OFFICE OF THE SECRETARY

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# SENATE

## S. No. 962

RECEIVED BY:

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### Introduced by Senator Manuel "Lito" M. Lapid

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# EXPLANATORY NOTE

The Philippines needless to say has enough laws to protect intellectual property owners. The new Intellectual Property Code of the Philippines signed into law in 1999 expressly covered entirely everything to prevent the proliferation of infringement of copyright, trademark and patent. Since then, vigorous actions by the joint operatives of the government had been executed to go after violators. In fact, during the previous Congress RA 9239 otherwise known as the "Optical Media Act of 2003" has been enacted to eradicate manufacturers of pirated optical disk.

In spite of all these, hundred thousands of bootleg optical disks most specially business software continues to penetrate and escalate practically in every retail shops of leading malls including street stalls of the metropolis. Admittedly, we are losing this battle against the pirates. They were able to turn their illegal activities evolved into a multi-million industry.

The very slow disposition of cases against violators is another hindrance to a successful campaign to piracy. The Business Software Alliance (BSA) is in fact calling for the Philippine government to follow-up on pending copyright infringement cases on software piracy. There are over 20 cases filed by BSA against software violators in the Philippines involving illegal copying, sale and distribution of unlicensed software from both local and foreign companies pending for years.

We cannot afford to allow operations of copyright thieves to further proliferate and escalate into an unmanageable point. Because of the present state of piracy situation in the Philippines, our country has been placed alongside with 19 other nations in the priority watchlist of the International Intellectual Property Alliance (IIPA) known as the "Special 301 Report" since 2001. This is not at all good for our economy; the county's export industry might lose its grounds from the US Generalized System of Preferences (GSP) Program, a program which allows the country's certain export products to be duty-free in the United States. An adequate and effective protection for Intellectual Property Rights of US products is a major consideration in the inclusion of our country in the GSP. Since we are among the leading export market of US entertainment and software products, piracy activity in our country has been crippling these industries. A study by International Data Corporation revealed that the industry losses approximately 3.9 billion pesos from local pirates, which is a clear indication of a weak enforcement of the law.

In order to address this concern, this proposed legislation will put in place an enforcement unit under the DTI, whose functions will deal exclusively on regulating and protecting copyright of business software works. This bill is actually intended to

supplement RA 9239 or the "Optical Media Act of 2003", which exclusive concern is to regulate activities pertaining to IP works stored in Optical Media. Business Software Alliance does not only go after optical media containing unlicensed works, but likewise those already installed and being used in business establishments. Hence, it is strongly believed by this representation that it would be for the best interest of business software copyright owners to treat their concerns separately as an effective tactical approach. Under this proposed measure, the function of the Optical Media Board (OMB) particularly pertaining to business software piracy, shall not be absorbed by the enforcement unit, but rather to help free the already over-loaded work entrusted to them.

This bill at hand will likewise supplement and strengthen the enforcement of protection conferred by RA 8293 or the Intellectual Property Code of the Philippines to copyright holders of business software. The enforcement unit will go after thieves and unauthorized users of business software copyright protected works subject to the provisions of the bill. This same body will also be tasked to regulate business operations concerning business software copyright protected works, by way of licensing business entities intending to distribute, sell, import, export, or reproduce these products commercially. More importantly, in order to provide solution to the backlog of cases pending in the courts relating to copyright infringement of business software, an Intellectual Property courts shall be established in every RTC.

Let us show to the world that our government is keen in totally eradicating software piracy in the Philippines in order to preserve the country's reputation from being branded as piracy haven of Asia.

The immediate approval of this bill is earnestly sought.

**MANUEL "LITO" M. LAPID**
*Senator*

# SENATE

'S. No. 962

Introduced by Senator Manuel "Lito" M. Lapid

## AN ACT
**STRENGTHENING THE ENFORCEMENT OF THE COPYRIGHT PROTECTION OF INTELLECTUAL PROPERTY RIGHT OWNERS OF COMPUTER PROGRAMS CREATING FOR THIS PURPOSE THE BUSINESS SOFTWARE COPYRIGHT PIRACY ENFORCEMENT UNIT, DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS 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 the *"Anti-Business Software Copyright Protection Act of 2010."*

SEC. 2.     *Definition of Terms.* - For the purpose of this Act, the following shall mean:

1.     **Protected works of business software copyright owners** – shall refer to protected works of business software copyright holders as provided for in Section 172.1 sub-paragraph (n) Computer programs of RA 8293 or the Intellectual Property Code of the Philippines.

2.     **Violation of the copyright** – shall refer to violation of rights bestowed to copyright owners under The Law on Copyright, part IV of RA 8293 otherwise known as Intellectual Property Code of the Philippines.

3.     **Commercial Reproduction** – shall refer to the act of transferring, copying, duplicating or dubbing in a commercial scale protected works of business software copyright owners.

