



Intellectual Property Coalition, Inc.

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Transmitted via email to FR0606@ustr.eop.gov

February 11, 2008

Ms. Jennifer Choe Groves

Director for Intellectual Property and Innovation and Chair of the Special 301
Committee

Office of the United States Trade Representative
600 17th Street, N.W., Room 303
Washington, D.C. 20508

Re: Special 301: Identification of Countries Under Section 182 of the Trade Act of 1974

Dear Ms. Groves,

We are pleased to submit our Comments on the captioned matter.

The IP Coalition Inc. ("IP Coalition") is a non-stock, non-profit corporation duly registered under Philippine law. It aims to serve as the primary policy caucus of industry organizations and stakeholder associations that rely on the protection and advancement of intellectual property rights in the Philippines.

As such, the IP Coalition strives to:

- (a) Serve as the private sector forum to discuss and deliberate upon intellectual property issues, so that mutual areas of concern can be identified and resolved together;
- (b) Participate as the voice of the private sector in the public policy process on matters affecting intellectual property;
- (c) Initiate and coordinate with government agencies to educate and enhance public awareness of intellectual property as a fundamental component of national development; and
- (d) Monitor the implementation of laws, rules, and regulations for the protection of intellectual property.

IP Coalition members include the *Asosasyon ng Musikong Pilipino* Foundation (AMP), Association of Videogram Distributors of the Philippines (AVIDPHIL), Business Software Alliance (BSA), Council to Combat Counterfeiting and Piracy of Patents, Copyrights & Trademarks (COMPACT), Filipino Society of Composers, Authors and Publishers (FILSCAP), Organization of Filipino Composers (KATHA), Movie Producers

Distributors Association of the Philippines (MPDAP), Philippine Association of Recording Industries, Inc. (PARI), Philippine Software Industry Association (PSIA), the Philippine Chamber of Commerce and Industry (PCCI), the American Chamber of Commerce of the Philippines (ACPI), the Philippine Internet Commerce Society (PICS). These associations enjoy the membership and participation of a substantial number, if not the majority, of players in their respective fields.

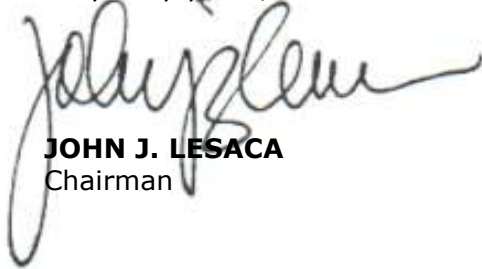
Our objective in making this submission is to provide the Office of the US Trade Representative ("USTR") with such factual and relevant information about developments in the Philippines in 2007 and, thus, be of assistance in the fair and judicious determination of the issues raised under Section 182 of the Trade Act of 1974 vis a vis the Philippines.

For the reasons discussed hereunder, the Executive Committee of the IP Coalition resolved to convey to the Office of the US Trade Representative its collective sentiment that the **Philippines remain in the Watch List. However, the USTR may wish to consider an out-of-cycle review to determine whether substantial advances in specific areas identified in our 2007 submission were achieved during the last twelve months or are, at least, being genuinely addressed.**

Considering that the IP Coalition enjoys membership from the varied and differing sectors of the Philippine IP community, where different issues are weighed differently by different interests, neither this determination of the Executive Committee nor these Comments shall be deemed to supplant, alter or modify any position or submission that any of its members may adopt or submit to the USTR or any other forum, unless otherwise indicated.

We thank the USTR for the opportunity to contribute to and participate in the 301 Review process for the good of the Philippines and the United States.

Very truly yours,



JOHN J. LESACA
Chairman



NUMERIANO F. RODRIGUEZ, JR.
General Counsel

2007: Issues and Challenges in the Protection and Advancement of Intellectual Property Rights in the Philippines

Last year, the USTR, in its 2007 Special 301 Report, retained the Philippines on its "Watch List". It meant that the Philippines, based on its evaluation, continued to be beset by IPR problems that "merit bilateral attention," notwithstanding significant improvements in certain areas of IPR protection.

