

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

OCT -5 P 3:30

SENATE
S.B. No. 1813

RECEIVED BY:

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Philippines is becoming Asia's dumping ground of optical disk pirates, warned Richard O'Neill, an official of the association of America's top seven movie studios, adding the proliferation of counterfeit products would lead to the loss of local jobs.

The local film industry is collapsing due to piracy. In fact, the Philippines ranks No. 5 among 15 countries in the Asia-Pacific region considered markets of optical disk pirates. The top four are Vietnam, Pakistan, China, and Indonesia.

Movie production in the Philippines is down by 80 percent as annual production slid to 80 films a year from 200 previously. This slowdown has led to P1.7 billion in foregone tax revenues, and has affected close to 110,000 jobs.

The film distribution industry stands to lose over a billion pesos in investments, while government risks losing P400 million in tax revenues should the industry collapse. Close to a million Filipino jobs were affected by the proliferation of pirated videos, while nearly 50 centavos out of every peso of potential earnings of the whole local film industry was lost to pirates.

To strengthen the government's drive against piracy, prevention should start at movie houses where unauthorized recording of motion pictures is done. This Act seeks to discourage film piracy by imposing criminal penalties for unauthorized recording of motion pictures in a motion picture exhibition facility.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

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AN ACT
TO PROVIDE CRIMINAL PENALTIES FOR UNAUTHORIZED RECORDING OF MOTION
PICTURES IN A MOTION PICTURE EXHIBITION FACILITY, TO PROVIDE CRIMINAL
AND CIVIL PENALTIES FOR UNAUTHORIZED DISTRIBUTION OF COMMERCIAL
PRERELEASE COPYRIGHTED WORKS, 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 may be cited as the "Artists' Rights and Theft Prevention Act of 2004" or the "ART Act of 2004."

SECTION 2. *Statement of Policy.* - Intellectual property, among other things, represents the ideas, imagination and creativity needed to innovate long before a product is brought to market. As such, it is fundamental to the continued economic, social, and cultural development of society and deserves the protection of our laws. The use of camcorders and other audiovisual recording devices in movie theaters to make illegal copies of films is posing a serious threat to the motion picture industry. National legislation is necessary and warranted to combat the most egregious forms of online theft of intellectual property and its significant, negative economic impact on the Philippine economy.

SECTION. 3. *Criminal penalties for unauthorized re-cording of motion pictures in a motion picture exhibition facility.* -

(1) OFFENSE - Whoever, without the consent of the copyright owner, knowingly uses or attempts to use an audiovisual recording device in a motion picture exhibition facility to transmit or make a copy of a motion picture or other audiovisual work or any part thereof, in a motion picture exhibition facility shall--

(1) be imprisoned for not more than ten years, fined under this Title, or both; or

(2) if the offense is a second or subsequent offense, be imprisoned for no more than twenty years, fined under this title, or both.

(2) FORFEITURE AND DESTRUCTION - When a person is convicted of a violation of subsection (1), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.

(3) AUTHORIZED ACTIVITIES- This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the Philippine government, or its political subdivision, or a person acting pursuant to a contract with the Philippine government or any of its political subdivisions.

SECTION 4. *Definitions.* - As used in this Act, the following terms shall mean:

(1) AUDIOVISUAL WORK, COPY, AND MOTION PICTURE- audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(2) AUDIOVISUAL RECORDING DEVICE- a digital or analog photographic or video camera, or any other technology capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

(3) MOTION PICTURE EXHIBITION FACILITY- means any theater, screening room, lobby, indoor or out-door screening venue, ballroom, or other premises where copyrighted motion pictures or other audio-visual works are publicly exhibited, regardless of whether or not an admission fee is charged.

SECTION. 5. *Civil remedies for infringement of a commercial prerelease copyrighted work. Damage for prerelease infringement-*

(1) IN GENERAL- In the case of a computer program, a non-dramatic musical work, a motion picture or other audiovisual work, or a sound recording, that is being prepared for

commercial distribution, actual damages shall be presumed conclusively to be no less than Two Hundred Thousand Pesos (P200,000.00) per infringement, if a person -

(a) distributes such work by making it available on a computer network accessible to members of the public who are able to reproduce the work through such access without the express consent of the copyright owner; and

(b) knew or should have known that the work was intended for commercial distribution.

(2) WORK PREPARED FOR DISTRIBUTION- For purposes of subparagraph (1), a work protected under this Title is being prepared for commercial distribution -

(a) when at the time of unauthorized distribution, the copyright owner had a reasonable expectation of substantial commercial distribution and the work had not yet been so distributed; or

(b) in the case of a motion picture, protected under this title, when at the time of unauthorized distribution, the work had been made available for viewing in motion picture exhibition facilities, but had not been made available to the general public in a format intended to permit viewing outside motion picture exhibition facilities.

SECTION. 6. *Implementing Agency* .- The Optical Media Board shall implement the provisions of this Act.

SECTION 7. *Separability Clause*. - If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 8. *Repealing Clause*. - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with, the provision of this Act is hereby repealed, modified or amended accordingly.

SECTION 9. *Effectivity Clause*. - This Act shall take effect fifteen days (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,

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