



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

PHILIPPINE HOME CABLE G.R. No. 188933
HOLDINGS, INC.,
Petitioner,

Present:

GESMUNDO, *Chief Justice*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

-versus-

FILIPINO SOCIETY OF
COMPOSERS, AUTHORS &
PUBLISHERS, INC.,
Respondent.

Promulgated:

February 21, 2023

X-----[Signature]-----X

DECISION

LEONEN, J.:

When a cable television system operator transmits a musical composition fixed in an audiovisual derivative work over a channel they control and operate, the operator is making that work accessible to members of the public from a place or time individually chosen by them. This is the essence of the “communication to the public” right in the Intellectual Property

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Code.

This resolves a Petition for Review¹ under Rule 45 of the Rules of Court, assailing the February 27, 2009 Decision² and July 21, 2009 Resolution³ of the Court of Appeals, Manila, in CA-G.R. CV No. 81083. The Court of Appeals affirmed, with modification, the October 20, 2003 Decision⁴ of the Regional Trial Court of Quezon City, Branch 90, finding Philippine Home Cable Holdings, Inc. civilly liable for copyright infringement.

Philippine Home Cable Holdings, Inc. (Home Cable) is a domestic corporation engaged primarily in the business of installing, operating, and maintaining a community antennae television system, commonly known as “cable television.” As part of its business as a cable television system operator, it enters into channel distribution agreements with international broadcasters or originators. The international broadcasters or originators’ channels are thus shown to Home Cable’s fee-paying subscribers. Particularly, Home Cable had a channel distribution agreement with Satellite Television Asian Region Limited (Star TV) for VIVA Cinema, a 24-hour Tagalog movie channel,⁵ and a cable TV service affiliation agreement with Cable Box Office Shows and Systems (Cable Box) for “HBO service, WB television series/mini-series/animation, Hollywood Channel service, ESPN service, CNN International & TNT Cartoon Network services, CNBC & NBC services, MTV Asia service and MGM GOLD NETWORK.”⁶

In 1995, Home Cable—then operating as Singing Makulay, Inc.—executed a Memorandum of Agreement with Precision Audio Video Service, Inc. (Precision Audio), a domestic corporation that produced and distributed videoke laser disc recordings.⁷ Based on the agreement, Home Cable purchased 24 volumes of laser discs containing videoke materials from Precision Audio.⁸ The contents of these laser discs would be made available on Home Cable’s channel 38 for approximately five hours per day, excluding time allotted for advertising. Precision Audio was given 60 seconds of airtime for its own advertisements, while Home Cable reserved the right to air other paid advertisements on the channel.⁹ Under the terms of this agreement, Home Cable was responsible for and in control of operating channel 38, including providing the equipment such as laser disc and VHS players.¹⁰ In

¹ *Rollo*, pp. 9–49.

² *Id.* at 51–75. The Decision was penned by Associate Justice Romeo F. Barza, and concurred in by Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok of the Ninth Division, Court of Appeals, Manila.

³ *Id.* at 77–78. The Resolution was penned by Associate Justice Romeo F. Barza, and concurred in by Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok of the Former Ninth Division, Court of Appeals, Manila.

⁴ *Id.* at 301–311. The Decision was penned by Judge Reynaldo B. Daway.

⁵ *Id.* at 79–92.

⁶ *Id.* at 100.

⁷ *Id.* at 112–113.

⁸ *Id.* at 112.

⁹ *Id.* at 113.

¹⁰ *Id.* at 112.

turn, Precision Audio guaranteed that it had full copyright over all the laser discs and that it had already acquired all necessary permits from relevant government agencies for the laser discs.¹¹

A year later, Home Cable again executed a Memorandum of Agreement¹² with Precision Audio, this time for the operation of channels 22, 32, and 52. This agreement also provided for Home Cable's responsibility and control over the three channels, content for which were to be provided by Precision Audio's videoke laser discs.¹³ As such, from 1997 to 1998, Home Cable carried Home Pinoy Karaoke on channel 22, playing Filipino songs, and Home English Karaoke on channel 32, which played English songs.¹⁴

The Filipino Society of Composers, Authors, and Publishers, Inc. (Filscap) is a non-stock and non-profit domestic association of Filipino composers, authors, and publishers.¹⁵ As found by the Regional Trial Court:

. . . . It had acquired by assignment, mandate, grant or by any other means, the representation and performance rights, mechanical reproduction and film synchronization rights into the musical compositions and/or literary works written and/or published by composers, authors and/or publishers affiliated to it as a society and/or to similar affiliated musical societies existing in foreign countries, like the American Society of Composers, Authors and Publishers, Inc. (ASCAP), Broadcast Music, Inc. (BMI), Performing Right Society Limited (PRSL), Australasian Performing Right Association Limited and Gessellschaft für Musikalische of Germany. . . . [Filscap] is representing or has represented practically [all] Filipino composers and has forty-five (45) foreign reciprocal agreements. It is granting or has granted licenses and is collecting or has collected royalties for the mechanical [production] of the above-mentioned compositions and works and is allotting and distributing or has allotted and distributed such royalties to their respective composers, authors and publishers. It has brought legal action for the protection of composers, authors and publishers of musical works against piracies of any kind, among other things[.]¹⁶

In July 1997, Filscap monitored Home Cable and found that its members' and foreign affiliates' musical compositions were being played on channels 22 and 32.¹⁷ It sent letters to Home Cable advising that Home Cable obtain a license from Filscap and pay the license fees for the continued use of its musical compositions on Home Cable's channels,¹⁸ but Home Cable did not respond.¹⁹ Then, on January 12 and 13, 1998, Filscap monitored channels 22 and 32 and again found that Home Cable continued to play its members'

¹¹ *Id.* at 113.

¹² *Id.* at 115-116.

¹³ *Id.* at 115.

¹⁴ *Id.* at 52.

¹⁵ *Id.*

¹⁶ *Id.* at 301.

¹⁷ *Id.* at 52.

¹⁸ *Id.* at 53.

¹⁹ *Id.* at 302.

musical compositions despite not securing a license from Filscap.²⁰

Thus, on February 16, 1998, Filscap filed with the Regional Trial Court a Complaint for injunction and damages²¹ against Home Cable. In its Complaint, it alleged that Home Cable “has been playing or otherwise performing or communicating to the public musical works included in the Filscap repertoire and despite full knowledge and nature of [Filscap’s] existing right and ownership of the public performance right and the communication to the public right of said musical works in the Philippines[.]”²² As a result of Home Cable’s alleged infringement of Filscap’s copyright over the musical works, Filscap demanded at least PHP 1,000,000.00 in actual damages in the form of recovery of unpaid license fees from August 16, 1997 until the filing of the Complaint,²³ as well as exemplary damages and attorney’s fees.²⁴

In its Answer to the Complaint, Home Cable argued that Filscap was not the real party in interest; that its secondary transmission of channels 22 and 32 was not public performance under copyright law; that Filscap’s rights did not include the right of communication of the work to the public; and that Filscap or its principals had already been paid for Home Cable’s use of the copyrighted materials.²⁵

Following a trial, the Regional Trial Court issued its Decision²⁶ finding Home Cable liable for copyright infringement. The dispositive portion of the Decision stated:

WHEREFORE, judgment is rendered ordering the defendant to pay to the plaintiff the following sums of money, to wit: a) PhP1,000,000.00 in the concept of damages that appear to be just, in lieu of actual damages; b) PhP1,000,00.00 [sic] as exemplary damages; c) PhP500,000.00 as reasonable attorney’s fees and expenses of litigation, plus costs of suit.

Moreover, the defendant, its agents, representatives, assignees and persons acting in its behalf and under its authority is or are ordered to cease and desist from using, or causing to be used, any musical work included in the repertoire of the plaintiff.

All other claims, including all counterclaims, are dismissed for lack of legal and/or factual basis.

SO ORDERED.²⁷

²⁰ *Id.*

²¹ *Id.* at 121–124.

²² *Id.* at 123.

²³ *Id.*

²⁴ *Id.* at 124.

²⁵ *Id.* at 302.

²⁶ *Id.* at 301–311.

²⁷ *Id.* at 311.