The USTR announcement stated:

The Philippines will remain on the Watch List in 2007. Throughout 2006, the Philippines continued to implement its Optical Media Act, including regulating the licensing of optical disc plants and coordinating raids against pirate optical disc production factories and retail establishments. The Philippines' Intellectual Property Office continued to coordinate among IPR enforcement agencies. **While recognizing these continued IPR enforcement actions, the United States urges the Philippines to continue strengthening its enforcement regime against piracy and counterfeiting. Specifically, the United States encourages the Philippines to increase the numbers of arrests, prosecutions, and convictions of pirates arising out of the optical disc plant inspections; ensure that courts impose deterrent sentences against criminal IPR infringers (i.e. significant fines or prison sentences that are actually served); destroy pirated and counterfeit goods and the equipment used to make them; take steps to combat the problem of illegal textbook copying; further improve customs enforcement; take actions against television signal theft by pirate cable TV operators; and fully implement the WIPO Internet Treaties, including addressing Internet piracy. The United States urges the Philippines to maintain a patent regime that is fully consistent with its WTO obligations.** The United States will continue to use the bilateral Trade and Investment Framework Agreement to engage the Government of Philippines on strengthening its IPR regime. (Emphasis supplied)

The foregoing conclusions of the USTR recognize the continuing efforts undertaken by the Philippine Government, primed in 2005, to improve the protection of intellectual property rights in the country through aggressive, sustained and focused enforcement actions by police agencies and the Optical Media Board ("OMB").

On February 15, 2006, the USTR noted the Philippines for "improved IPR enforcement"¹ and lowered its ranking from "Priority Watch List" to "Watch List".

¹Explaining its decision, the USTR stated:

Xxx throughout 2005, the Philippines bolstered implementation of its special legislation that was passed to stop illegal production of pirated optical discs such as CDs and DVDs by controlling the licensing of and conducting raids against pirate optical disc production facilities. In addition, Philippine authorities conducted numerous raids on retail stores selling pirated and counterfeit goods. The Philippine

Prior to the lowering to the "Watch List", the Philippines had been on the "Priority Watch List" since 2001.

Has this improving enforcement trend been sustained to-date?

Sustained Degree of Responsiveness and Readiness by Enforcement Agencies in 2007: "Fantastic Achievement!"

In 2007, there is no doubt that the Philippine enforcement agencies have achieved significant strides in improving enforcement of IPR.

The joint efforts of the NBI, PNP-CIDG, OMB and the BOC-IPU resulted in the seizure and confiscation of IP infringing goods amounting to P2,929,282,917.60, more than double the amount in 2006² and about three times more the amount realized in 2005³.

**Table 1
Enforcement Data
January – December 2007**

AGENCY	NO. OF OPERATIONS				QUANTITY			ESTIMATED VALUE (Php)
	Inspection	Search Warrant	Plant Audit	Warrants of Seizure & Detention	Pieces	Boxes/Sacks	Container	
NBI	-	244	-	-	329,283	17,707	-	260,928,950.00
PNP	-	242	-	-	315,352	-	-	400,709,373.00
OMB	2,503	-	23	-	4,807,523	-	-	1,120,489,200.00
BOC	-	-	-	33	1,207,299	6,972	37	1,083,664,930.20
TOTAL	2,503	468	23	33	6,659,457	24,679	37	2,929,282,917.60

Source: IP PHILIPPINES

The data for prior years, 2005 and 2006, earlier reported, are likewise reproduced hereunder, for easy reference.

government also measurably improved coordination of government agencies responsible for IPR enforcement.

http://www.ustr.gov/Document_Library/Press_Releases/2006/February/US_Government_Praises_Philippines_for_Improved_IPR_Enforcement.html

