

THIRTEENTH CONGRESS OF THE  
REPUBLIC OF THE PHILIPPINES }  
*First Regular Session*

5 MAY -3 P2:59

SENATE  
1991

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S. No. \_\_\_\_\_

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INTRODUCED BY HON. MANUEL B. VILLAR, JR.

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**EXPLANATORY NOTE**


The protection given by the Intellectual Property Code of the Philippines to technology transfer arrangements refer only to contracts or agreements involving the transfer of systematic knowledge for the manufacture of a product and excludes operation or distribution of a product or technology. The inclusion of the phrase "*operation or distribution of a product or technology*" in the definition of "*technology transfer agreements*" is intended to place within the ambit of technology transfer agreements contracts that are not only for the manufacture of a product but also those for the operation or distribution of a product or technology where transfer of know-how (or systematic knowledge) is likewise involved.

The purpose of the proposed amendment is to protect local enterprises from restrictions imposed by foreign owner of technologies or manufacturer of products. It is a fact that local enterprises are usually at the receiving end in technology transfer agreements and this situation is not likely to change in the near future. There is thus a need to protect local enterprises including distributors falling within the scope of the definition of technology transfer agreements. Protection is achieved, among others, by subjecting such agreements to the Prohibited Clauses under Section 87 of the Intellectual Property Code as these causes are deemed *prima facie* to have an adverse effect on competition and trade.

It is intended that the proposed amendments will benefit end-users of the product or technology the most. By prohibiting owners of the product or technology from restricting the source of raw materials and consumables, among others, local operators and distributors are more likely to be able to bring down the prices of the finished products thereby benefiting the end-users.

The additional prohibited clause proscribing exemption of licensor, manufacturer or owner of technology from granting terms at least equal to those granted to other licensees or distributors is intended to protect licensees under a non-exclusive licensing agreement from discriminatory practices by the licensor or owners of products and technologies.

In light of the foregoing considerations, approval of this measure is earnestly recommended.

  
MANUEL B. VILLAR, JR.

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**AN ACT EXPANDING THE SCOPE OF PROTECTION FOR  
TECHNOLOGY TRANSFER AGREEMENTS TO INCLUDE OPERATING  
AND DISTRIBUTION AGREEMENTS AMENDING FOR THAT PURPOSE  
SECTIONS 4, 85 AND 87 OF REPUBLIC ACT NO. 8293 OTHERWISE  
KNOWN AS THE INTELLECTUAL PROPERTY CODE OF THE  
PHILIPPINES, AND FOR OTHER PURPOSES**

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

SECTION 1. Section 4 under Part I, and Sections 85 and 87 under  
Chapter IX, Part II of R.A. No. 8293 are hereby amended to read as  
follows:

*Section 4. Definitions.* - 4.1 The term "intellectual property"  
consists of:

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4.2 The term "technology transfer arrangements" refers to  
contracts or agreements involving the transfer of systematic  
knowledge for the manufacture, **operation or distribution** of a  
product **or technology**, the application of a process, or rendering  
of a service including management contracts; and the transfer,  
assignment or licensing of all forms of intellectual property rights,  
including licensing of computer software except computer software  
developed for mass market.

Chapter IX

Voluntary Licensing

*Section 85. Voluntary License Contract* - To encourage the  
transfer, dissemination **and licensing of intellectual property  
rights** and technology, prevent or control practices and conditions  
that may in particular cases constitute an abuse of intellectual  
property rights having an adverse effect on competition and trade,  
**all intellectual property licensing arrangements** shall comply  
with the provisions of this Chapter.

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Section 87. Prohibited Clauses – Except in cases under Section 91, the following provisions shall be deemed *prima facie* to have an adverse effect on competition and trade.

87.1 Those which impose upon a licensee **or distributor** the obligation to acquire from a specific source capital goods, intermediate products, raw materials, **consumables**, and other technologies, or of permanently employing personnel indicated by the licensor.

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87.15 In case of non-exclusive technology transfer agreements, those which exempt the licensor, **manufacturer or owner of the technology** from the obligation to grant to the licensee or **distributor terms at least equal to those granted by the licensor, manufacturer or owner of technology to other licensees or distributors.**

SECTION 2. Implementing Rules and Regulations. – The Intellectual Property Office may issue Regulations prescribing details for the implementation of this law.

SECTION 3. Repealing Clause. – All acts and parts of acts inconsistent herewith are hereby repealed or amended accordingly.

SECTION 4. Separability Clause. - If any provision of this Act or the application of such provision to any circumstance is held invalid, the remainder of this Act shall not be affected thereby.

SECTION 5. Effectivity. – This Act shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

*Approved,*