Upon appeal, the Court of Appeals modified the Regional Trial Court's Decision. While it affirmed the trial court's finding of copyright infringement, it reduced the damages awarded to Filscap. The Court of Appeals found that the award of actual damages did not have any basis; thus, Filscap was entitled only to PHP 500,000.00 in moderate damages.²⁸ It also reduced the exemplary damages to PHP 500,000.00²⁹ and the attorney's fees to PHP 100,000.00.³⁰ The dispositive portion of the Court of Appeals' Decision stated:

WHEREFORE, in view of the foregoing, the Decision, dated October 20, 2003, of Branch 90 of the Regional Trial Court of Quezon City in Civil Case No. Q-98-33511 is hereby MODIFIED so that the amount of ₱1,000,000.00 as actual damages is DELETED and in lieu thereof, temperate damages in the amount of ₱500,000.00 is awarded. Further, the amount of ₱1,000,000.00 as exemplary damages is also REDUCED to ₱500,000.00 and the award of attorney's fees is likewise REDUCED to ₱100,000.00. In all other respects, said judgment is hereby AFFIRMED.

SO ORDERED.³¹

Home Cable's Motion for Reconsideration was denied on July 21, 2009.³²

On September 14, 2009, Home Cable filed before this Court a Petition for Review on *Certiorari*³³ under Rule 45 of the Rules of Court, assailing the Decision and Resolution of the Court of Appeals.

In its Petition for Review, Home Cable argues the following: First, that this Court should apply its ruling in the January 19, 2009 case of *ABS-CBN Broadcasting Corp. v. Philippine Multi-Media System, Inc.*³⁴; second, that Home Cable's retransmission of channels 22 and 32 were retransmissions that did not constitute copyright infringement; third, that Filscap did not hold the communication to the public rights over its principals' musical compositions; and finally, that Home Cable, as a cable television systems operator, does not exercise financial or editorial responsibility over the content of programs it retransmits.

According to Home Cable, it was a cable television system operator which functions were limited by its mandate and the National Telecommunications Commission's rules and regulations for cable television services.³⁵ It points out that in *ABS-CBN Broadcasting Corp. v. Phil. Multi-Media System, Inc.*, this Court had held that retransmission by a broadcast

²⁸ *Id.* at 72-73.

²⁹ *Id.* at 73.

³⁰ *Id.* at 73-74.

³¹ *Id.* at 74.

³² *Id.* at 77-78.

³³ *Id.* at 9-43.

³⁴ 596 Phil. 283-314 (2009) [Per J. Ynares-Santiago, Third Division].

³⁵ *Rollo*, p. 22.

service did not constitute copyright infringement.³⁶ Home Cable argues that in light of the “must-carry” provision in National Telecommunications Commission’s Memorandum Circular No. 4-08-88, liability for copyright infringement lies with broadcasting organizations and other off-air television channels should they broadcast Filscap’s materials without a license or sans compensation, not with entities like Home Cable.³⁷

Further, Home Cable claims that Precision Audio should have been impleaded as an indispensable party. It points out that in their Memoranda of Agreement, Precision Audio guaranteed the full copyright of laser disc materials.³⁸ For the same reasons, Star TV and Cable Box must likewise be impleaded as indispensable parties.³⁹

Moreover, it argues that Filscap did not have a cause of action against it, because 10 copyright owners⁴⁰ did not assign to Filscap the “right to communicate to the public” in their Deeds of Assignment.⁴¹ To Home Cable, Filscap’s authority was limited only to enforcing these copyright owners’ “performing rights,” namely the right to perform the work in public, to broadcast the work, and to cause the work to be transmitted to subscribers to a diffusion service.⁴² Similarly, the reciprocal agreements with foreign societies did not expressly mention the enforcement of rights against cable services.⁴³ Hence, Filscap did not have the capacity to enforce the present action against Home Cable.

Finally, Home Cable claims that Precision Audio was the broadcasting party that provided materials to Home Cable’s videoke channels 38, 22, 32, and 52, and that it only provided the medium for the transmission.⁴⁴ It claims that its control only extended to operating the equipment used for transmitting the broadcast signals, such as the music camp karaoke and laser disc materials.⁴⁵ According to Home Cable:

Petitioner has no control over the contents of materials which it may transmit through the videoke channels because the laser disc materials from Precision already contain a compilation of songs per volume. Petitioner received videoke laser disc materials consisting of volumes of songs and never represented itself as the origin or author of these volumes of copyrighted works. Only Precision has control and selection of the songs which appear in all the volumes subject of the agreement. In fact, the very same MOAs grant videoke programming exclusivity to Precision to the

³⁶ *Id.* at 24.

³⁷ *Id.* at 26.

³⁸ *Id.* at 26–27.

³⁹ *Id.* at 27.

⁴⁰ *Id.* at 30; Freddie Aguilar, Rachel Alejandro, George Canseco, Jose Mari Chan, Wenceslao T. Cornejo, Danny Javier, Jungêe Marcelo, Jim Paredes, Freddie Saturno, and Venancio “Vehnee” A. Saturno.

⁴¹ *Id.* at 29–30.

⁴² *Id.*

⁴³ *Id.* at 31–33.

⁴⁴ *Id.* at 33–34.

⁴⁵ *Id.* at 34.

exclusion of any other person or entity engaged in the same programming concept as Precision.⁴⁶

Filscap filed its Comment⁴⁷ on January 6, 2010. First, it argues that *ABS-CBN Broadcasting Corp. v. Philippine Multi-Media System, Inc.* could not be applied retroactively; second, Home Cable's retransmission was a broadcast or rebroadcast that was a public performance or a communication to the public under the Intellectual Property Code; third, Home Cable was liable for copyright infringement because it had control over the content of the programs it broadcast, notwithstanding the "must carry" rule; and fourth, Filscap was the real party in interest as it represented the copyright owners and foreign societies.

According to Filscap, while Section 177 of Republic Act No. 8293 does not use the term "broadcasting right," its equivalent is either or both the "public performance" and "communication to the public" rights.⁴⁸ Home Cable's retransmission of works through the simultaneous relay of broadcast signals exercised both these exclusive rights, without the consent or authority granted by the copyright holder over those works.⁴⁹

Filscap also points out that Home Cable's witnesses all admit that Home Cable's retransmission "(a) gives [it] the power to choose which program provider to deal with and thus, control the broadcast content being shown through its cable facilities; (b) makes works available to the general public by wire and in effect, transmits sounds and images or programs broadcast; (c) allows the public to access said works from a place and time individually chosen by them; (d) creates additional audience and (e) earns it profit."⁵⁰

Further, Filscap argues that it has proved that it may represent Filipino composers and music publishers based on the provisions of the deeds of assignments executed with them.⁵¹ To Filscap, the "do all acts" clause in these deeds grants it the power to license the composers' and music publishers' works, and to do other acts to administer and enforce their performing rights, including filing complaints such as the one in this case.⁵² These deeds of assignment all define "performing rights" as "the right to perform a work in public, to broadcast such a work or to include such a work in a cable programme service."⁵³ Filscap claims that the reason why "communication to the public" was not a right included in the definition in the deeds of assignment is because this right was not included in Presidential Decree No. 49, the copyright law in force at the time these deeds were executed.

⁴⁶ *Id.*

⁴⁷ *Id.* at 614-643.

⁴⁸ *Id.* at 617.

⁴⁹ *Id.* at 618-619.

⁵⁰ *Id.* at 620.

⁵¹ *Id.* at 628.

⁵² *Id.* at 629.

⁵³ *Id.* at 630.

Nonetheless, it argues that the assignment of the right to “cause the work to be transmitted to subscriber[s] to a diffusion service” in the deeds is analogous to the “communication to the public” right.⁵⁴

Home Cable filed its Reply⁵⁵ on February 15, 2010, arguing that its retransmission did not constitute control and management over program content. Because it had acted in compliance with the National Telecommunications Commission’s “must carry” rule, its actions were a statutory limitation on copyright and did not constitute copyright infringement.⁵⁶

Home Cable also argues that only performing rights under Section 203 of the Intellectual Property Code were assigned by composers and music publishers to Filscap; hence, it cannot sue on their behalf over alleged infringement of the economic rights under Section 177.⁵⁷

The issue to be resolved in this case is whether or not Philippine Home Cable Holdings, Inc. committed copyright infringement.

Article II, Section 17 of the Constitution mandates that the State give priority to education, science and technology, arts, culture, and sports:

SECTION 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

In relation to this, Article XIV, Section 13 provides for the protection and security of intellectual property and creations:

SECTION 13. The State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law.

An important aspect of intellectual property rights is that their protection subsists only “for such period as may be provided by law.”⁵⁸ As with other intellectual property rights, the metes and bounds of protection for works covered by copyright are defined and governed by existing law. In *Joaquin v. Drilon*:⁵⁹

⁵⁴ *Id.* at 635–636.