² Please refer to Table 3

³ Please refer to Table 2

Table 2
SUMMARY OF IP ENFORCEMENT DATA
January 01 -October, 2005

AGENCY	NO. OF OPERATIONS			QUANTITY			ESTIMATED VALUE (Php)
	Inspection	Search Warrant	Alert-Hold Order	Pieces	Boxes/Sacks	Container	
NBI		680	-	1,385,406	2	-	137,922,080
PNP		143	-	24,519	5,966	-	13,631,900
OMB	1,370	221	-	3,145,560	12	-	540,189,550
BOC	-	-	26	47568	3,092	1	392,722,480
TOTAL	1,370	1,044	26	4,623,960	9,072	1	1,084,466,010

Source: IP PHILIPPINES

Table 3
SUMMARY OF IP ENFORCEMENT DATA 2006

AGENCY	NO. OF OPERATIONS				QUANTITY			ESTIMATED VALUE (Php)
	Inspection	Search Warrant	Plant Audit	Warrant, Seizure & Detention	Pieces	Boxes/Sacks	Container	
NBI		419		-	546,464	350	-	290,964,640.00
PNP		281		-	374,859	1,438	-	131,291,496.96
OMB	942	88	14	-	1,642,143		-	207,807,400.00
BOC				26	416,392	5,771	-	722,765,810.00
TOTAL	942	788	14	26	2,979,858	7,559	0	1,352,829,346.96

Source: IP PHILIPPINES

Notable among these operations was the seizure by the Bureau of Customs of "about \$2 million worth of digital versatile disc-replicating equipment, capable of making 400,000 pirated copies a day", last January 24, 2007. "The smuggled goods, consisting of four "top-of-the-line" machines, video packaging materials and gadgets

used in producing duped copies, were in two 40-footer and two 20-footer container vans from Hong Kong, United States and Taiwan⁴."

In the same month, agents of the NBI seized counterfeit "Batman" and "Superman" toys worth P7.2 million during simultaneous raids conducted in Binondo, Manila on the basis of search warrants issued by Judge Reynaldo G. Ros of the Manila Regional Trial Court, Branch 33⁵.

In February, 2007, the NBI seized counterfeit "Vans" rubber shoes worth P1.5 million during simultaneous raids conducted in Pasay City⁶. In separate operations, the NBI also seized some 374 pairs of fake "Lacoste" slippers and 12,526 shirts and 370 pairs of pants, all bearing counterfeit "Express" labels, estimated to be worth more than P1.7 million⁷.

In April, 2007, police confiscated fake designer goods worth P84 million during separate raids at Harrison Plaza in Manila and Market! Market! Mall in Taguig City. Seized at the Harrison Plaza raid were P80 million worth of fake "Louis Vuitton" items and, at the Market! Market!, P4 million of fake "Lacoste" items⁸.

Equally relentless were the raids against software infringers. In October, 2007, the NBI seized illegal software and 31 computers valued at around P7 million pesos from China Geo Engineering Corp., an engineering firm involved in building roads, streets, dams and irrigations systems. The computers were allegedly loaded with unlicensed Microsoft and Autodesk software. In an earlier raid, the NBI also seized from Filipinas Multi-Line Companies in Quezon City 40 computers loaded with alleged unlicensed Autodesk and Microsoft software amounting to P4 million⁹.

In November, 2007, police raided two Internet cafés in Intramuros, Manila and seized 95 units of computer equipment and software estimated at P2.6 million¹⁰.

Except as listed above and unlike in previous years, we will dispense with coming up with a list of representative enforcement activities for the year in review. Orion Support Inc., a regional firm that renders security and investigative services does this job by publishing in its website (<http://www.osi-philippines.com/>) reports of all enforcement actions it has initiated for its clients. Similarly, the Pilipinas Anti-Piracy Team (or, PAPT), a government-led initiative composed of the NBI, OMB and PNP,

⁴ "Customs seizes \$2m in video copiers", Manila Standard Today, (http://www.manilastandardtoday.com/?page=police1_jan26_2007)

