

The Need for a Culture that Values IP: The Case of a Developing Country

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Gibo Teodoro, former Secretary of National Defense and the incumbent administration's bet for this year's presidential elections in the Philippines, was recently forced to pull out some of his campaign's TV and radio advertisements from broadcast. These commercials used a popular Filipino rock song that was allegedly utilized without permission.¹ The composer was outraged by the fact that he was never informed that his song would be used by Teodoro and demanded that his song be taken out of the commercials. This simple act that constituted a gross violation of intellectual property rights (IPRS) by a very prominent individual, who undoubtedly had unlimited resources at his disposal, is a manifestation of how most Filipinos have yet to imbibe a consciousness that upholds the rights of composers, writers, inventors and creators. Although the country's legislators have done their job in putting in place laws that would promote intellectual property rights, the state's appropriate agencies need to take a firmer stance in enforcing the laws and in raising awareness concerning IPRS.

Intellectual property rights remain to be an important element in the growth of modern societies. IPRS provide inventors and manufacturers the security that they need in order for them to continue to come up with new ideas that would benefit consumers the world over. This idea is founded on the main idea of property as Reeve had explained it:

Owner *A* owns *P* if: 1) *A* has the right to use *P*;
 2) *A* may exclude others from using *P*;
 3) *A* may transfer rights defined by rules 1 and 2 to others by consent.²

¹ Aris R. Ilagan, "Teodoro pulling out TV ad using 'Posible'," *Manila Bulletin*, 18 January 2010, accessed from <http://www.mb.com.ph/node/239075/teodoro-pulling-out-tv-ad-u> on 10 February 2010.

² A. Reeve, *Property* (Atlantic Highlands: Humanities, 1986), 11.

Without the assurance that any subsequent creation or invention will be recognized and protected as one's own property, few individuals will be inclined to produce new ideas or products that may eventually benefit a good number of people. Without the protection of the law, original and new ideas churned out by brilliant people from developing countries are open to exploitation by anyone. IPRS, therefore, need to be upheld and protected for the sake of the common good. Failure to do so would spell dire consequences especially for most developing countries.

IPRS and the Developing Countries

Based on Reeve's definition of property, IPRS may prove to be useful for developing countries as it provides them with the legal authority to exercise their exclusive right over their creations from which they may earn considerably. This is because all who would like to take advantage of their creations would now be compelled to recompense what is legally due. A fellow developing country in the African continent has proven that such a feat is possible. Tadesse Meskela, General Manager of *Oromia Coffee Farmers Co-operative Union (OCFCU)* in Ethiopia, reports of how their cooperative have managed to gain substantial profits since the establishment of fair trade trademarks and the registration of Ethiopian coffee trademarks *Harrar, Sidamo* and *Yirgacheffe*. Because of IPRS, OCFCU sales of Ethiopian coffee managed to jump from US\$180 thousand in 2001 to over US\$20 million in 2008.³ Profits from the coffee industry have been used to fund projects that would promote decent living such as the construction of health clinics, schools and provision of other social services. On the other hand, to turn the other way and to neglect the professed benefits of IPRS may be detrimental to the fate of developing countries.

³ World Intellectual Property Organization, "Enhancing use of IP for Development," *WIPO Magazine*, November 2009, accessed from http://www.wipo.int/wipo_magazine/en/2009/06/article_0011.html on 10 February 2010.

Appreciation for IPRS...or the lack thereof

Such a misfortune has fallen upon the Filipinos when it had failed to secure patents for an indigenous coconut by-product called *nata de coco* for which the Japanese have already secured one for themselves. This food item that is immensely popular overseas could have brought in considerable profits for the Philippines if only it was still in possession of the legal right to take full advantage of this product for manufacture and export.

From this experience, many Filipinos should have learned the significance of IP for their own development. If only we had valued our creations and inventions more, enough to secure patents for them, we could have benefitted greatly from this simple yet profitable Filipino discovery. It is evident that Filipinos are still lagging behind in this area. Statistics have shown that very few Filipinos have shown interest in securing patents for their creations. An article estimates that of the patents filed and granted in the country's intellectual property office (IPO), 97% have been submitted by foreigners and only 3% are by Filipinos.⁴ The low number of patent applications is not really surprising because the culture of appreciating IPRS seems absent in most institutions of higher education where individuals ought to learn the rudiments of their respective industries. From 1948 to 2006, only 21 patents were granted to universities and R&D institutions; and from the period between 1995 and 2005, the Philippines' IPO received only 43 patent applications from universities and RDIs.⁵

Resultant Attitudes, Consequent Violations

The manifest disinterest of most Filipinos with regard to patents and their inability to see the value of IPRS in general may have penetrated not only the attitudes of regular Filipino consumers, but

⁴ P.A. Castro, "Brain Gain," *Enterprise Philippines*, 14 October 2008, accessed from http://www.mediag8way.com/?_s=8&_ss=P&P=3&PN=8564&L=S&II=456&ID=S,456,B3,1-14 on 10 February 2010.