⁵⁵ *Id.* at 650–669.

⁵⁶ *Id.* at 659.

⁵⁷ *Id.* at 662–664.

⁵⁸ CONST., art. XIV, sec. 13.

⁵⁹ 361 Phil. 900 (1999) [Per J. Mendoza, Second Division].

Copyright, in the strict sense of the term, is purely a statutory right. It is a new or independent right granted by the statute, and not simply a pre-existing right regulated by the statute. Being a statutory grant, the rights are only such as the statute confers, and may be obtained and enjoyed only with respect to the subjects and by the persons, and on terms and conditions specified in the statute.⁶⁰

An early system for the protection of creative works through copyright was established in Act No. 3134, the Copyright Law of the Philippine Islands. This law was superseded by Presidential Decree No. 49, the Decree on Intellectual Property. Later, in 1996, Congress passed Republic Act No. 8293, otherwise known as the Intellectual Property Code, which consolidated the then-disparate laws and decrees on various intellectual property rights, including copyright. Amendments were made to the Intellectual Property Code in succeeding years to be responsive to technological developments and public policies.⁶¹

Under the Intellectual Property Code, “original intellectual creations in the literary and artistic domain” or literary and artistic works are protected from the moment of their creation:

SECTION 172. *Literary and Artistic Works*. — 172.1. Literary and artistic works, hereinafter referred to as “works”, are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

- (a) Books, pamphlets, articles and other writings;
- (b) Periodicals and newspapers;
- (c) Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
- (d) Letters;
- (e) Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
- (f) Musical compositions, with or without words;
- (g) Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
- (h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;

⁶⁰ *Id.* at 914.

⁶¹ E.g., Republic Act No. 9150, Republic Act No. 9502, and Republic Act No. 10372.

(i) Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;

(j) Drawings or plastic works of a scientific or technical character;

(k) Photographic works including works produced by a process analogous to photography; lantern slides;

(l) Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;

(m) Pictorial illustrations and advertisements;

(n) Computer programs; and

(o) Other literary, scholarly, scientific and artistic works.⁶²

The type of work subject of the case must be identified. This Court has previously denied the protections of copyright law to works which fall outside the exclusive enumeration in Subsection 172.1, such as dating game show formats,⁶³ light boxes,⁶⁴ and utility models, all of which were not works of applied art.⁶⁵ The Intellectual Property Code also has provisions which apply only to certain types of works, such as writings,⁶⁶ audiovisual works,⁶⁷ works of architecture,⁶⁸ or computer programs.⁶⁹

In this case, videoke may appear to be an audiovisual work under Subsection 172.1(l), in line with the word being a portmanteau of "video" and "karaoke." Yet a typical videoke of a song is not one single object, having discrete components: a set of moving images, the song's lyrics superimposed over the moving images, and a musical composition in instrumental format synchronized to the superimposed lyrics. Each of these components may be separately protected by copyright: the moving images as a cinematographic work in Subsection 172.1(l), the lyrics as writing in Subsection 172.1(a), and the musical composition in Subsection 172.1(f). The videoke itself is a form of audiovisual derivative work, also protected by copyright by virtue of Subsection 173.1(a).⁷⁰ Additionally, if a laser disc contains a collection of

⁶² Republic Act No. 8293 (1996), sec. 172.

⁶³ *Joaquin v. Drilon*, 361 Phil. 900 (1999) [Per J. Mendoza, Second Division].

⁶⁴ *Pearl & Dean (Phil.) v. Shoemart*, 456 Phil. 474 (2003) [Per J. Corona, Third Division].

⁶⁵ *Ching v. Salinas*, 500 Phil. 628 (2005) [Per J. Callejo, Sr., Second Division].

⁶⁶ E.g., INTELLECTUAL PROPERTY CODE, subsection 188.2

⁶⁷ E.g., INTELLECTUAL PROPERTY CODE, subsections 178.5 and 213.6

⁶⁸ E.g., INTELLECTUAL PROPERTY CODE, sec. 186, subsection 187.2(a)

⁶⁹ E.g., INTELLECTUAL PROPERTY CODE, sec. 189.

⁷⁰ INTELLECTUAL PROPERTY CODE subsection 173.1(a) states:

videoke, the collection may be a derivative work if the originality requirements of Subsection 173.1(b) are met.⁷¹ Yet, it must be noted that derivative works do not affect the force of or extend any subsisting copyright on the original works used in the derivative work, and the copyright protection over the derivative works does not imply by itself the right to use the original works.⁷² Moreover, the videoke itself is distinct from the laser disc in which it is fixed.⁷³

Here, respondent claims that the subject works were musical works,⁷⁴ or musical compositions under Subsection 172.1(f). Consequently, this Court confines its discussion to the subject musical compositions, the identification and copyright subsistence of which are uncontested.

The Intellectual Property Code enumerates in Section 177 the economic rights that comprise copyright:

SECTION 177. *Copyright or Economic Rights.* — Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n)

177.5. Public display of the original or a copy of the work;

Sec. 173. *Derivative Works.* — 173.1. The following derivative works shall also be protected by copyright:

(a) Dramatizations, translations, adaptations, abridgements, arrangements, and other alterations of literary or artistic works; and . . .

⁷¹ INTELLECTUAL PROPERTY CODE, subsection 173.1(b), which states:

Sec. 173. *Derivative Works.* — 173.1. The following derivative works shall also be protected by copyright: . . .

(b) Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents.

⁷² INTELLECTUAL PROPERTY CODE, subsection 173.2, which states:

173.2. The works referred to in paragraphs (a) and (b) of Subsection 173.1 shall be protected as new works: *Provided, however,* That such new work shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply any right to such use of the original works, or to secure or extend copyright in such original works.

⁷³ INTELLECTUAL PROPERTY CODE, sec. 181, which states:

Sec.181. *Copyright and Material Object.* — The copyright is distinct from the property in the material object subject to it. Consequently, the transfer or assignment of the copyright shall not itself constitute a transfer of the material object. Nor shall a transfer or assignment of the sole copy or of one or several copies of the work imply transfer or assignment of the copyright.

⁷⁴ *Rollo*, p. 302.

177.6. Public performance of the work; and

177.7. Other communication to the public of the work[.]

Should any person, without the consent or authority of the copyright holder, exercise any of these economic rights, they may be liable for copyright infringement. This expands the scope of copyright infringement from merely the unauthorized duplication of a literary, artistic, or scientific work to the unauthorized performance of the acts in Section 177.⁷⁵ In *Habana v. Robles*:⁷⁶

... Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright.⁷⁷

To uphold a copyright infringement claim, the following must be proved: first, the complainant or plaintiff's ownership of a validly copyrighted material, and second, the defendant or respondent's exercise of any the enumerated economic rights without the consent of the copyright owner or holder.⁷⁸ For the second element, it must further be shown that the exercise of the economic right was inconsistent with any of the limitations on copyright⁷⁹ and permissible unauthorized reproductions and importations.⁸⁰

⁷⁵ *NBI-Microsoft Corp. v. Hwang*, 499 Phil. 423, 438 (2005) [Per J. Carpio, First Division], *Microsoft Corp. v. Manansala*, 772 Phil. 14, 21 (2015) [Per J. Bersamin, First Division].

⁷⁶ 369 Phil. 764 (1999) [Per J. Pardo, First Division].

⁷⁷ *Id.* at 779.

⁷⁸ *Olaño v. Lim Eng Co*, 783 Phil. 234, 250 [Per J. Reyes, Third Division].

⁷⁹ *ABS-CBN Corporation v. Gozon*, 755 Phil. 709, 723 (2015) [Per J. Leonen, Second Division].

⁸⁰ INTELLECTUAL PROPERTY CODE, secs. 187–190, which state:

Sec. 187. *Reproduction of Published Work.* — 187.1. Notwithstanding the provision of Section 177, and subject to the provisions of Subsection 187.2, the private reproduction of a published work in a single copy, where the reproduction is made by a natural person exclusively for research and private study, shall be permitted, without the authorization of the owner of copyright in the work.

187.2. The permission granted under Subsection 187.1 shall not extend to the reproduction of:

- (a) A work of architecture in the form of building or other construction;
- (b) An entire book, or a substantial part thereof, or of a musical work in graphic form by reprographic means;
- (c) A compilation of data and other materials;
- (d) A computer program except as provided in Section 189; and
- (e) Any work in cases where reproduction would unreasonably conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author.

