fund that will enable them to execute the appropriate measures that they should have done. With this, it is clear that maximum utilization of information was not achieved since the Board was not able to use the information to advance one step in its objectives.

^A Recently concluded “destruction ceremony” in the Camp Aguinaldo last February 11, 2006 ^{however} ~~though~~ gave the Board an additional income. Thousands and thousands of optical discs seized from raids in various parts of Metro Manila were pulverized and ^{will be} ~~will be~~ sold as scrap in a

public bidding. According to Chairperson Edu Manzano, "Last year, we sold more than 100 tons of scrap plastic discs. The income, which amounted to P1.4 million, is being used to repair ~~our~~ service vehicles and to purchase equipment." This year the money that will be raised will go to the funding of raids and the setting up of a website. ^{ck} In addition to this, President Arroyo ~~has~~ allocated 20% of the gross income of the recently concluded Metro Manila Film Festival to finance the activities of the Board (Vargas, 2006). This move, however, was disdained by producers and even artists. According to Mr. Manuel Nuqui, President of the Philippine Motion Picture Producers Association and VP for Internal and Administrative Affairs of Movie Industry Anti-Piracy Council, Inc, the Mowelfund which is supposed to be the fund to support the artists especially the people who are working behind the camera should be given solely to the artists who have been working for the film industry. He added that the Optical Media Board has been receiving its funds as part of the General Appropriations Act given by the government.

This is not to say that the movie industry does not acknowledge the fact that the Board has its budgetary deficiencies. On the contrary, he disputed that the Anti-piracy Council has been providing for financial assistance to the government agency which is mandated to help the industry fight piracy. In fact, the Anti-Piracy Council gave money to the Video Regulatory Board and the Optical Media Board. Financial assistance amounted up to Php 200,000 –Php 300,000 and sometimes even more.

Since the film industry is one of the most affected sectors with the problem of piracy, the Anti-Piracy Council has ~~been~~ conducted raids of their own. With the help of NBI and PNP, the task force of the council went from Metro Manila to as far as Cebu to secure results for themselves. According to Mr. Nuqui, the time when pirates from Cebu were caught was really the time when piracy of local films was at its lowest. Moreover, aside from the raids conducted,

the Council has been instrumental in the passage of three laws. These are the MTRCB Law, the Presidential Decree 1987 which established the Video Regulatory Board and the Intellectual Property Code (Interview ^{with} Mr. Nuqui, February 3, 2006). *(What do you mean? Please explain)*

Amidst the chaos generated from the 20% share of the OMB, the additional funds that will be gathered from the income generated from the MMFF will be an additional leverage for the Optical Media Board to enhance its enforcement activities (Vargas, 2006)

Another problem within the Board itself is the limited manpower for its operations. OMB Head of Operations Dean Perez stated that though there were other agencies which are aiding them in their activities, it is still not enough. For the Board, there were only 20 personnel to inspect and raid the whole of the archipelago. In Perez's words, "*Halos 20 lang kami ^{at} kilala na kami ng mga nagtitinda sa mga mall.*" The problem lies with the fact that the agency cannot hire additional personnel as there is no additional fund that ^{to} will support such hiring.

Politics behind the Implementation of OMB's Activities

It should be noted that the Optical Media Board is part of the government and thus it should conform and adjust to the happenings within the government. The passing of the Implementing Rules and Regulations of the Optical Media Act has been postponed for a couple of months to give way to the canvassing of the 2004 national elections. According to Dennis Pinlac, representative of the OMB to the Congressional Oversight Committee (COC), Congress ^{has} deliberated on changes that ^{are} deemed necessary to widen the responsibilities of the Optical Media Board (Villafania, 2004). *(COC approved)*

However, Chairperson Edu Mannzano, in an interview regarding the delayed promulgation of the Implementing Rules and Regulations of the Optical Media Act, said "Politics is hampering the approval of the implementing rules and regulations (IRR) of the

optical media law...what is hard for us now is that if we can take out the politics out of the loop, then we can have the IRR of the Optical Media Law promulgated.” (Oliva, 2004).

Before the actual promulgation of the IRR last February of 2006, there have been statements that the Optical Media Board was operating “in a legal limbo.” Representative Ronaldo Zamora of San Juan pointed out that the lack of implementing rules made it difficult for the OMB agents to demarcate its actions as to whether they are within the limits of their authority (Ager, 2004).