⁵ *Ibid.*

also how the authorities are handling IP violations in the country. The Philippines remain to be one of the media piracy havens in Asia. International Intellectual Property Alliance (IIPA) data shows that in 2002, 80% of the motion picture materials, 40% of the record and music materials, and 61% of the business software applications retailed in Philippine markets were being pirated.⁶ Estimates also show that the period from January 2002 to August 2003, optical disc pirates earned almost PHP42.5 billion or approximately US\$78.7 million.⁷ As such, the local motion picture industry lost US\$30 million while the music industry lost US\$20.9 in profits. These have had reverberating effects on the entire entertainment industry where producers have become reluctant to come up with new films or music albums. The foregone projects could have translated into more jobs for thousands of individuals.

In order to witness the grave condition of piracy in the country, one does not have to dig deep. The *Quiapo* district of the city of Manila is run down by stalls upon stalls that are selling pirated optical discs from movies to computer software applications. The area already covers several blocks involving hundreds, maybe thousands of retailers. Everybody knows about it; many patronize it; it is open every day including holidays, yet the authorities seem to be doing nothing to address it.

The Question of Implementation

It is difficult to say that the government of the Philippines has not done its part to alleviate the problem of IPRS violations. Over the years, pieces of legislation have been enacted to formalize the protection of intellectual property rights. This has not been tantamount, however, to strict implementation.

⁶ Emilio R. Gonzalez III, "Pirates: facing the challenge of optical disc piracy," *Philippine Business Magazine* 8, no. 10 (2003), accessed from <http://www.philippinebusiness.com.ph/archives/magazine/vol10-2003/10-8/policy.htm> on 10 February 2010.

⁷ Using the 2003 average exchange rate of \$1=P54.

Even before the Philippines have conceded to the provisions of the World Trade Organization's *Trade Related Intellectual Property Rights* (TRIPS) Agreement, it already had a comprehensive network of laws that protected patents (since 1947), trademarks (since 1947), and copyrights (since 1972).⁸ The country is also a signatory to several important multilateral treaties, namely: Paris Convention for the Protection of Industrial Property, Berne Convention for the Protection of Literary and Artistic Works, Budapest Treaty on International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, ASEAN Framework Agreement on Intellectual Property Cooperation, and the Convention Establishing the World Intellectual Property Organization.⁹ Part of the obligations to these international agreements is the adoption of relevant legislation to be enacted at the local level.

Despite considerable advances made in the adoption of laws, there seem to be gaps in the way these are enforced. An interesting anecdote relates of how the country's key agency for combating media piracy apprehends illicit activities within its jurisdiction. Edu Manzano, the former chairman of the Optical Media Board (which functions directly under the Office of the President) was said to have undertaken unorthodox measures in trying to prevent the piracy of local films featured in the annual Metro Manila Film Festival. In a festival four years ago, movie producers of the participating films were said to have been compelled to pay the sum of PHP200,000 to movie pirates just so the latter would be kept from selling pirated copies of the producers' films in the black market. Manzano and his men apparently brokered the deal between the two.¹⁰ It is interesting to note that Manzano is Gibo Teodoro's running mate in this year's elections.

⁸ Republic of the Philippines, "Individual Action Plan for APEC" (Draft), 31 October 1996.

⁹ *Ibid.*

¹⁰ Bayani San Diego and Nini Valera, "DVD Pirates paid off by film fest producers," *Philippine Daily Inquirer*, 20 February 2006:1.

Recommendation

The continued neglect of IPRS in developing countries such as the Philippines may prove to be detrimental to their citizens in the long run as it is ultimately the people who are harmed by the absence of IP protection—such as the limitations in profits and the loss of jobs. To solve this, there must be a concerted effort to promote IPRS. In addition to the enactment of laws for its protection, governments need to resolutely enforce the rules and unequivocally punish those who are complicit in the violation of such rules instead of engaging them in dialogues where compromises may be struck. More importantly, governments need to foster an environment where the citizens will develop awareness of IP laws' significance in their lives. Projects that would raise the level of consciousness among the general public on the benefits of securing patents and the ill-effects of patronizing illicit goods should be undertaken. The people should be made to realize that their participation in the protection of IPRS will ultimately reinforce the country's journey to real development, and this could mean better lives for all of them.