⁵ "Counterfeit Branded Toys Confiscated", TEMPO, January 24, 2007

⁶ "NBI seizes P1.5-M fake rubber shoes," Tempo February 05, 2007

⁷ "NBI seizes P3.2 M in fake apparel" (http://newsinfo.inquirer.net/breakingnews/metro/view_article.php?article_id=48678)

⁸ "Police seize fake Lacoste, Louis Vuitton items" (http://newsinfo.inquirer.net/breakingnews/metro/view_article.php?article_id=60235) Posted on April 13, 2007

⁹ "NBI seizes illegal software from engineering firm" (http://newsinfo.inquirer.net/breakingnews/infotech/view_article.php?article_id=95098) Posted on October 17, 2007

¹⁰ "Cops seize unlicensed software in Intramuros Net cafés " (http://newsinfo.inquirer.net/breakingnews/infotech/view_article.php?article_id=104795) Posted on December 04, 2007

maintains in its website a record of its achievements for any given period (<http://www.papt.org.ph/>).

Qualitatively and quantitatively, the enforcement record for 2007 evidences consistent readiness and responsiveness by the enforcement agencies to respond to stakeholders. The volume of activities in 2007 preponderantly establishes that there is no indifference by and among the enforcement agencies to IP protection.

In a press statement made last September, 2007, Tarun Sawney, BSA Director for Anti-Piracy, Asia said that, while piracy rates in the Philippines were still high, government agencies are now "consistently enforcing intellectual property laws regarding copying of computer programs". He called this a "fantastic achievement," which he credited to the government's creation of the PAPT in 2005¹¹.

Treading the Path to IP Justice

As we asserted in our previous submissions, the raids and seizures are NOT enough to deter piracy and counterfeiting. Enforcement is but the initial stage in the process to protect IP.

After the seizure, the legal process to establish the culpability of the persons from whom the seizure was made must ensue. Criminal charges must be filed with the Department of Justice or Prosecutor's Office after a search warrant raid to determine whether respondents therein may be indicted before a court of law and, ultimately meted the penalties provided by law. In cases of Warrants of Seizure and Detention issued by the Commissioner of Customs, or his representative, forfeiture proceedings before the Law Division must be commenced. In cases of Inspections undertaken by the OMB, administrative cases, which may result in the imposition of fines, closure or suspension of business establishments and/or forfeiture of the seized properties must be instituted¹².

The path to IP justice does not end with the seizure or confiscation. Unfortunately, the true weaknesses in the Philippine legal infrastructure to protect IPR are, for the most part, embedded in the stages AFTER the seizure or confiscation.

Last year, after identifying these major weaknesses, we identified specific tasks that constitute the "(C)hallenge to build and strengthen institutions that promote the protection and advancement of IP rights". At the same time, we stressed the imperative to "continue to build a legal framework that promotes the protection and advancement of IP rights."

The weaknesses in the system so far observed and identified, perhaps, prevalently, in 2006, should serve as the guide in identifying the tasks that must be attended to.

¹¹ "RP making progress on software piracy—watchdog"

(http://newsinfo.inquirer.net/breakingnews/infotech/view_article.php?article_id=87966) Posted on September 11, 2007

¹² Section 7, Rule 7 of the OMB IRR, op cit. provides: 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.

The thrust must be to continue to build and strengthen institutions that promote the protection and advancement of IP rights.

Building strong institutions is at the core of long-term development. "Making a proper job of building institutions is not only a guarantee to a sustainable democratic and just order but also lays a strong foundation for development".

Fully functioning, responsive government enforcement agencies that are accountable, a strong legal framework, an independent judiciary that dispenses speedy justice are the institutions that are indispensable to "an effective intellectual and industrial property system". Institutional strengthening must, therefore, be a key component of the national IP strategy.

To be able to resist pressures from vested interests, an agency must be manned by men and women who possess the necessary professional skills and must be supported with sufficient resources, to implement its programme.

