

FOURTEENTH CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
Second Regular Session )

SENATE  
OFFICE OF THE SECRETARY

9 JUN -2 P5:07

SENATE

Senate Bill No. 3300

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INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

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**EXPLANATORY NOTE**

Article XIV Section 13 of the 1987 Philippine Constitution provides among others, that the State shall protect and secure the exclusive rights of individuals and entities to their intellectual property and creations.

Moreover, Republic Act No. 8293 otherwise known as the "Intellectual Property Code of the Philippines" enunciates that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products.

The advent of technological advances has made our crusade against the perennial problems on piracy and its evolving forms, even more difficult. There is a pressing need to effusively safeguard intellectual properties and creations for the nation to reap its potential promise of economic, socio-political and cultural benefits amidst the proliferation of incidents relating to the unauthorized use, possession and / or control of cinematographic films, other audiovisual works and/or their soundtrack in public exhibition / theatrical facilities which may lead to the downfall of the film industry.

This legislative measure aims to prohibit and penalize the unauthorized use, possession and/or control of audiovisual recording devices for the unauthorized recording of cinematographic films, other audiovisual works and/or their soundtracks in exhibition facilities in order to regulate, if not totally curb, such unauthorized acts which are contrary to public interests and sabotages economic advancement.

Hence, immediate passage of this bill is earnestly sought.

  
JINGGOY EJERCITO ESTRADA  
Senator

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**AN ACT TO PROHIBIT AND PENALIZE THE UNAUTHORIZED USE, POSSESSION AND/OR CONTROL OF AUDIOVISUAL RECORDING DEVICES FOR THE UNAUTHORIZED RECORDING OF CINEMATOGRAPHIC FILMS AND OTHER AUDIOVISUAL WORKS AND/OR THEIR SOUNDTRACKS IN AN EXHIBITION FACILITY, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES**

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

**SECTION 1. *Short Title.*** – This Act shall be known as “*Anti-Camcording Act of 2009*”.

**SEC. 2. *Definition of Terms.*** – For purposes of this Act:

(a) “Audiovisual work” means a work that consists of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

(b) “Audiovisual recording device” means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a cinematographic film or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

(c) “Authorized person” means the police and/or any other person duly authorized by the relevant authority to exercise powers conferred upon by this Act.

(d) “Cinematographic film” means any audiovisual work consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(e) “Copy” means any article or thing in which the visual images or sounds comprised in any cinematographic film or audiovisual work are embodied, and includes the making of a copy which is in electronic format, or transient or incidental to some other use thereof.

(f) “Copyright owner” means any one who has the exclusive rights comprised in a copyright as provided under Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, and related international treaties, conventions or agreement to which the Republic of the Philippines is a party.

(g) “Exclusive licensee” means a licensee who is authorized in writing and who, on behalf of the owner or prospective owner of copyright, to the exclusion of all other persons, is authorized to do an act within the Philippines that, by virtue of this Act, the owner of the copyright would, but for the license, have the exclusive right to do or to perform.

(h) “Exhibition facility” means any cinema, film theater, screening room or other venue that is used for the public exhibition of a cinematographic film or audiovisual work, whether or not a fee is chargeable.

(i) “Operator of an exhibition facility” means any person or entity who holds or is required to hold a license by the Securities and Exchange Commission (“SEC”, for companies and partnerships), the Department of Trade and Industry (“DTI”, for sole proprietorships), the Movie and Television Review and Classification Board (MTRCB) or any and all other relevant government offices that have, or will have, jurisdiction over exhibition facilities to operate the exhibition facility.

(j) “Relevant authority” means the officers, members, responsible personnel of law enforcement agencies such as the Philippine National Police (PNP) and their adjuncts, the National Bureau of Investigation (NBI), agents of the Optical Media Board (OMB) and the OMB-deputized agents.

(k) “Transmit” means to convey by any means, whether over a path or a combination of paths, provided by a material substance or by wireless means or otherwise, and whether or not in response to a request made.

