

SENATE
S. B. No. 497

PL 15 A11 :01

Introduced by SENATOR VICENTE C. SOTTO III

AN ACT
ENABLING THE INTELLECTUAL PROPERTY OFFICE THROUGH THE
NATIONAL TELECOMMUNICATIONS COMMISSION TO CANCEL
LICENSES OF INTERNET SERVICE PROVIDERS THAT ALLOW
WEBSITES TO INFRINGE OR TO FACILITATE INFRINGEMENT OF
COPYRIGHT

EXPLANATORY NOTE

Technology constantly evolves, and it evolves rapidly. Powerful innovations of the Internet age such as uploading and downloading, linking, torrenting, and streaming create opportunities. However, these innovations pose enormous challenges and concerns, particularly on the protection of intellectual property online.

The Philippines is, unfortunately, one of the countries described by Internet pirates as “safe” for uploading, downloading, linking, torrenting, and stream infringing content without fear of prosecution. The Philippines continues to be a haven for cyber criminals who illegally make content available on the Internet.

Years ago, the Intellectual Property Office (IPO) was able to disrupt the notorious pirate torrent site, KickAssTorrents (kat.ph), by seizing the .ph domain – the country’s code domain. However, these prolific pirates simply changed their domain to that of another country – to .to for Tonga or .so for Somalia, just to cite an example. Since the Philippine IPO had no jurisdiction over these countries’ domain registrars, it could not further disrupt KickAssTorrents. Hundreds if not thousands of sites have sprouted all over the web, including download sites, linking sites, streaming sites, and cyberlockers that broadcast or allow unauthorized access to copyrighted materials, often with a single click of a button. To date in the Philippines, motion pictures and television programs, music, books, and other copyrighted materials have been relentlessly shared, copied, distributed, or

streamed over servers without much hope for protection for the copyright owner. This situation can be remedied by the passage of a law that will empower the IPO and enable local Internet Service Providers (ISPs) to take reasonable steps to disable access to sites whenever these sites are reported to be infringing copyright or facilitating copyright infringement.

Republic Act No. 8293, otherwise known as the “Intellectual Property Code of the Philippines”, declares as its policy that “The State recognizes 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.” This intellectual property system must constantly improve and evolve so as to meet the rapidly changing landscape of internet. It is the obligation of the State to protect the works of Filipino artists – may it be actors, singers, painters and application developers. Such can be done through an enactment of legislation which will enable Filipino artists to stop online piracy.

Thus, the passage of this bill is earnestly sought.

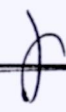

VICENTE C. SOTTO III

Office of the Secretary

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

1 **SECTION 1. Title.** – This Act shall be known as the “Philippine Online
2 Infringement Act.”

3 **SECTION 2. Declaration of Policy.** – The State recognizes the protection of
4 intellectual property as an integral aspect of national development and
5 growth. Being a signatory to global intellectual property laws and
6 agreements, the State shall respect and abide by the policies of these
7 international agreements and shall strive to provide adequate protection and
8 effective enforcement of intellectual property rights.

9 It is the policy of the State to recognize the vital role of communication
10 and information in nation building. As such, government agencies dedicated
11 to the promotion and administration of communication and information
12 should be empowered to regulate private companies that operate business
13 which operate in the internet space, some of whom may be violating or
14 facilitating violations of intellectual property rights.

ARTICLE I
DEFINITION OF TERMS

- 15 (a) **Commission** – the National Telecommunications Commission
16 (b) **Copyright** – shall be defined consistent with that term in Republic Act
17 No. 8293, as amended
18 (c) **Online location** – any collection of related web pages accessible by a
19 user through a domain internet protocol (IP) address or uniform
20 resource locator (URL)

- 1 (d) **Infringing online location** – any online location the primary purpose
2 of which is to infringe copyright or facilitate copyright infringement
3 (e) **Internet service provider (ISP)** – any person or legal entity operating
4 in the Philippines that provides customers with access to an online
5 location, including through information location tools

ARTICLE II
APPLICATION FOR DISABLING ACCESS TO INFRINGING ONLINE
LOCATIONS

6 **SECTION 4. *Application to the Office.*** – A copyright owner, or an
7 exclusive licensee thereof, may file an application to the Intellectual Property
8 Office (IPO) to require internet service providers (ISPs) to take reasonable
9 steps to disable access to an infringing online location.