The interruption in the promulgation of the IRR hindered the Board in its operations. The previous IRR has no teeth to combat the widened scope of the Optical Media Board and as such a new and extensive one should be passed for the Board.

Indirect expense as another business
Another factor is the judicial system in the Philippines. As known, the judicial system is an autonomous entity in itself. Thus, the Optical Media Board has no control over the administrative cases that will be filed against the pirates caught. According to OMB Head of Operations Dean Perez, the PNP and the CIDG have several times caught Taiwanese illegal manufacturers but most of these illegal replicators have either disappeared or were freed after sometime (Interview with Perez, February 9, 2006). He added that they were not even certain whether cases have been filed or if trials were made. Furthermore, he added that due to the limited personnel in the Board, they cannot file cases against all the vendors of illegal discs. If they will file cases against everyone who sells pirated discs then there will be no one available to conduct raids as the process that will take to convict a person is actually long.

In addition, he added that when one comes to court, evidences should be specified. This means that the actual goods taken from a certain vendor of pirated discs should be intact. This is however, not the case with pirated discs. Because of the nature of the selling which is sometimes

called as the “cat and mouse” type, it becomes difficult for agents to segregate which discs were acquired from which seller.

Penalize manufacturers & not just seller
As much as possible, the Board wanted to penalize the manufacturers and not the mere sellers of pirated discs. This can be an issue for debate since the RA 9239 and its IRR gave the OMB the authority to sanction even the distributors of pirated discs. Implementing Rules and Regulations of the Optical Media Act Title IV Rule I section I (h) specified “Suspension of operations of the establishment for a period of not less than one (1) month, but not more than three (3) months, confiscation of optical media products accessories and paraphernalia and/or a fine of not less than Php 50,000.00, but not more than Php 100,000.00, shall be imposed upon any person, establishment or entity who shall knowingly possess optical media produced in violation of the Act and/or these Rules, for the purpose of sale, rental, distribution or any other commercial purpose or with the intent to profit” (IRR, 2005).

An interview conducted with sellers of pirated VCDs and DVDs confirmed that only the *u* products were confiscated. The people who are engaging in the distribution were not caught nor asked to pay any fines. Mr. Dean Perez *(jic?)* justified the action saying that for humanitarian reasons the Board does not file cases against the poor sellers. He added that piracy is their only source of income. Sometimes sellers of these illegally acquired discs were only fourteen to fifteen years old. Muslims who were from Mindanao decided *M* to go to Manila in pursuit of better lives ended up selling pirated discs in Quiapo. Muslim brothers would even justify what they are doing with the argument that *the* Koran does not prohibit them from selling these discs since they did not steal them. Hence it is not illegal and they should continue on with their businesses without interference from the government.

While it is hard to argue with this type of reasoning, this does not mean that the power or authority that was given to an institution should be forgotten altogether. It is justifiable that a poor person be given a leeway however if this will continue then there will really be no progress considering the number of "big fishes" caught.

The Local Government in Cooperation with the OMB

Decentralization in government has been one of the areas given much thought by researchers. For one, it has various advantages and disadvantages coupled with it. With the establishment of local government units, the political and administrative tendencies of dictatorship are greatly hindered. Furthermore, with decentralization comes the capabilities of experimentation and the development of new techniques by localities without the requiring other localities to pursue these changes as well. Since the local government units are placed directly within the place wherein it has authority, these units actually know the peculiar needs of their population. Thus, it can establish organizations and methods to solve these problems without worrying whether other localities will be able to implement the said methods.

In addition, the issues gauged to be treated by the territorial subdivisions concerned can be facilitated by the local government units. This will help even the national government by lessening the problems it has to attend to. Decentralization also gives the citizens the feel of government. They can share their problems and participate more in the government than when the national government is the only entity that rules. With this, their political knowledge is enhanced giving political aspirants training for political leadership (Wit, 1967).

With decentralization, ^{the} local chief executive is not merely tasked to collect taxes and deliver services. He/she is to facilitate in problem solving by allowing the citizens of the community stimulate actions. He/she should also take efforts in defining community problems

and gather the public and the private resources to achieve community aspirations (Mendoza, 2000).