With such institutions in place, we can rely less and less on ad hoc committees and task forces to generate positive results which are, at best, temporary. Better equipped and better prepared, the enforcement agencies can achieve levels of performance that can deal permanent deathblows against piracy and counterfeiting.

The coming months should, therefore, unfold resolute steps to strengthen the OMB, the BOC IP Unit of the BOC, the courts handling IP cases and the Bureau of Legal Affairs of the IPO.

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The foregoing challenges constitute the tasks that the Philippines needs to address in 2007 if its objective is to provide lasting solutions to the problems of piracy and counterfeiting in the country. **A market list, pared down to what we believe are the most essential, should include the institutionalization of the Optical Media Board and the BOC IP Unit, the designation of some court as "IP-dedicated"; the strengthening of the IP PHILIPPINES Bureau of Legal Affairs, the passage of enabling laws to implement the Internet Treaties and the propagation of the Local Government IP Ordinance¹³.**

(Emphasis supplied)

In its own public statement, the IP Coalition expressed hope that the Philippines be totally removed from the Watch List in "two years"¹⁴. This was conditioned upon

¹³ 2007 IP Coalition Submission to the USTR

¹⁴ "IP Coalition sees removal from US watch list in 2 years"

(http://newsinfo.inquirer.net/breakingnews/infotech/view_article.php?article_id=77564) Posted on July 19, 2007

those “resolute steps” to accomplish the tasks in the market list being actively pursued.

After twelve (12) months, the inevitable question is: What have been done so far?

Institution and Capacity-Building: The Fluke at the DOJ

Last July 5, 2007, the Secretary of Justice issued Resolution No. 498, reversing and setting aside the earlier Joint Resolution issued on November 21, 2006 by the investigating prosecutor on twelve complaints filed by Discovery Communications-Europe, National Geographic Channel, AXN Holdings, Turner Entertainment Networks, Asia, ESPN Sp. et. al. against Estrellita T. Juliano-Tamano, et. al. for violation of R. A. No. 8293 (Sec. 177 in relation to Section 217).

The resolution which directed the investigating prosecutor to immediately cause the dismissal of 94 indictments against respondents, held that the “It is thus evident that “broadcasting” is not included, intentionally or unintentionally, among the copyright or economic rights protected by RA 8293. Xxx as it is clear that complained act is outside the ambit of R. A. 8293”, the complaint must be dismissed.

In one sense, the Justice Secretary was correct, that is, the rights of broadcasting organizations are NOT included in the enumeration of economic rights under Section 177.

This does not mean, however, that such rights are “outside of the ambit” of the law. Together with the rights of performers and sound recorders, those of broadcasting organizations are protected under Chapter XII, Part 4, of the IP Code and are referred to collectively as “Neighboring Rights”.

Clearly, as broadcasting organizations, the complainants “enjoy the exclusive right to carry out, authorize or prevent any of the following acts:

211.1. The rebroadcasting of their broadcasts;

211.2. The recording in any manner, including the making of films or the use of video tape, of their broadcasts for the purpose of communication to the public of television broadcasts of the same; and

211.3. The use of such records for fresh transmissions or for fresh recording. (Sec. 52, P. D. No. 49)” (Section 211, IP Code)

We deplore such a ruling and the very thought that it can even happen.

But, as we have stated, we submit that the DOJ ruling is just a temporary aberration that will ultimately be resolved in favor of the rights holders. Under a legal system where the principles governing IPR are being treated on an almost first-impression basis, mistakes are likely to be committed. These do not mean, however, that the state policy to protect intellectual property rights mandated by law has been effectively supplanted by the contrary, hostile official position of the Justice Secretary.

In any event, we share the disappointment of the complainants with the subject ruling. At the same time, we urge them to be steadfast in their fight as this is the

only way that the legal system can continue to improve itself in the protection and advancement of IPR in the country.

Institution and Capacity-Building: Optical Media Board

The IP Coalition has always been of the position that the OMB must be strengthened.

Last year, we noted that, even after four years from its creation, the OMB neither had the capability nor the rules to administratively resolve all cases that arise from its inspections. We also noted the inability of OMB to file criminal cases.