Sec. 188. *Reprographic Reproduction by Libraries.* — 188.1. Notwithstanding the provisions of Subsection 177.6, any library or archive whose activities are not for profit may, without the authorization of the author of copyright owner, make a single copy of the work by reprographic reproduction:

- (a) Where the work by reason of its fragile character or rarity cannot be lent to user in its original form;
- (b) Where the works are isolated articles contained in composite works or brief portions of other published works and the reproduction is necessary to supply them, when this is considered expedient, to persons requesting their loan for purposes of research or study instead of lending the volumes or booklets which contain them; and
- (c) Where the making of such a copy is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the

Alternatively, the defendant or respondent may prove that its exercise of the economic right falls within fair use.⁸¹

ermanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable and copies are not available with the publisher.

188.2. Notwithstanding the above provisions, it shall not be permissible to produce a volume of a work published in several volumes or to produce missing tomes or pages of magazines or similar works, unless the volume, tome or part is out of stock: *Provided*, That every library which, by law, is entitled to receive copies of a printed work, shall be entitled, when special reasons so require, to reproduce a copy of a published work which is considered necessary for the collection of the library but which is out of stock.

SECTION 189. *Reproduction of Computer Program.* — 189.1. Notwithstanding the provisions of Section 177, the reproduction in one (1) back-up copy or adaptation of a computer program shall be permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful owner of that computer program: *Provided*, That the copy or adaptation is necessary for:

- (a) The use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has been obtained; and
- (b) Archival purposes, and, for the replacement of the lawfully owned copy of the computer program in the event that the lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

189.2. No copy or adaptation mentioned in this Section shall be used for any purpose other than the ones determined in this Section, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

189.3. This provision shall be without prejudice to the application of Section 185 whenever appropriate.

Sec. 190. *Importation for Personal Purposes.* — 190.1. Notwithstanding the provision of Subsection 177.6, but subject to the limitation under the Subsection 185.2, the importation of a copy of a work by an individual for his personal purposes shall be permitted without the authorization of the author of, or other owner of copyright in, the work under the following circumstances:

- (a) When copies of the work are not available in the Philippines and:
 - (i) Not more than one (1) copy at one time is imported for strictly individual use only; or
 - (ii) The importation is by authority of and for the use of the Philippine Government; or
 - (iii) The importation, consisting of not more than three (3) such copies or likenesses in any one invoice, is not for sale but for the use only of any religious, charitable, or educational society or institution duly incorporated or registered, or is for the encouragement of the fine arts, or for any state school, college, university, or free public library in the Philippines.

(b) When such copies form parts of libraries and personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: *Provided*, That such copies do not exceed three (3).

190.2. Copies imported as allowed by this Section may not lawfully be used in any way to violate the rights of owner the copyright or annul or limit the protection secured by this Act, and such unlawful use shall be deemed an infringement and shall be punishable as such without prejudice to the proprietor's right of action.

190.3. Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulations for preventing the importation of articles the importation of which is prohibited under this Section and under treaties and conventions to which the Philippines may be a party and for seizing and condemning and disposing of the same in case they are discovered after they have been imported.

⁸¹ INTELLECTUAL PROPERTY CODE, sec. 185, which states:

Sec. 185. *Fair Use of a Copyrighted Work.* — 185.1. The fair use of a copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs may also constitute fair use. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include

- (a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes,
- (b) The nature of the copyrighted work;
- (c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (d) The effect of the use upon the potential market for or value of the copyrighted work.

As to the first element, petitioner does not make any claim as to the invalidity of copyright subsisting in the subject musical compositions. Instead, what petitioner challenges is respondent's right to sue it for alleged unauthorized "public performance" or "communication to the public" of works which "performing rights"⁸² were assigned to respondent.

Section 180 of the Intellectual Property Code states that copyright may be assigned, in whole or in part, and within the assignment's scope, the assignee is entitled to all the assignor's rights and remedies.⁸³ Moreover, copyright owners may designate a society to enforce on their behalf their copyright and moral rights.⁸⁴

This Court has recognized respondent's legal standing to sue for copyright infringement, noting that the Intellectual Property Office of the Philippines has accredited it as a collective management organization.⁸⁵

Being the government-accredited CMO for music creators/copyright owners, FILSCAP assists music users in getting the necessary authorization to publicly play, broadcast and stream copyrighted local and foreign songs in the Philippines. It is created exactly for the purpose of protecting the intellectual property rights of its members by licensing performances of their copyright music. With [Filscap], the individual composer would have a difficult time enforcing their rights against an infringer, not to mention the expenses and time involved in pursuing such cases. But [Filscap] eases this burden away by handling these concerns. In addition, [Filscap], acts as an agency for the composers who deal with any party who desires to obtain public performance rights and privileges.

The mechanics behind [Filscap's] role is plain and simple. Copyright holders assign their rights to [Filscap]. Filscap enters into reciprocal agreements with foreign societies such as the American society of Composers, Authors and Publishers (ASCAP), BMI, Australian Performing Right Association (APRA), Performing Right Society Limited (PRS) of the United Kingdom and Föreningen Svenska Tonsättares Internationella

185.2. The fact that a work is unpublished shall not by itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

⁸² *Rollo*, p. 499.

⁸³ INTELLECTUAL PROPERTY CODE, sec. 180, which states:

Sec. 180. *Rights of Assignee.* — 180.1. The copyright may be assigned in whole or in part. Within the scope of the assignment, the assignee is entitled to all the rights and remedies which the assignor had with respect to the copyright.

180.2. The copyright is not deemed assigned inter vivos in whole or in part unless there is a written indication of such intention.

180.3. The submission of a literary, photographic or artistic work to a newspaper, magazine or periodical for publication shall constitute only a license to make a single publication unless a greater right is expressly granted. If two (2) or more persons jointly own a copyright or any part thereof, neither of the owners shall be entitled to grant licenses without the prior written consent of the other owner or owners.

⁸⁴ INTELLECTUAL PROPERTY CODE, sec. 183, which states:

Sec. 183. *Designation of Society.* — The copyright owners or their heirs may designate a society of artists, writers or composers to enforce their economic rights and moral rights on their behalf.

⁸⁵ *Filscap v. Anrey, Inc.*, G.R. No. 233918, August 11, 2022, p. 8 [Per J. Zalameda, *En Banc*].

Muskibyrå (STIM) of Sweden, whose roles are similar to [Filscap], Being the assignee of the copyright, it then collects royalties through the form of license fees from anyone who intends to publicly play, broadcast, stream, and to a certain extent (reproduce) any copyrighted local and international music of its members and the members of its affiliate foreign societies. In return, [Filscap] does an accounting of all license fees collected and then distributes them to its members and the members of its affiliate foreign societies.⁸⁶

Petitioner's contention that what the composers and music publishers assigned to respondent were "neighboring rights" in Section 203 is erroneous. Considering the type of works involved, their authors, and the phrasing of the deeds of assignment, it is evident that economic rights under Section 177 were assigned to respondent.

Section 203 of the Intellectual Property Code enumerates the rights of performers:

SECTION 203. *Scope of Performers' Rights.* — Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

203.1. As regards their performances, the right of authorizing:

(a) The broadcasting and other communication to the public of their performance; and

(b) The fixation of their unfixed performance.

203.2. The right of authorizing the direct or indirect reproduction of their performances fixed in sound recordings, in any manner or form;

203.3. Subject to the provisions of Section 206, the right of authorizing the first public distribution of the original and copies of their performance fixed in the sound recording through sale or rental or other forms of transfer of ownership;

203.4. The right of authorizing the commercial rental to the public of the original and copies of their performances fixed in sound recordings, even after distribution of them by, or pursuant to the authorization by the performer; and

203.5. The right of authorizing the making available to the public of their performances fixed in sound recordings, by wire or wireless means, in such a way that members of the public may access them from a place and time individually chosen by them.