This leads us to the next ^{analytic or} analyzes with the actions done by the Optical Media Board. As we have said early on, the local government unit has been cooperating with the OMB in its objective of eradicating piracy in the country. Aside from this, it was made clear that the chief executives of these units have the power and the duty to solve problems that the society deemed detrimental. However, politics has entered even in this instance. The Optical Media Board Head of Operations Dean Perez though ~~not stated~~ ^{not stated} explicitly, ~~stated~~ ^{stated} that the local government units have not been very cooperative in trying to solve piracy (Interview with Perez, February 9, 2006). Take for example the case of Quiapo, Manila. It is not a secret that Quiapo is one of the hubs of piracy. Almost everyone who has been in Manila will notice the extreme case of piracy distribution in the area. However, despite this known fact, and amidst the need to lessen piracy in the country, the local government unit has not been able to stop the sells of pirated discs in the area.

Questions of why this is happening can have several answers, most of which are mere hypothesis. First, politicians are politicians; though this is not to generalize, there are politicians who want to protect their political ambitions. The people whom they will penalize are the same people who will vote in elections. Of course, if a politician has political aspirations, he/she will definitely think twice in ruining the trust that people have for him/her. ^{explain further} Second, there were rumors that the manufacturers of these pirated discs have a hold in the government. This is not impossible considering the length of time that this problem haunts our society. Since the rule of President Ferdinand Marcos and up to the present administration the solution to the problem is still far from becoming a reality.

The state has declared as a policy the need to ensure protection and promotion of intellectual property rights. As such it is not merely the job of the Optical Media Board to address this problem. As much as possible, since it is really the local government unit who has a direct control over the given area, it should take the initiative to put necessary measures to eradicate piracy in its designated locations.

General Status of Poverty in the Philippines

Although the 1990s statistics signified ^{the} decline of poverty incidence from 49.3% of the total population in 1985 to 40.6% in 1994 and 36.8% in 1997, ADB study conducted by Ernie Pernia and Arsenio Balisacan ^{an} stated that this decline in poverty incidence did nothing to improve ^{the} inequitable distribution of wealth in the country. Because of this, the Arroyo Administration focuses on developmental agenda specifically on the issues of poverty and unemployment. With the four primary strategies included in the Medium-Term Philippine Development Plan which stresses poverty reduction through equitable growth, rural development, and social sector investment, the Arroyo Administration ^{seeks} ^{on} ^{to} achieve substantial progress with regards the status of poverty in the country. But despite these goals the country has not been successful in alleviating its ~~people's~~ ^{people's} poverty (Henderson, 2002).

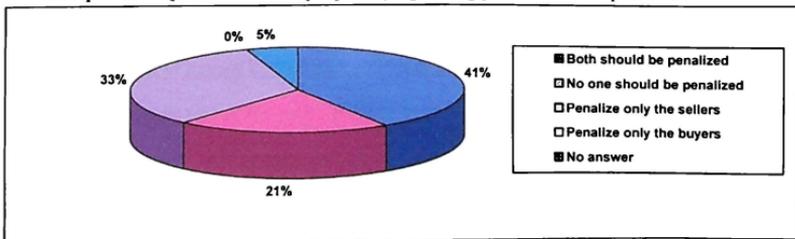
This same reality is the reason for the proliferation of piracy in the Philippines. The producers of films admit that they can no longer lower the prices of original discs due to the costs of production. And while they have not yet thoroughly adapted to new technology which will enable them to produce film less expensively, the case of high price for original discs will remain the same. Because of unaffordable prices of legitimate discs, the general public opts to buy the way cheaper products which are sometimes made even more convenient for them to avail.

Interviews conducted with sellers of pirated discs in Quiapo confirm the truth of poverty as one of the root causes of piracy in the country. Firstly, as was stated earlier, people cannot afford the high prices of original discs. Legitimate discs costs around Php 250.00 – Php 400.00 depending on whether these are local or foreign products. Pirated discs however cost only Php 25.00 for VCDs and Php 35.00 for DVDs. With these figures into consideration, it will really be more practical to buy pirated discs since there is a big difference in their prices.

Secondly, sellers of pirated discs do not have alternative source of income. One interviewee admitted that before selling pirated discs, she has been engaging in “5-6.” Another was from Mindanao who because of lack of opportunity decided to live in Manila and later on ended up selling pirated discs. One interviewee, though had a previous source of income in line with cosmetics. However, she said that because the trend nowadays is pirated discs, she left her previous job to try her luck in the business of pirated discs. In a day, the net income can reach up to Php 1500.00. However, the lease for the place in Quiapo ranges from Php160,000 – Php 200,000 annually depending on the strategic location of the stalls.