The impressive enforcement record of the OMB, notwithstanding, OMB must also have the capability to administratively resolve all cases that arise from its inspections¹⁵. OMB must also have the capability to institute criminal cases and follow them through to successful prosecutions¹⁶. As observed by IIPA, "inspections of pirate optical disc plants, seizures of pirate imports at the borders, and raids on retailers are not being followed by significant criminal prosecutions, and thus there is little deterrence as a result of enforcement activities in the Philippines¹⁷. Further, "(U)nfortunately, the results of the administrative cases have not been overwhelmingly favorable due in part to lack of OMB efforts, **lack of administrative capabilities, and lack of transparency**¹⁸." (Emphasis supplied)

To its credit, the Rules of Procedure in Administrative Cases had been prepared and published in the OMB website¹⁹. The Executive Director confirmed that said rules had already been formally approved and are in effect. We thus have to see how effective these Rules will be in disposing of the numerous administrative cases that must ensue, or should have been filed, after OMB conducted or conducts its raids. Expectedly, the 4,807,523 optical discs seized during the last twelve months can and will hopefully be better accounted for when they are subjected to administrative proceedings.

Further, it is observed that the OMB continues to be weakened by sheer lack of personnel, inadequate logistical support and want of training. From the time that the OMB came into existence in 2004, it has had to operate under a disproportionate budget that is not tailored to respond to its mandates and programs .

¹⁵ SEC. 10, Rep. Act. No. 9239 provides: Powers and Functions of the OMB.- The OMB shall have the following powers and functions: xxx 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;

¹⁶ SEC. 10. Rep. Act No. 9239 provides: Powers and Functions of the OMB.- The OMB shall have the following powers and functions: xxx f) Act as complainant in the criminal prosecution of violators of this Act;

¹⁷ IIPA 2006 Special 301 Report: Philippines, page 127.

¹⁸ IIPA 2006 Special 301 Report: Philippines, page 134

¹⁹ <http://www.omb.gov.ph/index.php?id1=14>

Though the OMB has retained the same, if not greater, enthusiasm and vigor to seize and confiscate violating optical media, there is little or no improvement in its institutional capabilities to address the bigger mandates of its charter.

Institution and Capacity-Building: Creation of IPR Courts or IP-Dedicated Courts

The creation of IPR Courts has been suggested to address the problem of delays in the judicial process. We continue to support this suggestion because a court that can devote more time on IP cases will, at least, theoretically, mean less time for IP owners to wait. As a result, the trial period of each case can be considerably reduced from two to ten years to six months to one year. It does not need to sport a lofty or technical name; all it needs is the flexibility to allocate the time needed to resolve its cases most expeditiously and a judge imbued with that sense of judicial urgency. It need not be created by another special law; it can be some existing court made "IP-dedicated" by an order issued by the Supreme Court.

Lamentably, there is nothing in the horizon that indicates that the creation of the IPR Court or IP-dedicated Court is going to happen anytime soon.

The Nagging Issue of Judicial Delay.

The problem of judicial delay afflicts not only cases for IP violations, but also all other cases pending in the courts. It is understandable, therefore, that the Supreme Court, in looking for all possible solutions to the problem, does not focus on solutions to expedite resolution of IP cases solely and specifically, but of all cases in general.

Recently, an E-court project has been implemented in Marikina City court rooms²⁰.

MANILA, Philippines – The city government of Marikina Wednesday started its electronic court (e-court) project to facilitate and enhance court transactions and services.

Mayor Marides Fernando said the program would reduce the delays in court proceedings and transactions, benefiting both the public and the city government 's employees.

The project was initiated by Sen. Aquilino Pimentel Jr. through a P5 million allocation from the Priority Development Assistance Fund.

The allotment covers the computerization of eight regional courts and two municipal trial courts in the city. It would also help set up a court database to allow better connectivity in the judiciary 's administrative processes.