Performers are defined in Subsection 202.1 as "actors, singers, musicians, dancers, and other persons who act, sing, declaim, play in, interpret, or otherwise perform literary and artistic work." For purposes of

⁸⁶ *Id.*

Chapter XII on the rights of performers, producers of sound recordings and broadcasting organizations, these performers have rights over their performances separate from the right to perform or publicly communicate the literary or artistic work, which is vested in the author of the work. Hence:

Developments in technology, including the process of preserving once ephemeral works and disseminating them, resulted in the need to provide a new kind of protection as distinguished from copyright. The designation “neighboring rights” was abbreviated from the phrase “rights neighboring to copyright.” Neighboring or related rights are of equal importance with copyright as established in the different conventions covering both kinds of rights.⁸⁷

Here, respondent does not represent performers of the subject musical compositions. Consistent with its mandate, it is a collective management organization for composers, authors, and publishers in the field of musical compositions. This is clear based on the definition of “copyright work” in the deed of assignment it enters into with its affiliates or members:

a) the expression “copyright work” shall mean any musical work whether now or existing hereafter composed and such words as are associated with any musical works and shall include the vocal and instrumental music in any cinematographic film, the words and/or music of any monologue having a musical introduction and/or accompaniment, the musical accompaniment of any non-musical play, and any part of any such work, words, music, or accompaniment as aforesaid.⁸⁸

That respondent pertains to rights under Section 177 of the Intellectual Property Code and not the neighboring rights in Section 203 is also apparent in the scope of “performance” that respondent’s affiliates and members have assigned respondent to administer or enforce:

c) the expression “performance” includes, unless otherwise stated, any mode of acoustic presentation, including any such presentation by means [of] broadcasting or cause of a work to be transmitted to subscribers to a diffusion service, or by the exhibition of a cinematographic film, or by the use of a sound recording, or by any other means, and references to “perform” and “performing” shall be construed accordingly.⁸⁹

Respondent claims that the lack of explicit reference to the right to communicate the work to the public is because, at the time when the deeds were written, the prevailing copyright law was Presidential Decree No. 49, which enumeration of economic rights predated many technological developments that may have an effect on literary, artistic, and scientific works:

⁸⁷ *ABS-CBN Corporation v. Gozon*, 755 Phil. 709, 751 (2015) [Per J. Leonen, Second Division].

⁸⁸ *Rollo*, p. 498.

⁸⁹ *Id.*

SECTION 5. Copyright shall consist in the exclusive right;

(A) To print, reprint, publish, copy, distribute, multiply, sell, and make photographs, photo-engravings, and pictorial illustrations of the works;

(B) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute if it be a model or design;

(C) To exhibit, perform, represent, produce, or reproduce, the work in any manner or by any method whatever for profit or otherwise; if not reproduced in copies for sale, to sell any manuscript or any record whatsoever thereof;

(D) To make any other use or disposition of the work consistent with the laws of the land.⁹⁰

In this regard, Section 239.3 of the Intellectual Property Code extended its provisions to works in which copyright protection was obtained prior to its effectivity and which copyright is still subsisting:

SECTION 239. Repeals. —

239.3. The provisions of this Act shall apply to works in which copyright protection obtained prior to the effectivity of this Act is subsisting: *Provided*, That the application of this Act shall not result in the diminution of such protection.

Moreover, the wording of the deeds of assignments indicates that among the rights assigned to respondent by the copyright holders was the right to broadcast or cause a work to be transmitted to subscribers to a diffusion service. Even without the use of the specific phrase “communication to the public,” respondent is plainly the assignee who may authorize others who wish to do these acts with respect to the copyright holders’ musical compositions, or demand compensation in case these acts were done without their consent or authority.

The second element of copyright infringement is similarly present in this case.

In respondent’s Complaint, it alleged that petitioner has been “playing or otherwise performing or communicating to the public” the subject musical compositions. Both the Regional Trial Court⁹¹ and the Court of Appeals⁹² determined that petitioner did both when it cablecast—engaged in program origination of—the two karaoke channels. But the application of Section 177

⁹⁰ Presidential Decree No. 49 (1972), sec. 5.

⁹¹ *Rollo*, pp. 309-310.

⁹² *Id.* at 68.

is inexact. Based on petitioner's acts complained of, only an infringement of the "communication to the public" right has been committed.

Our country's early law on copyright, Act No. 3134, granted to copyright holders a broad exclusive performance right, without limitation as to manner, method, or intent to or actual profit. Thus, Section 3(c) stated:

SECTION 3. The proprietor of a copyright or his heirs or assigns shall have the exclusive right:

.....
(c) To exhibit, *perform*, represent, produce, or reproduce the copyrighted *work in any manner or by any method whatever for profit or otherwise*; if not reproduced in copies for sale, to sell any manuscripts or any record whatsoever thereof; (Emphasis supplied)

Then, on August 1, 1951, the Philippines' accession to the 1948 revision to the Berne Convention for the Protection of Literary and Artistic Works became effective.⁹³ Known as the Brussels Act, the 1948 revision included a provision on the exclusive right of an author of a dramatic, dramatico-musical, or musical work to its public presentation and public performance, and the public distribution thereof:

Article 11

(1) The authors of dramatic, dramatico-musical or musical works shall enjoy the exclusive right of authorizing: i. the public presentation and public performance of their works; ii. the public distribution by any means of the presentation and performance of their works. The application of the provisions of Articles 11*bis* and 12 is, however, reserved.

(2) Authors of dramatic or dramatico-musical works, during the full term of their rights over the original works, shall enjoy the same rights with respect to translations thereof.

(3) In order to enjoy the protection of this Article, authors shall not be bound, when publishing their works, to forbid the public presentation or performance thereof.⁹⁴

Article 11*bis* of the Brussels Act, meanwhile, provided for the parameters of the exclusive right to the communication to the public by wire or wireless means of a literary or artistic work:

Article 11*bis*

(1) Authors of literary and artistic works shall have the exclusive right of authorizing: i. the radio-diffusion of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images; ii. Any communication to the public, whether over wires or not, of the radio-diffusion of the work, when the

⁹³ Proclamation No. 137 (1955).

⁹⁴ Brussels Act (1948), art. 11.

communication is made by a body other than the original one; iii. The communication to the public by loudspeaker or any other similar instrument transmitting, by signs, sounds or images, the radio-diffusion of a work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral right of the author, nor to his right to obtain just remuneration which, in the absence of agreement, shall be fixed by competence authority.⁹⁵

Later, the Berne Convention was revised in the Paris Act of 1971. Article 11 of the Paris Act separated the public performance and communication to the public of the performance rights:

Article 11

(1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:

(i) the public performance of their works, including such public performance by any means or process;

(ii) any communication to the public of the performance of their works.

(2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Further, Article 11 *bis* of the Paris Act refined the communication to the public right introduced in the Brussels Act:

Article 11 *bis*

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

(i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;

(ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;

(iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

⁹⁵ Brussels Act (1948), art. 11 *bis*.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

In 1972, at a time when the Philippines' accession to the Berne Convention was still only to the Brussels Act, the Philippines again modified its law on copyright through Presidential Decree No. 49. Section 5 thereof substantially retained Section 3 of Act No. 3134:

SECTION 5. Copyright shall consist in the exclusive right;

(A) To print, reprint, publish, copy, distribute, multiply, sell, and make photographs, photo-engravings, and pictorial illustrations of the works;

(B) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute if it be a model or design;

(C) To exhibit, *perform*, represent, produce, or reproduce, the work *in any manner or by any method whatever for profit or otherwise*; it not reproduced in copies for sale, to sell any manuscript or any record whatsoever thereof;

(D) To make any other use or disposition of the work consistent with the laws of the land. (Emphasis supplied)

On April 14, 1980, the Philippines acceded to the Paris Act. The treaty entered into force on July 16, 1980, with the declaration that the accession would not apply to Articles 1 to 21 and the Appendix of the Paris Act.⁹⁶

⁹⁶ Berne Notification No. 98, Accession by the Republic of the Philippines to the Paris Act (1971) (with the exception of Articles 1 to 21 and the Appendix), April 16, 1980, *available at* https://www.wipo.int/treaties/en/notifications/berne/treaty_berne_98.html (last accessed on February 28, 2023).

Following a 1993 bilateral agreement with the United States of America in order to remove the Philippines from the “Special 301” priority watch list,⁹⁷ the Philippines agreed to submit amendments to its copyright law in the areas of sound recordings and computer programs, among others, and to begin the process of accession to the substantive portions of the Paris Act.⁹⁸ On March 18, 1997, the Philippines finally extended its accession to Articles 1 to 21 and the Appendix of the Paris Act, with those articles entering into force on June 18, 1997.⁹⁹

Consequently, Republic Act No. 8293 in 1997 for the first time statutorily recognized the Philippines’ obligations in accordance with international conventions, treaties, and other agreements¹⁰⁰ involving intellectual property, transforming¹⁰¹ relevant provisions of the Paris Act and including amendments to strengthen copyright protection in the Philippines according to the United States’ recommendations.