For some, the lack of legitimate jobs can, to a certain extent, justify the business of illegitimate discs. However in a survey conducted, more intellectuals as well as low income earners suggests that sellers of pirated discs should be penalized. The graph below shows the partition of respondents in their view of who should be penalized.

Graph 4.1 -- Question: Should people buying/selling pirated discs be penalized?



The Graph 4.1 shows that most of the respondents who are intellectuals acknowledge that both the sellers and the buyers of pirated discs should be penalized. Some 33 respondents however, singled out the sellers as the ones who should receive due sanctions. Among the reasons cited by those who answered “both should be penalized” are as follows:

Table 4.1 –Reasons cited for “both should be penalized”

It is a crime	9	70
Both are responsible	5	
It is not fair to punish only one	3	
It is ethical to protect our artists	2	
Others	2	
No answer	20	

For those who answered “only sellers should be penalized”, there is a unanimous reason of which they all deemed that the sellers started the crime. As a matter of fact, in a separate survey conducted to low income earners, most stated that without the sellers no one will be enticed to buy pirated discs in the first place.

Of course, this is quite questionable because in the same way, it can be argued that without the demand for pirated discs, manufacturers will opt not to produce pirated discs since consumers are not interested in buying the product.

The results of the survey however do not mean that respondents are very much into protecting the intellectual property rights of artists and talents. In fact, discussions later on will prove otherwise.

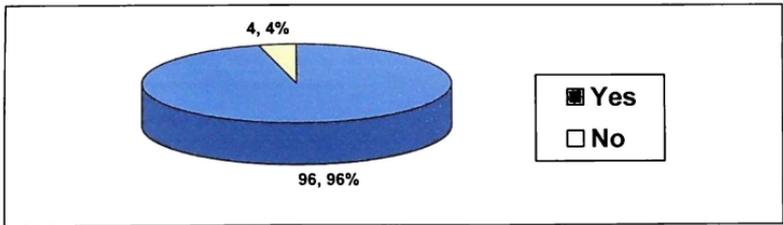
General Perception of People in the Issues of Piracy and Artists' Protection

Piracy has been one of the issues recently seen in televisions and newspapers. With the rumored undertakings by the Optical Media Board in ensuring that the recently concluded Metro

Manila Film Festival will not be attacked by pirates, the problem of piracy has elevated itself at a certain level ~~that~~ ^{has} needed attention.

The intellectual property right of artists and talents is one of the rights stepped upon by illegal manufacturers and replicators of original discs. There is a general perception that for a law to become effective and for people to accept it as vital and important to society, they should believe in what the law espouses. In a survey conducted, most intellectuals and even low income earners recognizes the intellectual property rights of artists and talents. The graph below will show the view of respondents with regards to intellectual property rights of artists and talents.

Graph 4.2 – Question: Do you believe that artist, composers, producers' works should be given protection from unfair exploitation by the public?

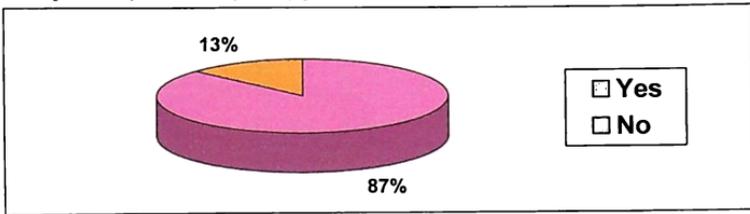


Graph 4.2 shows that more respondents believe that artists are entitled to have the authority to distribute reproduce their own works. This entails, as well, that unfair exploitation of their works is considered as illegal.

However, as was said a while ago, the results of the survey do not necessary ^{mean} ~~mean~~ that people choose to stop themselves from buying pirated discs. In a survey conducted, the same people who answered "yes" to the question of artists' protection also answered "yes" when asked if they buy pirated discs. The graph below will illustrate this further.

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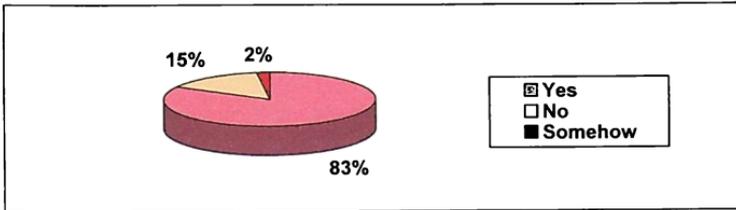
Graph 4.3 –Question: Do you buy pirated VCDs and DVDs?