*SEC. 3. Acts Constituting Unauthorized Possession, Use and/or Control of Audiovisual Recording Devices.* – It shall be unlawful for any person who, at a time when copyright subsists in a cinematographic film or other audiovisual work or its soundtrack, without the authorization of the copyright owner or exclusive licensee thereof:

(a) uses or attempts to use an audiovisual recording device to transmit or make a copy of any performance in an exhibition facility of such cinematographic film or other audiovisual work or its soundtrack, or any part thereof; or

(b) has in his/her possession, an audiovisual recording device in an exhibition facility, with the intent of using or attempting to use the audiovisual recording device to transmit or make a copy of any performance in the exhibition facility of such cinematographic film or other audiovisual work or its soundtrack, or any part thereof.

*SEC. 4. Acts Constituting the Unauthorized Use, Possession and/or Control of Audiovisual Recording Devices for the Purpose of Sale, Rental or Other Commercial Distribution of a Copy of a Cinematographic or Audiovisual Work or its Soundtrack, or Any Part Thereof.* – It shall be unlawful for any person who, at the time when copyright subsists in a cinematographic film or other audiovisual work or its soundtrack, without the authorization of the copyright owner or exclusive licensee thereof, for the

purpose of sale, rental or other commercial distribution of a copy of the cinematographic or audiovisual work or its soundtrack, or any part thereof:

(a) uses or attempts to use an audiovisual recording device to transmit or make a copy of any performance, in full or in part, in an exhibition facility of such cinematographic film or other audiovisual work or its soundtrack, or any part thereof;

(b) has in his/her possession or control, an audiovisual recording device in an exhibition facility, with the intent of using or attempting to use the audiovisual recording device to transmit or make a copy of any performance in the exhibition facility of such cinematographic film or other audiovisual work or its soundtrack, or any part thereof; or

(c) aids, abets or connives in the commission of the acts prohibited under this section.

*SEC. 5. Penalties.* – A person who will be guilty of violating the provisions of Sections 3 and 4 shall be subject to a fine of Fifty thousand pesos (P50,000.00) but not to exceed Five hundred thousand pesos (P500,000.00) and imprisonment of six (6) months and one (1) day to six (6) years and one (1) day.

If the offender is an alien, said person shall immediately be deported after payment of the fine and after serving his/her sentence. He/She shall thereafter be refused entry into the Philippines.

If the offender is a government official or employee, the penalty shall include perpetual disqualification from public office and forfeiture of his right to vote and participate in any public election for a period of five (5) years.

*SEC. 6. Presumptions as to the Subsistence of Copyright and/or Ownership of Copyright.* – For purposes of Section 3, copyright shall be presumed to subsist in the subject cinematographic film or other audiovisual work or its soundtrack if the accused does not put in issue the question as to whether copyright subsists therein. However:

(a) where the accused puts such question in issue but does not satisfy the court that he/she does so in good faith, the presumption as to the subsistence of copyright herein shall apply, notwithstanding that the accused puts that question in issue;

(b) where the name of a person appears on copies of the subject cinematographic film or other audiovisual work or its soundtrack as made available to the public in such a way as to imply that the person was the maker thereof and, in the case of a person other than a body corporate, that name was his/her true name or a name by which he/she was commonly known, that person shall be presumed to be the maker thereof and the copyright owner thereof, unless the contrary is established; and/or

(c) where the accused puts in issue the question of whether copyright subsists in the subject cinematographic film or other audiovisual work or its soundtrack, or the ownership of the copyright therein, an affidavit made in behalf of the copyright owner in which he/she makes assertions of facts relevant to showing that: (1) copyright subsists in the work or other subject matter; and/or, as the case may be, (2) he is the owner of the copyright, shall be admitted in evidence and shall be *prima facie* proof of the matters stated therein until the contrary is proved, unless the court requires that oral/testimonial evidence be adduced to prove those matters.

SEC. 7. *No Defense on Account of Use for Private or Domestic Purposes.* – It shall not be a defense that the transmission or making of the copy of the cinematographic film or other audiovisual work or its soundtrack, or any part thereof, was for private or domestic purposes or in connection with a fair use deal.