Notably, the modern formulation of the “communication to the public” right—including the distinct “making available” right—in international

⁹⁷ The “Special 301” priority watch list is part of the “Special 301” Report, “an annual review of the global state of [intellectual property] protection and enforcement” issued by the Office of the United States Trade Representative, and names countries deemed by the United States to have insufficient intellectual property protections or enforcement of intellectual property rights. See USTR Releases 2022 Special 301 Report on Intellectual Property Protection and Enforcement, April 27, 2022, available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/april/ustr-releases-2022-special-301-report-intellectual-property-protection-and-enforcement> (last accessed on February 28, 2023).

⁹⁸ Agreement Between the United States of America and the Philippines, Effected by Exchange of Letters at Manila and Washington, April 6, 1993, pp. 2–3, available at <https://www.state.gov/wp-content/uploads/2019/12/93-406-Philippines-Intellectual-Property-Notes.pdf> (last accessed on February 28, 2023).

⁹⁹ Berne Notification No. 179, Declaration by the Republic of the Philippines Extending the Effects of its Accession of the Paris Act (1971) to Articles 1 to 21 and the Appendix, March 18, 1997, available at https://www.wipo.int/treaties/en/notifications/berne/treaty_berne_179.html (last accessed on February 28, 2023).

¹⁰⁰ Republic Act No. 8293, secs. 2 and 3, which state:

Sec. 2. *Declaration of State Policy.* — 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. It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such periods as provided in this Act.

The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines.

Sec. 3. *International Conventions and Reciprocity.* — Any person who is a national or who is domiciled or has a real and effective industrial establishment in a country which is a party to any convention, treaty or agreement relating to intellectual property rights or the repression of unfair competition, to which the Philippines is also a party, or extends reciprocal rights to nationals of the Philippines by law, shall be entitled to benefits to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of an intellectual property right is otherwise entitled by this Act.

¹⁰¹ See, e.g., *Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 & 240954, March 16, 2021 [Per J. Leonen, *En Banc*].

intellectual property law¹⁰² was formalized in the World Intellectual Property Organization (WIPO) Copyright Treaty, which sought to make copyright protections responsive to the advent of new technologies,¹⁰³ and the WIPO Performances and Phonograms Treaty, which sought to protect the rights of performers and producers of phonograms.¹⁰⁴ In particular, Article 8 of the WIPO Copyright Treaty stated:

Article 8

Right of Communication to the Public

Without prejudice to the provisions of Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii) and 14*bis*(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

¹⁰² The “communication to the public” right, separate and distinct from the “public performance” right, likewise exists in other jurisdictions. Among the Association of Southeast Asian Nations (ASEAN), the copyright laws of Cambodia (Law on Copyright and Related Rights, articles 2(c) and 2(i)), Indonesia (Law of the Republic of Indonesia No. 28 (2014), article 9.), Laos (Law on Intellectual Property (amended), article 102)), Myanmar (Pyidaungsu Hluttaw Law No. 15/2019, chapter 10(18)), Malaysia (Act 332 (Copyright Act 1987), article 3), Singapore (Copyright Act, s 7(1)), and Vietnam (Law No. 50/2005/QH11, article 20) all recognize a “communication to the public” economic right separate from a “public performance” right. See The ASEAN Secretariat, ASEAN Intellectual Property Rights Enforcement Handbook (2020), available at https://www.aseanip.org/Portals/0/ASEAN%20IPR%20Enforcement%20Handbook_with%20ISBN%20and%20Logo%20Final.pdf (last accessed on February 28, 2023). The European Union Directive 2001/29/EC, known as the InfoSoc Directive, provides in Article 3 the “right of communication to the public of works and right of making available to the public other subject-matter”, while Australia implemented the “communication to the public” right in its Copyright Amendment (Digital Agenda) Act 2000. Conversely, the United States has not carved out a “communication to the public” or “making available to the public” right separate from the extant “public performance” right in its federal copyright law, Title 17 of the U.S. Code; instead, the United States Supreme Court in *ABC, Inc. v. Aereo, Inc.* (573 U.S. 431 (2014)) has held that the statutory scope of “public performance” encompassed the activities of a broadcaster, a viewer of the broadcast, and a cable system operator. Indeed, in 2016, the United States Copyright Office, through the Register of Copyrights, submitted a report to the United States Congress that concluded that the scope of Section 106, as written and then interpreted by United States courts, “collectively meet and adequately provide the substance of the making available right.” (United States Copyright Office, “The Making Available Right in the United States, A Report of the Register of Copyrights”, p. 4 available at https://www.copyright.gov/docs/making_available/making-available-right.pdf (2016)) The Copyright Office report used the phrase “making available right” because, in international intellectual property law, the essence of the communication to the public right is “the making available to the public of works in such a way that members of the public may access these works from a place and at a time individually chosen by them.” (*Id.* at 1)

¹⁰³ WIPO Copyright Treaty, Preamble, which states, in part:
The Contracting Parties,

Desiring to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules and clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works,

¹⁰⁴ WIPO Performances and Phonograms Treaty, Preamble, which states in part:

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the production and use of performances and phonograms,

Both treaties were concluded in 1996. Although the Philippines acceded to the WIPO Copyright Treaty¹⁰⁵ and the WIPO Performances and Phonograms Treaty¹⁰⁶ only on July 4, 2002, it had already, in a sense, unilaterally integrated these treaties' contemplation of a "communication to the public" in domestic legislation via Section 171.3 of the Intellectual Property Code.

As a result, in a divergence from both Act No. 3134 and Presidential Decree No. 49, Republic Act No. 8293 not only modified the scope of the performance right into the "public performance" right, but also granted the "communication to the public" among the Code's new economic rights, by way of the distinct "making available" formulation.

Here, petitioner's act of cablecasting the karaoke channels cannot be considered an exercise of the public performance rights over the subject musical compositions. Concededly, the works were performed by means of certain processes, and because the musical compositions were fixed in sound recordings in a videoke format, they were made audible "at a place or at places where persons outside the normal circle of a family and that family's closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and/or at different times." However, the fact that "performance" of the musical composition requires the process described in Subsection 171.3—using wireless means to make the musical compositions available to the members of the public in such a way they may access these compositions from a place and time individually chosen by them—in order to be perceived places the act complained of outside Subsection 171.6.

It must be noted that a later amendment to the Intellectual Property Code, in Republic Act No. 10372, further expanded the scope of "communication to the public" to include broadcasting, rebroadcasting, retransmitting by cable, and retransmitting by satellite:

'Communication to the public' or 'communicate to the public' means any communication to the public, including broadcasting, rebroadcasting, retransmitting by cable, and retransmitting by satellite, and includes the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them.¹⁰⁷

¹⁰⁵ WCT Notification No. 38, Accession by the Republic of the Philippines. July 4, 2002, *available at* https://www.wipo.int/treaties/en/notifications/wct/treaty_wct_38.html (last accessed on February 28, 2023).

¹⁰⁶ WPPT Notification No. 37, Accession by the Republic of the Philippines. July 4, 2002, *available at* https://www.wipo.int/treaties/en/notifications/wppt/treaty_wppt_37.html (last accessed on February 28, 2023).

¹⁰⁷ Republic Act No. 10372, sec. 4.

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Nonetheless, even prior to the amendment, playing a musical composition, fixed in an audiovisual derivative work, over cable television to paying subscribers is making that work accessible to members of the public from a place or time individually chosen by them. This is the essence of the “communication to the public” right.

To evade liability, petitioner argues that its transmission of the subject musical compositions is not an infringing act. It anchors its theory on *ABS-CBN Broadcasting Corp. v. Phil. Multi-Media System, Inc.*,¹⁰⁸ decided after the promulgation of the Court of Appeals’ Decision, in which this Court held that the carriage by cable television systems of other broadcasters’ free-to-air signals was not copyright infringement.¹⁰⁹

Petitioner’s contention has no merit. The dissimilarity between the facts in this case and *ABS-CBN Broadcasting Corp. v. Phil. Multi-Media System, Inc.* must lead this Court to different conclusions.

Section 6 of the National Telecommunications Commission Memorandum Circular No. 4-08-88¹¹⁰ states the “must carry” rule:

Section 6. Carriage of Television Broadcast Signals.

6.2. Mandatory Coverage

6.2.1. A Cable TV system operating in a community which is within the Grade A or Grade B contours of an authorized TV broadcast station or stations must carry the TV signals of these stations.

Section 2.3 of Memorandum Circular No. 4-08-88 defines a television broadcast station as “any television broadcast station authorized to operate on a channel regularly allocated to a community.”