This shows that despite the fact that respondents acknowledged that they believe in artists' rights, they still buy pirated discs. In the same case, while the same respondents agree that in one way or the other some people engaged in piracy should be penalized, they still purchase illegitimate discs for personal satisfaction. With this, it can be concluded that perception is different from actual action. In a nationwide survey conducted by the SWS last 2000 and 2002, it has been known that more people think that it is not okay to buy pirated discs. As was explained by Ms. Jeanette M. Ureta, ^(i.c) survey data archivists of the Social Weather Station, questions like "is it okay to buy pirated discs?" does not mean that people who answered "no" in actuality do not buy pirated discs.

The same can be applied to the survey conducted for the purpose of this study. Contradictions may seem to have arisen with the answers of respondents. However, this is the reality ^{WVPS} that is happening in our country. For elaboration, two questions from the survey will be analyzed. The questions that will be taken into study are the following: (a) Do you think piracy is a crime? (b) Do you buy pirated VCDs and DVDs? The next graph will show the disparity between the number of people who believes that piracy is a crime. With this presented, it will be seen that several contradictions were made.

Graph 4.4 – Question: Do you think piracy is a crime?



Going back to Graph 4.3, 87% answered that they do buy pirated discs. Given the next question of whether they believe that piracy is a crime, the some respondents had 83% answered “yes”. This shows that people consider piracy as illegal but they continue to buy pirated discs. Table 4.2 will show the reasons for this.

Table 4.2 Reasons for buying pirated discs.

Cheaper	85
Can be watched repeatedly	55
To have a copy of the film or music recording	38
Missed theatrical release	31
Less time consuming than going to movie houses	25
It is a craze nowadays	3
Others	9

Total ?

The topmost reason for buying pirated discs is still practicality. As OMB Head of Operations Dean Perez stated it is hard to combat the fact that pirated discs are really more affordable than original ones. Not to mention that discs are just famous for a short period of time. A movie will not be forever in demand and once a person have already watched the movie *cheaper better watch* more often than not, that person will not wish to have a quality copy of the film unless it is a classic or one of his/her favorites. This is one reason why piracy is still rampant in the country.

OMB's Efforts and Activities

(I.C. 7.)

In an interview conducted with Mr. Manuel Nuqui, VP-Internal and Administrative Affairs of the Movie Industry Anti-Piracy Council, Inc, he stated that piracy will not be solved by catering to the whims of the illegal manufacturers. This was pertaining to the alleged "ransoming" of the Optical Media Board to ensure that the films of the recently concluded MMFF will not be pirated. A sum of Php 25,000 per title was asked by the pirates to guarantee that no pirated versions of the films will be produced while the movies were still being shown in theaters. For artists and producers it is unethical that a member of the industry itself will consider paying a ransom to these illegal manufacturers.

Chairman of the Optical Media Board Edu Manzano defended the Board with the justification that it is part of their intelligence. Entrapment entails processes that should be carefully planned to make sure that lives of their agents will not be put at risk. He stated that they are not mere "onlookers." He added that several arrests were done which included: an owner of a printing press, the operator of a VCD-burning center in Cebu, two pirates videotaping screenings of MMFF entries and selling them to mom-and-pop CD burning operations in Quiapo and two vendors (Bismarck, 2006).

It is up to the general public which side to believe. However, in this type of argumentations one thing is apparent. There is lack of coordination between and among institutions and agencies which should have been united in fighting piracy in the country. As Head of Operations Dean Perez stated, piracy is a well syndicated crime which involves even smuggling. And as such, the status of piracy in the country cannot afford anymore bickering from the agencies which have been tasked to promote the rights of intellectual creators in the Philippines.

Political Will of the Arroyo Administration

It is very important that the Arroyo administration support the campaign of anti-piracy. However, it does not stop there. A sense of a strong political will should be present to boost the efforts done by the agencies which are authorized to fight piracy in the country. Pertaining to the other problems in the country, Senator Richard Gordon urged President Gloria Macapagal-Arroyo "to seriously show political will in order to end the political crisis in the country". The problem of piracy is no exception. The people buying, the people selling, the manufacturers, distributors will all take a step back when they see that the government is serious in its goals of fighting piracy. However, it can be said that the problem of piracy is not one of the priorities of the government. Although 20 % share from the Metro Manila Film Festival will be given to the Optical Media Board for its enforcements activities, Chairperson Edu Manzano admits that this is not enough.