1

4. **Department** – shall refer to the Department of Trade and Industry.

5. **License** – shall refer to the permit issued by the BUSPU to all business entities intending to retail, distribute, import, export and reproduce commercially protected works of business software copyright owners.

**SEC. 3.** *Declaration of Policy.* - It is the policy of the State to promote and protect business software in the Philippines by providing a conducive trade environment to spur the industry's growth and development in the country by intensifying enforcement against its illegal use, marketing and replications.

**SEC. 4.** *Coverage.* – Copyrightable works of business software copyright owners as defined in this act whose afforded protection is prescribed under Sec. 221 (e) and Sec. 221.2 of the Intellectual Property Code of the Philippines shall be covered by this Act.

**SEC. 5.** *Creation of Business Software Copyright Piracy Enforcement Unit.* - To carry out the above policy, there is hereby created a body to be known as the Business Software Copyright Piracy Enforcement Unit, herein referred to as BUSPU. The BUSPU shall be placed under the Department of Trade and Industry.

The BUSPU shall be headed by a Unit Director who shall be appointed by the Secretary of the Department for a term of three (3) years, unless sooner removed by the Secretary, who shall have the rank on Director III.

**SEC. 6.** *Regional Offices of BUSPU.* - The BUSPU shall establish offices in different regions in the country as may be determined by the Director, based on his assessment where there is a rampant operation of copyright violators.

The BUSPU Regional Offices shall be headed by a Regional Director who shall serve for a term of three (3) years and shall hold its office within the Department's Regional Offices building.

SEC. 7.    *Powers and Functions.* – The BUSPU shall have the following powers and Functions:

(1)    To regulate, grant, supervise or cancel the issuance of license for the retail, distribution, import, export and commercial reproduction of protected works of business software copyright owners to include floppy disk, optical media disk, memory chips or any other data storage which may be devised in the future;

(2)    To inspect and examine all protected works of business software copyright owners, including floppy disk, hard disk drive, flash drive, optical media disk, memory chips or any other similar variations which may be devised in the future, with the end in view of confiscating the same in case of violation of the copyright of protected business software works subject to the provision of this act;

(3)    To cause for the closure of retails, distributors and users of protected works of business software copyright owners in case it is not licensed with the BUSPU or it has violated the conferred copyrights of the latter;

(4)    To cause for the prosecution of violators of the Intellectual Property Code of the Philippines subject to provisions covered by this Act.

(5)    To levy, assess and collect fees and charges for the issuance of licenses and other appropriate requirements to business entities, which the BUSPU   is authorized to grant for the proper implementation of its duties.

(6)    To devise and implement programs to make effective the prevention of sale, distribution and use of unlicensed business softwares.

(7)    To exercise such other powers and functions as may be necessary or incidental to the attainment of the purposes of this Act.

SEC. 8.    *Licensing.* – No person, whether natural or juridical, may engage in the importation, exportation, commercial reproduction, retail, and distribution of protected works of business software copyright owners, without first acquiring a license from the BUSPU to operate as such. The registration with and permit issued by the

BUSPU is a condition precedent for securing a business permit or license from the appropriate authorities.

**SEC. 9.** *Assistance from other Government Agencies.* – The BUSPU can call upon and deputize members of the different law enforcement agencies and other appropriate government offices to assure the effective compliance of this act.

**SEC. 10.** *Prosecution of Violators.* – The BUSPU shall strictly pursue criminal action against those apprehended under this Act for the execution of penalties and application of remedies as provided in the provisions of infringement, Chapter XVII of the Intellectual Property Code of the Philippines.

**SEC. 11.** *Establishment of Intellectual Property Courts.* – In order to ensure a speedy disposition of copyright infringement cases on software piracy, there shall be established at least one (1) Intellectual Property (IPR) court branch in every Regional Trial Court in the country which shall have the exclusive original jurisdiction over intellectual property cases. The presiding judge to be appointed in the IPR courts must undergo training to be conducted by the Intellectual Property Office of the Philippines (IPOPHIL) and must have extensive experience in handling Intellectual Property related cases.

**SEC. 12.** *Funding.* - In order to provide the necessary funds required for the annual operational expenditures of the BUSPU and the creation of the Intellectual Property Courts, the amount necessary to carryout their functions shall be included in the annual General Appropriations Act of the year following its enactment into law and thereafter.

**SEC. 13.** *Repealing Clause.* – The provision of any law, Issuance, Executive Order, Letter of Instruction, Rules or Regulations which are inconsistent with the provision of this act are hereby repealed, amended or modified accordingly.

**SEC. 14.** *Separability Clause.* - If for any reason, any provision of this Act is declared invalid or unconstitutional, the remainder of this Act shall not be affected.

**SEC. 15.** *Effectivity Clause.* - This Act shall take effect immediately upon publication in a newspaper of general circulation.

*Approved,*