In *ABS-CBN Broadcasting Corp. v. Phil. Multi-Media System, Inc.*, this Court stated that, when cable television systems comply with the “must carry” rule, they do not rebroadcast the free-to-air signals and do not act as broadcasting organizations:

Under the Rome Convention, rebroadcasting is “the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization.” The Working Paper prepared by the Secretariat of the Standing Committee on Copyright and Related Rights defines broadcasting organizations as “entities that take the financial and editorial

¹⁰⁸ 596 Phil. 283 (2009) [Per J. Ynares-Santiago, Third Division].

¹⁰⁹ *Id.* at 296–297.

¹¹⁰ Otherwise known as the Revised Rules and Regulations Governing Cable Television Systems in the Philippines.

responsibility for the selection and arrangement of, and investment in, the transmitted content.” Evidently, PMSI would not qualify as a broadcasting organization because it does not have the aforementioned responsibilities imposed upon broadcasting organizations, such as ABS-CBN.

ABS-CBN creates and transmits its own signals; PMSI merely carries such signals which the viewers receive in its unaltered form. PMSI does not produce, select, or determine the programs to be shown in Channels 2 and 23. Likewise, it does not pass itself off as the origin or author of such programs. Insofar as Channels 2 and 23 are concerned, PMSI merely retransmits the same in accordance with Memorandum Circular 04-08-88. With regard to its premium channels, it buys the channels from content providers and transmits on an as-is bases to its viewers. Clearly, PMSI does not perform the functions of a broadcasting organization; this, it cannot be said that it is engaged in rebroadcasting Channels 2 and 23.

Thus, while the Rome Convention gives broadcasting organizations the right to authorize or prohibit the rebroadcasting of its broadcast, however, this protection does not extend to cable retransmission. The retransmission of ABS-CBN’s signals by PMSI—which functions essentially as a cable television—does not therefor constitute rebroadcasting in violation of the former’s intellectual property rights under the IP Code.¹¹¹

At the outset, petitioner is not acting in compliance with the National Telecommunication Commission’s “must carry” rule when it distributes channels from entities such as Star TV and Cable Boss. Petitioner’s obligation to carry these channels is not pursuant to the requirements of Memorandum Circular No. 4-08-88, but because of contracts it entered into where it pays to transmit Star TV and Cable Boss’ channels on its system. Those channels are not the “television broadcast stations” contemplated in Section 6.2.1 of Memorandum Circular No. 4-08-88, especially because they are not free-to-air TV signals like the ones subject of the case in *ABS-CBN Broadcasting Corp. v. Phil. Multi-Media, Inc.*

More accurately, the Star TV and Cable Boss channels are akin to “premium channels” that are bought from channel providers and transmitted on an as-is basis to its viewers.¹¹² Notwithstanding the lack of regulatory obligation such as the “must carry” rule, it is evident from petitioner’s distribution agreements with Star TV and Cable Boss that petitioner merely retransmits signals that these entities provide and is prohibited from modifying those programs.¹¹³ In that regard, *ABS-CBN Broadcasting Corp. v. Phil. Multi-Media Inc.*’s concept of “retransmission” applies to the situation with the Star TV and Cable Boss channels that petitioner carries.

However, this reasoning does not apply to channels 22 and 32, the videoke channels on Home Cable’s lineup. An examination of the agreements

¹¹¹ *ABS-CBN Broadcasting Corp. v. Phil. Multi-Media System, Inc.*, 596 Phil. 283, 300–301 (2009) [Per J. Ynares-Santiago, Third Division].

¹¹² *Id.* at 300.

¹¹³ *Rollo*, p. 89.

with Precision Audio shows that Precision Audio was only obliged to sell videoke laser discs to petitioner, and petitioner has responsibility and control over the channels:

1. The FIRST PARTY agrees to sell, and the SECOND PARTY agrees to purchase on cash basis the new releases of videoke laser disc materials of TWO THOUSAND PESOS (P2,000.00), Philippine Currency. Further, the SECOND PARTY shall make available to FIRST PARTY the Channels mentioned below free of program fee charges the promotion solely of the FIRST PARTY's products.

2. The SECOND PARTY shall be responsible for and in control of the operation of Channels 22 [PINOY KTV], 32 [ENGLISH KTV], and 52 [CHINESE KTV]. It shall be responsible for providing the equipment (music camp karaoke and laser disc materials) necessary for the satisfactory operation of the above mentioned Channels.¹¹⁴

As observed by the Court of Appeals:

Thus, unlike other channels which it merely retransmits to its subscribers such as CNN (Cable News Network), BBC (British Broadcasting Corporation), HBO (Home Box Office), Cinemax, Discovery, and National Geographic and the like, the [petitioner] operated and controlled the karaoke channels from which it played or "cablecasted" the videoke laser disc materials which it had brought. In effects, the [petitioner] was acting as a broadcaster in the case at bar. Hence its argument that it is merely retransmitting programs and is, thus, not liable for copyright infringement does not apply to the particular circumstances of the case at bar.¹¹⁵

Consistent with Section 181 of the Intellectual Property Code, petitioner's purchase of the laser discs from Precision Audio as part of their agreements¹¹⁶ did not by itself transfer or assign the copyright of the fixed musical compositions in those laser discs. Assuming that Precision Audio's production and distribution of the videoke laser discs was with the copyright holders' consent, only the economic rights to adapt the musical compositions to videoke format, reproduce the fixation in laser disc, and sell the laser discs were granted to Precision Audio, unless the terms of the license state that additional rights were included.

Moreover, if the licenses for the musical compositions did include any public performance or communication to the public rights, those rights were not for Precision Audio to sublicense to a third party such as petitioner unless expressly allowed by the copyright holder or licensor. If these were the case with the laser discs here, then petitioner failed to allege and prove it.

¹¹⁴ *Id.* at 115.

¹¹⁵ *Id.* at 70.

¹¹⁶ *Id.* at 112, 115.

To emphasize, copyright over an original work is unaffected even when that work is used in a derivative work. And the grant of copyright protection to the derivative work does not by itself make the use of the original work, or any part of it, lawful absent the copyright holder's consent. Precision Audio may warrant that it holds the copyrights to the videoke works fixed in the laser discs purchased by petitioner, and it may license or assign any of the videoke's economic rights to petitioner as part of the sale, but that does not affect the copyright over the underlying musical composition which is a component of the videoke. At most, Precision Audio validly granted to petitioner the right to publicly perform or communicate to the public the videoke, but not the composite original works which economic rights were held by others, such as the composers, authors, or publishers that respondent represents.

Precision Audio is not an indispensable party to this case. The Rules of Court provide:

Rule 3, SEC.7. *Compulsory Joinder of Indispensable Parties.* — Parties-in-interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

In *Boston Equity Resources, Inc. v. Court of Appeals*:¹¹⁷

An indispensable party is one who has such an interest in the controversy or subject matter of a case that a final adjudication cannot be made in his or her absence, without injuring or affecting that interest. He or she is a party who has not only an interest in the subject matter of the controversy, but "an interest of such nature that a final decree cannot be made without affecting [that] interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable." Further, an indispensable party is one who must be included in an action before it may properly proceed.

On the other hand, a "person is not an indispensable party if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him or her and those already parties to the action, or if he or she has no interest in the subject matter of the action." It is not a sufficient reason to declare a person to be an indispensable party simply because his or her presence will avoid multiple litigations.

Applying the foregoing pronouncements to the case at bar, it is clear that the estate of Manuel is not an indispensable party to the collection case, for the simple reason that the obligation of Manuel and his wife, respondent herein, is solidary.¹¹⁸

¹¹⁷ 711 Phil. 451 (2013) [Per J. Perez, Second Division].

¹¹⁸ *Id.* at 469-470.

Petitioner's liability for copyright infringement is separate and distinct from Precision Audio's, if there is any. As stated above, the economic right that petitioner infringed is the right to communicate the subject musical compositions to the public, and this finding is in no way affected or altered by any act or omission of Precision Audio. Petitioner's liability can be determined without need to implead Precision Audio. With regard to the warranties made by Precision Audio in the Memoranda of Agreement, the Court of Appeals correctly held that "[i]f any, the said guarantee merely gives the defendant-appellant the right to go after Precision Audio Video Services, Inc., for possible reimbursement."¹¹⁹

No other limitation to copyright exists in this case. Petitioner has also not raised the defense of fair use. Therefore, its unauthorized exercise of the copyright holders' communication to the public rights as a result of cablecasting the two karaoke channels is copyright infringement.

Whenever copyright infringement is proved, damages shall be awarded:

SECTION 216. *Remedies for Infringement.* — 216.1. Any person infringing a right protected under this law shall be liable:

.....
(b) Pay to the copyright proprietor or his assigns or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the infringement as well as the profits the infringer may have made due to such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty.