The prioritizing of the Arroyo government of different issues other than piracy cannot be put in question. As we know, the country has been experiencing tremendous problems which include conditions of the poor, education, livelihood and the likes.

Summary

The chapter discussed several reasons why piracy in the Philippines has continued for decades. Generally, the reasons include the following: limitations within the Optical Media Board, politics behind the implementation of OMB's activities, the problems encountered with the local government units, the condition of poverty in the country, the perception of people with regards to piracy and their recognition of artists' talents, the own efforts of the Optical Media Board, and lastly the political will of the Arroyo Administration.

Though, for the most part, poverty is considered the root cause of piracy nowadays. It is still important to consider that other factors contribute to the problem. By doing this, other things can be done or can be given attention while still trying to solve the problem of poverty in the country. So much work is still to be done. And this is acknowledged by Chairperson Edu Manzano. A decrease of six percent is far from being the solution to the problem as tons and tons of pirated discs are still being sold at Quiapo and even by vendors from every corner of the street.

CHAPTER 5

Conclusion and Recommendations

The Optical Media Board in ^{with its} ~~its~~ objective of eradicating piracy in the Philippines definitely encountered many shortcomings and problems. As was discussed in the previous chapter, some of these problems ^{cannot be} ~~are~~ outside the domain of the Board. And as such, it would be very difficult to secure changes. However, the Board itself made several critical mistakes in fighting the prolonged case of piracy in the country. The researcher therefore concluded that though some aspects of the reasons why piracy cannot thoroughly be eliminated like poverty and the non-cooperation of the local government units are beyond the control of the agency, other factors though should have been given more attention by the Board.

Information Campaign

It is crucial that people know the pros and cons of piracy. Survey conducted for the purpose of the study showed that people who buy pirated discs consider piracy as a crime but still continue to involve themselves in the activity. Moreover, 63% of the respondents answered that they do believe in the objectives of the Board in fighting piracy, but the same 87% of the respondents buy illegitimate discs. This can be explained by the fact that the specific hazards caused by piracy are not truly known to people. The general perception of people is that artists are robbed of their rights to protect their works from unfair exploitation. However, little emphasis is given to the low income earners working behind the camera. Because of piracy, less and less films are produced each year, leaving these people out of work.

Another information campaign that should be sustained is the promotion of the Optical Media Board itself. Although 76% of the respondents in the survey conducted knew of the said Board, the only activities of the Board they know of are raids and confiscations of pirated discs.

Summarize from the report what was your res- to give you here why why not

Because of this, people are left thinking that the government is not serious in eradicating piracy since nothing is actually done ^{except} but the mechanical operations of raiding illegal discs. Moreover, the general public cannot feel the dedication since they know that after consecutive raids, vendors will continue selling pirated discs.

Furthermore, even the sellers of pirated discs are not aware of the new agency tasked to solve piracy. In an interview with a vendor, she mentioned the actions of the Video Regulatory Board headed by Bong Revilla. In her words, "*Pag nandyan na ang VRB, tataakbo na kami.*" The Optical Media Board has been operating for more than two years and it should already be known to the public that it was established to handle the job of the previous Video Regulatory Board.

Again, information dissemination is vital to ensure that the public knows what the agency is fighting for. And with this information, people will be able to help the government by disengaging itself from buying these discs considering the detrimental effects this has on the economy and people from the industry.

Rigid Law Implementation

Republic Act No. 9239 and its Implementing Rules and Regulations authorize the Board to enforce penalties for offenses. However, some of these sanctions are not followed considering the status of people to be penalized. As was stated in the previous chapter, Head of Operations Dean Perez admitted that for humanitarian reasons those selling pirated discs are not asked to pay fines. The Board wants to take the illegal manufacturers and producers themselves and these people are the one they want to penalize.

It is not to say that this action is entirely wrong. Some can justify the deed by saying that there wasn't any choice but to engage in this kind of activity since it is the only source of income of the family. However, if this kind of thinking will be adapted to any syndicate then truly there

will be crimes left and right. It is good that the government thinks of the welfare of the vendors, however, with this continuing, it shows that the government is not serious in fighting piracy as leeway is always given to people who are engaging in this kind of business. Another way of explaining the situation will be to use this kind of thinking with sellers of illegal drugs. The government clearly disdains the use and the proliferation of illegal drugs as it robs the nation of a future. Taking the justification that the seller has no other way of generating money aside from selling illegal drugs, does not mean that he/she will be acquitted from the charges of drug pushing. The same goes for any poor individual engaging in any illegal activity.