SEC. 8. *Requirement for Posting of Notices in an Exhibition Facility on the Prohibition Against the Bringing Into Said Exhibition Facility of Audiovisual Recording Devices and the Like.* – All exhibition facilities,

cinemas or theaters shall be required to conspicuously post in at least two (2) areas in the exhibition facility including, but not limited to, the areas where tickets are sold and the entrances of the exhibition facilities, notices or signages warning against the bringing of audiovisual recording devices into the cinematographic film/audiovisual screening/exhibition area, with a reservation that the management/operator of the exhibition facility will take into preventive and temporary custody such audiovisual recording device/s until the film/movie theater patron leaves the screening/exhibition area/facility.

Failure of the management/operator of the exhibition facility to comply with the foregoing requirement will subject said management/operator liable to pay a fine of Fifty thousand pesos (P50,000.00).

*SEC. 9. Powers of Authorized Persons to Enter an Exhibition Facility and Search the Same.* – An authorized person, without a warrant and without payment of any admission fee or other charge, may enter and search any exhibition facility if the authorized person has reasonable ground to believe that any violation of this Act has been or is being committed and, due to the delay necessary to obtain a warrant could result in the loss or destruction of evidence, or for any other reason it would not be reasonably practicable to obtain a warrant.

*SEC. 10. Other Powers of Authorized Persons.* – An authorized person who has reasonable ground to believe that a violation under this Act has been or is being committed may:

(a) search any person if the person subject of the search has in his/her actual possession, any audiovisual recording device, in respect of which an offense under this Act has been or is being committed;

(b) seize, remove or detain any audiovisual recording device or other object which appears to contain, or likely to contain, evidence of an offense committed under this Act;

(c) use reasonable force to remove any person or object obstructing the authorized person in the exercise of any power conferred upon him/her by this Act;

(d) detain any person found in any place which the authorized person is empowered to enter and search if, after inquiry made, said authorized person has reasonable ground to believe that the person subject of the search is connected with the subject matter of the search, and it is considered necessary to detain the person subject of the search to be able to adequately perform the search; and

(e) require the operator of an exhibition facility or any other person who appears to be at the time responsible for the control or management of the exhibition facility, to give information or render assistance that may be necessary to enable the authorized person to carry out the functions under this Act.

SEC. 11. *Forfeiture and Disposal of Unauthorized Copy of Cinematographic Film or Other Audiovisual Work/Audiovisual Recording Devices Used in the Commission of the Acts Penalized under this Act.* – The court before which a person charged with an offense in violation/contravention of this Act, whether or not said person charged is convicted of the offense, may order that any copy of a cinematographic film or other audiovisual work in which copyright subsists, or parts thereof which appears to the court to be an unauthorized copy, and any audiovisual recording device or other equipment in the possession of the alleged offender or the court, be destroyed or delivered to the owner or the exclusive licensee of the copyright owner concerned, or otherwise dealt with in such a manner as the court deems fit.

In the event that the court retains representative samples of the unauthorized copy of a cinematographic film or other audiovisual work, or audiovisual recording devices or other equipment for evidentiary purposes in the prosecution of the offense for which an accused is charged, the retained

samples shall remain in *custodia legis* until the final resolution of the court proceedings thereon.

SEC. 12. *Enforcement.* – The OMB, in coordination with the PNP, operators of the cinemas, theaters or exhibition facilities, and owners of the cinematographic films or audiovisual works and other soundtracks, shall enforce the provisions of this Act. The OMB may deputize, for a defined period, the heads or personnel of such agencies and instrumentalities of government or private sector representatives or stakeholders of rights over cinematographic films/audiovisual works and their soundtracks, to perform the enforcement functions required under this Act.

SEC. 13. *Separability Clause.* – If any provision of this Act is declared invalid, the other parts or provisions hereof not affected thereby shall remain and continue to be in full force and effect.

SEC. 14. *Repealing Clause.* – All laws, decrees, ordinances or rules and regulations which are inconsistent with or contrary to the provisions of this Act are hereby amended or repealed.

SEC. 15. *Effectivity.* – This Act shall take effect fifteen (15) days after its complete publication in at least two (2) newspapers of national circulation.

Approved,

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