We affirm the Court of Appeals' modification of the award of damages, though it must be noted that the trial court did not award "actual damages" but "just damages in lieu of actual damages"¹²⁰ as stated in Section 216.1(b). Just damages may pertain to temperate or moderate damages, when actual or compensatory damages are not sufficiently proven. Under Section 216.1(b), a court is given the discretion as to the amount and kind of damages it can impose. Nonetheless, there is no reason to disturb the Court of Appeals' modified award of temperate damages. Article 2224 of the Civil Code provides:

Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

¹¹⁹ *Rollio*, p. 71.

¹²⁰ *Id.* at 311.

In *Sambar vs. Levi Strauss & Co.*:¹²¹

For although the exact amount of damage or loss can not be determined with reasonable certainty, the fact that there was infringement means they suffered losses for which they are entitled to moderate damages.¹²²

The award of exemplary damages and attorney's fees are also proper and reasonable under the circumstances.

However, the interest to be imposed on the monetary award in favor of respondent must be adjusted in view of this Court's Resolution in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*,¹²³ the relevant portions of which state:

With regard to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

.....

B. In obligations not consisting of loans or forbearances of money, goods or credit:

.....

2. For unliquidated claims:

Compensatory interest on the amount of damages awarded may be imposed in the discretion of the court at the rate of 6% per annum. No compensatory interest, however, shall be adjudged on unliquidated claims or damages until the demand can be established with reasonable certainty. Thus, when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date of the judgment of the trial court (at which time the quantification of damages may be deemed to have been reasonably ascertained) until full payment. The actual base for the computation of the interest shall, in any case, be on the principal amount finally adjudged.¹²⁴

All intellectual property rights are not mere economic exercises. Our Constitution and laws recognize their social function and benefit to the common good. Copyright, in particular, is linked with culture:

..... Copyright is profoundly intertwined with culture. Many, if not all,

¹²¹ 428 Phil. 425 (2002) [Per J. Quisimbing, Second Division].

¹²² *Id.* at 437.

¹²³ G.R. No. 225433; September 20, 2022 [Per J. Leonen, *En Banc*].

¹²⁴ *Id.* at 20-21.

copyrighted works can and do shape identities of persons, groups, communities, and nations. Copyright is not merely economic; it also embodies “discursive power—the right to create, and control, cultural meanings.” The State recognizes this not just with copyright law, but also with laws that promote and protect art, literature, culture workers, and the preservation and development of national cultural heritage. So-called “factual works” are part of the expression, speech, and the press explicitly protected in our Bill of Rights, while artistic creations enjoy State patronage and constitute cultural treasures.¹²⁵

To encourage the creation, proliferation, and innovation of literary, artistic, and scientific works, our laws have designed a regime of protection that balances the incentives to an individual for disclosing their works and the eventual benefit to the public once the protections lapse and these works become freely available.¹²⁶ An essential component of this balance is certainty of enforcing creators’ rights against unauthorized trespass:

Intellectual property rights, such as copyright and the neighboring right against rebroadcasting, establish an artificial and limited monopoly to reward creativity. Without these legally enforceable rights, creators will have extreme difficulty recovering their costs and capturing the surplus or profit of their works as reflected in their markets. This, in turn, is based on the theory that the possibility of gain due to creative work creates an incentive which may improve efficiency or simply enhance consumer welfare or utility. . .

These, however, depend on the certainty of enforcement. Creativity, by its very nature, is vulnerable to the free rider problem. It is easily replicated despite the costs to and efforts of the original creator. The more useful the creation is in the market, the greater the propensity that it will be copied. The most creative and inventive individuals are usually those who are unable to recover on their creations.¹²⁷

Awareness of, and compliance with, intellectual property laws is the obligation of all persons, natural or juridical. To attain the advantages provided by society’s scientists, inventors, artists, and other gifted citizens, there must first be respect for and enforcement of their rights.

ACCORDINGLY, the Petition for Review on *Certiorari* is **DENIED**. The Decision and Resolution of the Court of Appeals, Manila, in CA-G.R. CV No. 81083 are **AFFIRMED WITH MODIFICATION**. Philippine Home Cable Holdings, Inc. is ordered to pay Filipino Society of Composers, Authors & Publishers, Inc. PHP 500,000.00 as temperate damages, PHP 500,000.00 as exemplary damages, and PHP 100,000.00 in attorney’s fees. Interest at the rate of six percent (6%) *per annum* shall be imposed on the sum of the monetary awards from October 20, 2003, the date of the Regional Trial Court

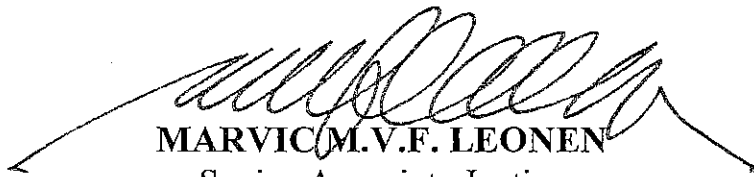
¹²⁵ J. Leonen, Dissenting Opinion in *Filscap v. Anrey, Inc.*, G.R. No. 233918, August 11, 2022, p. 5–6 [Per J. Zalameda, *En Banc*].

¹²⁶ *Id.* at 2–3.

¹²⁷ *ABS-CBN Corporation v. Gozon*, 755 Phil. 709, 774–775 (2015) [Per J. Leonen, Second Division].

Decision, until full payment.

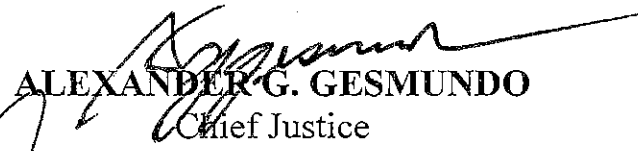
SO ORDERED.



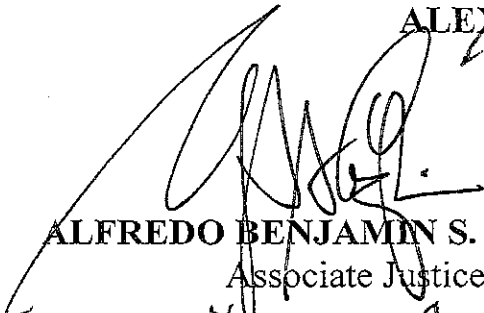
MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

See Concurring Opinion




ALEXANDER G. GESMUNDO
Chief Justice




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


Please see Concurrence



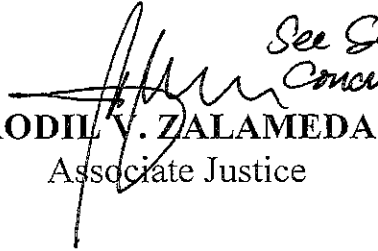
RAMON PAUL L. HERNANDO
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

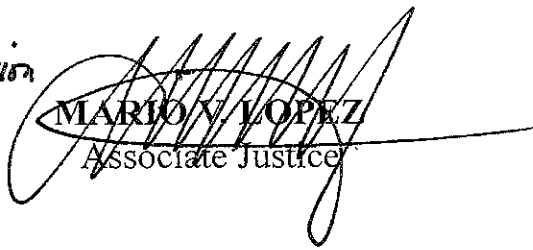


HENRI JEAN PAUL B. INTING
Associate Justice




RODIL V. ZALAMEDA
Associate Justice

See Separate Concurring Opinion



MARIO V. LOPEZ
Associate Justice



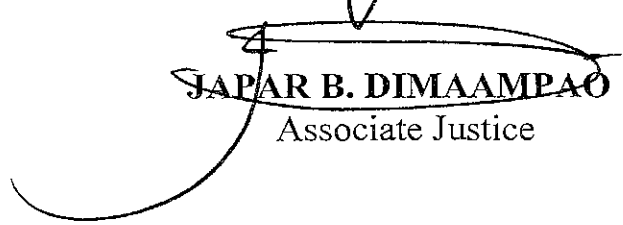
SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice




JHOSEP V. LOPEZ
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

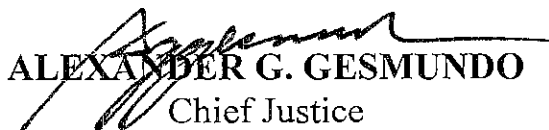

JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO JR.
Associate Justice

pk. see separate Concurring Opinion

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.


ALEXANDER G. GESMUNDO
Chief Justice