- 10 a) To accommodate requests of both local and international applicants,
11 the application may be made by completing a form available at the
12 IPO website;
- 13 b) The application shall indicate:
- 14 i. The domains, internet protocol (IP) addresses, and/or
15 URLs by which each infringing online location is
16 accessible;
 - 17 ii. The copyrighted material of the applicant which is being
18 infringed;
 - 19 iii. Other matters which the IPO may take into account,
20 including:
 - 21 1. The flagrancy of such infringement;
 - 22 2. Whether the online location makes available or
23 contains directories, indexes or categories of the
24 means to infringe, or facilitate an infringement of
25 copyright;
 - 26 3. Whether the owner or operator of the online
27 location demonstrates a disregard for copyright
28 generally;
 - 29 4. Whether access to the online location has been
30 disabled by orders from any court of another
31 country or territory on the ground of or related to
32 copyright infringement;
 - 33 5. The proportionate effects and impact that blocking
34 may have on local users, whether individually or
35 collectively; and/or
 - 36 6. Any other relevant matter
- 37 c) One application may be submitted for multiple infringing online
38 locations; however, the requirements of this Section must be met and
39 set out in the application

40 **SECTION 5. *Review by the IPO.*** – Upon receipt of the application form, the
41 IPO shall review the same and determine whether the online location meets
42 the requirements of the preceding section.

- 1 a) The IPO shall, within fifteen (15) days from the filing of the
2 application, prepare a report of its findings and provide the applicant
3 and internet service providers with the same.
4 b) A Review Committee shall be formed to review all applications received
5 and the IPO report.
6 c) The Committee, in reviewing the application and the IPO report, may
7 give due consideration to all the matters set out in Section 4(b).

8 **SECTION 6. Action by the IPO.** – If the Committee agrees with the IPO
9 report and its findings that the online location meets the requirements of
10 Section 4 of this Act, the Committee shall, within ten (10) days from the
11 promulgation of the IPO report, send a Notice of Approval back to the IPO.

- 12 a) The IPO shall then, within five (5) days, render an Order requiring the
13 ISP to take reasonable steps to disable access to the infringing online
14 location. A copy of the said Order shall likewise be given to the
15 applicant.
16 b) Otherwise, the IPO shall, within five (5) days, send a Notice to the
17 applicant that its application is denied, setting forth the grounds for
18 denial.
19 c) Whether the application is granted or denied, the IPO shall submit its
20 Report accompanied by the Order, if any, to the National
21 Telecommunications Commission.

22 **SECTION 7. Watch List.** – Even if the online location does not meet the
23 requirements of Section 4 of this Act, the IPO shall keep a watch list of all
24 online locations for which there has been an application under this Act.

25 The IPO shall keep a list of all infringing online locations for which
26 Orders have been rendered under this Act. The IPO may at any time during
27 the operation of the Orders notify the ISPs should it become known that the
28 infringing online location be accessible from a different domain name, IP
29 address, or URL, and make such different domain name, IP address, or URL
30 subject to the Orders.

ARTICLE III RESPONSIBILITIES OF THE INTERNET SERVICE PROVIDERS

31 **SECTION 8. Response to the Order of the Office.** – Upon receipt of the
32 Order enjoining them to block a website, Internet Service Providers (ISPs)
33 may, if they object to any part of the Order, submit a response to the Office
34 setting out the grounds for such objection within five (5) calendar days. In
35 this case, the Office may alter the Order within ten (10) calendar days as it
36 deems fit, or, if no alteration is required, then the response is deemed
37 rejected and the Order shall remain in force.