The project aims to connect local courts to the Supreme Court so both sides can effectively monitor decisions, memoranda and caseloads, Fernando added.

²⁰ "E-court project makes debut in Marikina City court rooms", Philippine Daily Inquirer, First Posted on 02/07/2008 (http://newsinfo.inquirer.net/inquirerheadlines/metro/view_article.php?article_id=117269)

It would also pay for a closed-circuit video room that allows a child witness to testify outside the courtroom.

Lawyer Aquilino "Koko" Pimentel III, a son of the senator who attended the project launch, said computerization would play a major role in reducing delays in court proceedings.

He expressed hopes that it would soon evolve into the paperless filing of pleadings and sharing of court information.

Apart from providing a database, the e-court project also calls for the installation of a computer-aided transcription machine that allows transcripts of stenographic notes to be printed and distributed right after a hearing.

The E-Court project certainly addresses the problem of judicial delay by improving the tools needed by the judge to effectively and efficiently perform his functions. We submit, however, that the presiding judge in every sala of the land still holds the biggest key to minimizing, if not eradicating, incidences of delay in the judicial process.

In the end, the judge decides whether or not to allow the "delay". The Rules grant the judge the authority and discretion to resolve such motions, based on facts which he must find, by deciding which delays are justified and which are not. The judge controls the judicial valve that allows the flow of "delay", in torrents or in drips.

In truth, not all delays are dilatory. Admittedly, a good number are even justified. The big challenge rests with the judge: to separate the chaff from the grain. And the bigger challenge is to sanction those who overstep the demarcation line between duty and abuse.

Cultivating a Judicial Sense of Urgency

When "it currently takes anywhere from two to even ten years for most cases to reach a conclusion", as observed by the IACC, the observation that the judge may have been more liberal than necessary in allowing "delays" or that he may have taken the path of least resistance and allowed an expansive, if not, lenient, view of what a "meritorious case" covers or up to where the "interest of justice" extends, cannot be escaped.

The trial judge has control over the disposition (read, movement or progress) of cases before him. By nurturing a healthy sense of urgency, a judge may gain a keener sense to see through an attempt to slow down, halt or derail the proceedings. When facing a judge who has a reputation for being a stickler to the Rules, a lawyer is encouraged, if not compelled, to come to court more prepared than usual. He thinks twice, even thrice, before submitting "canned" or "ready-to-file" motions. He will not risk taking any delaying tactic unless he himself believes that he has a substantial cause that will

stand close scrutiny. Under this realizable scenario, unjustified delay can, hopefully, be minimized.

To be sure, the Supreme Court can promulgate circulars to circumscribe the discretion of the judge in such cases by further defining instances of what are in and what are out. But, considering there can be as many justifications for "delay" as there are circumstances surrounding human relations, that listing can never be complete. The challenge, therefore, it is humbly submitted, is for the Court Administrator to inculcate this judicial sense of urgency among judges²¹.

Institution and Capacity-Building: BOC IP Unit Must be Expanded.

The bulk of pirated optical media found in the Philippines is imported from its Asian neighbors. It has been observed that the importation of pirated optical media is the bigger part of the optical disc piracy problem in the Philippines. This spells the extent of the task that the BOC Intellectual Property Unit (BOC IP Unit) must perform. It also explains why there is a need to strengthen it and expand its manpower and personnel.

Yet, to-date, it remains the same small agency as it was last year and the year before.

Institution and Capacity-Building: The Bureau of Legal Affairs of the IPO

We have identified the Bureau of Legal Affairs ("BLA") of the IPO for its potential to make a difference in the speedy resolution of IP disputes. Under the law, BLA exercises original jurisdiction in administrative complaints for violations of laws involving intellectual property rights, where the total damages claimed are not less than Two hundred thousand pesos (P200,000). In such cases, BLA, like a court of law, may grant provisional remedies in accordance with the Rules of Court. After formal investigation, the Director for Legal Affairs may order an injunction through a cease and desist order; the condemnation or seizure of products which are subject of the offense; the forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense; impose administrative fines not less than Five thousand pesos (P5,000) nor more than One hundred fifty thousand pesos (P150,000), and other analogous penalties²².

