

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

8 JAN 29 2012

SENATE
S. No. 2023

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 motion picture exhibition facility.


MIRIAM DEFENSOR SANTIAGO

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1 AN ACT
2 TO PROVIDE CRIMINAL PENALTIES FOR UNAUTHORIZED
3 PICTURES IN A MOTION PICTURE EXHIBITION FACILITY,
4 AND CIVIL PENALTIES FOR UNAUTHORIZED
5 PRERELEASE COPYRIGHTED WORKS, AND FOR OTHER PURPOSES

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

8 SECTION 1. *Short Title.* – This Act may be cited as the “Artists’ Rights and
9 Theft Prevention Act of 2008” or the “ART Act of 2008.”

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

19 SECTION. 3. *Criminal Penalties for Unauthorized Recording of Motion Pictures*
20 *in Action Picture Exhibition Facility.* –

21 (A) OFFENSE – Whoever, without the consent of the copyright owner,
22 knowingly uses or attempts to use an audiovisual recording device in a motion picture
23 exhibition facility to transmit or make a copy of a motion picture or other audiovisual
24 thereof, in a motion picture exhibition facility shall-

1 (1) be imprisoned for not more than ten years, fined under this Act

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

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

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

14 SECTION 4. *Definition of Terms.* – As used in this Act, the following terms shall
15 mean:

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

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

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

1 SECTION 5. *Civil Remedies for Infringement of a Commercial Prerelease*
2 *Copyrighted Work; Damage for Prerelease Infringement.* –

3 (A) IN GENERAL— In the case of a computer program, a non-dramatic musical
4 work, a motion picture or other audiovisual work, or a sound recording, that is being
5 prepared for commercial distribution, actual damages shall be presumed conclusively to
6 be no less than Two Hundred Thousand Pesos (P200,000.00) per infringement, if a
7 person –

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

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

13 (B) WORK PREPARED FOR DISTRIBUTION— For purposes of subparagraph
14 (A), a work protected under this Title is being prepared for commercial distribution –

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

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

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

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

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

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

7 Approved,