This does not mean that what the Optical Media Board did was wrong. But this is not justifiable either. If everyone will do the same thing, then no one will be guilty of anything by just blaming poverty.

In addition, according to Head of Operations Dean Perez, there were illegal manufacturers who were caught. However, after some time, these people were either acquitted or have been freed by the agencies that had custody. This is one great problem in the case of piracy. Reports of "big fishes" are rampant; but ask again in a couple of months and these people mostly pure blooded Taiwanese citizens have returned to their countries without being convicted of anything.

The public should know that actual cases have been filed and convictions made. This will help very much in projecting the image that the government is steadfast in its campaign of stopping piracy.

Furthermore, the Republic Act No. 9239 or the Optical Media Act espoused that the Board should issue SID or Source Identification Code. However, though not stated explicitly by the Head of Operations Dean Perez, the Board up to now has not been issuing the said codes.

Rigid law implementation entails that the Board be able to follow and execute the provisions as these are deemed important by the lawmakers who passed the said law

Change in People's Perception

This next recommendation is highly related with the process of disseminating information. The Optical Media Board admits that they cannot do it alone. Head of Operations Dean Perez explicitly said that people's initiative is needed. While there is a demand for this kind of product, manufacturers will produce and provide these discs. The Filipino people after presented with the advantages and the disadvantages will decide whether a Php 35 00 VCD is worth the jobs lost due to piracy.

Coordination with Other Agencies

The Optical Media Board should coordinate more with other agencies to further improve their function. For one, the Board admitted that although they would seize thousands and thousands of discs, the next day the same amount or even more will enter the country from Malaysia, Indonesia, Vietnam, and Taiwan. Having said this, the action done which costs thousands of pesos became futile as supplies from other countries were able to penetrate the country. Knowing this problem, the Optical Media Board should advance talks with the Bureau of Customs on how to enhance coordinating procedures which will allow the Board to know whether supplies of materials and machines for illegal manufacturing are brought in.

It is acknowledged that the Bureau of Customs is an independent entity  itself. However, this should not be a hindrance in the Optical Media Board's work of curtailing piracy. Talks and arrangements should be employed since both are agents of the government which are charged to do things for the government.

Another instance wherein lack of coordination was apparent appeared with the bickering of Leo Martinez, head of the Film Academy and the Chairperson of the Optical Media Board Edu Manzano. These offices together with the Anti-piracy Council should have been contacting each other with the current operations of each office. They should be helping each other fight this problem after all they are really the ones affected by the chronic problem of piracy in the country.

Alternative Jobs

Although this part has often been the cause of serious debates, it is still very important to cite the problem of lack of alternative jobs as one of the root causes of piracy. Of course, it is impossible to let the Optical Media Board handle this predicament. And it is understandable since it is not within their job description to provide alternative jobs for sellers of pirated discs. One of the vendors in Quiapo told us that if there were other jobs, other livelihood which the government could provide, she will stop selling pirated discs. In her words "*siyempre ayaw din namin ng ganito, lagi kaming tumatakbo, delikado din naman.*"

As long as the problem of poverty and lack of opportunity be addressed by the government efficiently it is very difficult to expect people to lean towards morally accepted jobs. Once families are put in a situation where survival is endangered, people can never be expected to follow all the laws.

To sum it up, the Optical Media Board has achieved substantial results like taking the Philippines from the "Priority Watch List" down to the level of "Watch List." Considering the short time it has been operating, the Board did its job. However, a lot of things can still be improved as was earlier stated. The problem of piracy as seen in areas in Quiapo and Metrowalk is far from being over. Strict observance of intellectual property rights is yet to be realized.

The researcher though does not discredit the reality that several factors have contributed to the present status of piracy in the country. It is not just the sole failure of the Optical Media Board as factors like budgetary and manpower considerations, problems encountered with the local government unit and political will of the Arroyo administration are also present

However, as the study proved, several factors are also lacking or have been overlooked by the Board to solve the problem of piracy. With programs on information dissemination, rigid law implementation, change in people's perception and streamlined administrative procedures, a better observance of the intellectual property rights and thus the lessening levels of piracy in the country will be achieved