IP Philippines has reported that, from January to December, 2007, the BLA disposed of 295 inter partes cases, 70 of which were old cases. IP Philippines claims that, presently, the turn-around time for resolving inter partes cases is from 10 to 14 months, down from the average of 24 to 36 months three years ago. Also, IP Philippines reported that, for the same period, the BLA resolved 26 IP Violations cases, 17 of which were old cases. It is claimed that BLA has effectively reduced the turn-around time for resolving IP Violations cases to two years, compared to the average of 36 to 48 months three years ago. BLA has further committed to reduce turn-around time for inter partes and IP Violations cases to 10 months and 12 months, respectively.

²¹ 2007 IP Coalition Submission to the USTR

²² Section 10, Part I, IP Code

We look forward to seeing the positive impact of these improvements on the over-all efforts of government to protect and enforce intellectual property rights.

Building a Legal Framework that Promotes IP rights

The Internet Treaties

The WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonograms Treaty (WPPT) which seek to address the challenges posed by today's digital technologies, by providing protection for digital works in the Internet, came into force in the Philippines on October 4, 2002²³.

As a signatory to these treaties, the Philippines is under obligation to provide a legal framework of basic rights, to ensure that creators may control the use or enjoyment of their works as they are disseminated through new technologies and communications systems; and technological adjuncts to ensure that rightholders can effectively use technology to protect their rights and to license their works online.

On July 3, 2007, shortly after the opening of the 14th Congress, Senator Edgardo J. Angara filed Senate Bill No. 880 (An Act Amending Certain Provisions of Republic Act No. 8293 or the Intellectual Property Code of the Philippines and for Other Purposes). This Bill seeks to "amend the Code through the integration of comprehensive and efficient strategies to respond to the upsurge of internet piracy. The bill was read on First Reading and referred to the Committee on Trade and Commerce on September 4, 2007.

Notably, this bill is identical to Senate Bill 1973, filed last April, 2005 during the 13th Congress and Senate Bill 1704 during the 12th Congress. Stated otherwise, this bill has been "languishing" in the Senate since 2003, at the earliest, or for some five years already. The same fate has befallen their House versions (HB 3182; HB 3308/322).

The Legislature needs to pass these enabling laws soonest.

IP Ordinances

The objective is to build institutions that will protect and advance IP rights within the local government structure. The strategy is to empower the local chief executive to take swift administrative action against the proliferation of pirated and counterfeit products and services within the territorial jurisdiction of his city or municipality.

To date, the following cities have passed the IP Local ordinance: Quezon City; Cebu City; Muntinlupa City; Iloilo City; Naga City; Tuba, Benguet and Baguio City.

But we still await the actual implementation of the IP Ordinance by the aforementioned local governments.

²³ <http://www.wipo.int/treaties/en/ip/index.html>

Protecting IP Rights: To Do List and What Have Been Done List

Having reviewed our IPR market list, we have noted that, apart from the enforcement agencies surpassing their own performance records, little or no movement has been observed in the following areas: a) the institutionalization of the BOC IP Unit; b) the designation of some court as "IP-dedicated"; c) the passage of enabling laws to implement the Internet Treaties, and d) the propagation of the Local Government IP Ordinance. Upon the other hand, while we appreciate the respectable improvements achieved in a) the institutionalization of the OMB, and b) strengthening of the Bureau of Legal Affairs of IP Philippines, the same are not of such magnitude as yet to sustain the environment of IP protection required by rights holders. It is in this light that we think that an out-of-cycle review may be in order.

Nevertheless, the efforts of the Philippines in 2007 belie any notion that the Philippines has failed to provide "an adequate level of IPR protection or enforcement, or market access for persons relying on intellectual property protection".

FOR THE FOREGOING REASONS, the IP Coalition Executive Committee submits that the Philippines should remain on the Watch List.