38 **SECTION 9. Complying with the Order.** – Subject to Section 8 of this Act,
39 the ISPs must comply with the Order within ten (10) days following the
40 issuance of an Order, or an alteration of an Order, as the case may be.

- 1 a) Should the ISP be unable to comply with the Order within ten (10)
2 days from its issuance, it must submit a written explanation and an
3 action plan to the IPO.
4 b) Failure to comply with the Order within ten (10) days of its issuance
5 and without a written explanation and action plan shall subject the
6 ISP to liability for penalties under Article IV of this Act.

7 **SECTION 10. *Actions to be Taken.*** – Reasonable steps to disable access to
8 an infringing online location shall include Domain Names (DNs) blocking in
9 respect of all DN's from which the infringing online location operates; IP
10 address blocking or re-routing in respect of static IP addresses for infringing
11 online locations; URL blocking in respect of all URLs of the Target Online
12 Locations and their DN's; or any alternative technical means for disabling
13 access to the infringing online location as agreed in writing between the
14 applicants and an ISP.

- 15 a) The ISP must redirect any communication by a user of its service
16 seeking access to an infringing online location disabled pursuant to
17 an Order to a webpage informing users who have been redirected to
18 the webpage that access to that infringing online location has been
19 disabled by Order of the IPO because the infringing online location
20 infringes or facilitates the infringement of copyright.
21 b) The ISP subject to the Order shall submit a quarterly report to the IPO
22 and to the Commission informing them of the status of compliance
23 with the Order, and any relevant information regarding the availability
24 of the infringing online location in the Philippines via the ISP.

ARTICLE IV CANCELLATION OF LICENSE

25 **SECTION 11. *Recommendation to the Commission.*** – The IPO shall make
26 recommendations to the Commission to cancel the license of an ISP that
27 commits the following acts:

- 28 a) Refusal to comply with an Order from the IPO to take reasonable steps
29 to disable access to an infringing online location;
30 b) Failure to comply with an Order within ten (10) days from its issuance
31 and without the requisite written explanation and action plan; or
32 c) Any gross violation of Article III of this Act.

33 **SECTION 12. *Notice and Conference.*** – Within five (5) days upon receipt of
34 the recommendation from the IPO, the Commission shall schedule a hearing
35 to investigate the alleged violations of the ISP described in the preceding
36 section.

37 The Commission shall serve a notice to the ISP and schedule a
38 conference for the same to determine whether the cancellation of the license
39 of the ISP shall be proper.

1 The conference shall be scheduled no more than fifteen (15) days from
2 the date the Commission receives the recommendation from the IPO. The
3 conference shall be concluded within a single day and a final judgment must
4 be rendered therein.

5 **SECTION 13. *Cancellation of License.*** – If the recommendation of the IPO
6 to cancel the license of the ISP is proper and meritorious, the Commission
7 shall facilitate the prompt cancellation of the license of the ISP.

**ARTICLE V
MISCELLANEOUS**

8 **SECTION 14. *Implementing Rules and Regulations.*** – Within ninety (90)
9 days from the effectivity of this Act, the IPO, in consultation with the
10 appropriate agencies and departments, shall promulgate the necessary rules
11 and regulations for the implementation of this Act.

12 **SECTION 15. *Appropriations.*** – The amount necessary for the
13 implementation of this Act shall be included in the General Appropriations
14 Act.

15 **SECTION 16. *Separability Clause.*** – If any provision of this Act is declared
16 unconstitutional or otherwise invalid, the validity of the other provisions
17 shall not be affected thereby.

18 **SECTION 17. *Repealing Clause.*** – All laws, decrees, orders, rules and
19 regulations or parts thereof inconsistent with this Act are hereby repealed or
20 modified accordingly.

21 **SECTION 18. *Effectivity.*** – This Act shall take effect after fifteen (15) days
22 from its publication in the Official Gazette or in a newspaper of general
23 circulation.

Approved,