

Revised Rules & Regulations on Settlement of Disputes Involving Technology Transfer Payments and the Terms of a License Involving the Author's Right to Public Performance or Other Communication of His Work

NOTICE

Pursuant to Section 19 of the Final Provisions of the Rules and Regulations on Settlement of Dispute Involving Technology Transfer Payments and the Terms of a License Involving the Author's Right to Public Performance or Other Communications of His Work which took effect on 20 October 1998, NOTICE IS HEREBY GIVEN that the Intellectual Property Office will begin to accept and settle disputes involving technology transfer payments and the terms of a license involving the author's right to public performance or other communications of his work on 28 May 2001.

For the information and guidance of all concerned, the Rules and Regulations have been modified and are hereby published in full, as modified:

REVISED RULES AND REGULATIONS ON SETTLEMENT OF DISPUTES INVOLVING TECHNOLOGY TRANSFER PAYMENTS AND THE TERMS OF A LICENSE INVOLVING THE AUTHOR'S RIGHT TO PUBLIC PERFORMANCE OR OTHER COMMUNICATION OF HIS WORK

Whereas, the State recognizes that an effective intellectual and industrial property system is vital to the development of domestic creativity, facilitates transfer of technology, attracts foreign investments and ensures market access for our products;

Whereas, the State recognizes that the use of intellectual property bears a social function and 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;

Whereas, it is the policy of the State to enhance the enforcement of intellectual property rights in the country; and, to protect and secure the exclusive rights of artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people;

Now, therefore, pursuant to the provisions of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, the following rules and regulations on settlement of disputes involving technology transfer payments and the terms of a license involving the author's right to public performance or other communication of his work are hereby promulgated:

Section 1. Title. These rules and regulations shall be referred to as "Rules on Dispute Settlement."

Section 2. Definition of Terms. Unless otherwise specified, the following terms shall have the meaning herein provided:

(a) "Author" means the natural person who has created the work;

(b) "Bureau" means the Documentation, Information and Technology Transfer Bureau of the Intellectual Property Office;

(c) "Communication to the public" or "communicate to the public" means 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;

(d) "Director General" means the head of the Intellectual Property Office;

(e) "Director" means the Director of the Documentation, Information and Technology Transfer Bureau;

(f) "Dispute Settlement Division" means the division within the Bureau primarily in charge of mediation proceedings;

(g) "Mediator" means any officer within the Bureau as the Director may designate with respect to disputes involving technology transfer payments and any officer in the Office as the Director General may designate with respect to cases involving author's right to public performance or other communication of his work;

(h) "Office" means the Intellectual Property Office;

(i) "Public performance" means (1) in case of a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process; (2) in the case of an audiovisual work, the showing of its images in sequence and the making of the sounds accompanying it audible; and (3) in the case of a sound recording, the act of making the recorded sounds 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, and where the performance can be perceived without the need for communication within the meaning of "communication to the public" or "communicate to the public".

(j) "Technology Transfer Arrangements" shall mean contracts or agreements, including renewals thereof, involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts; and the transfer, assignment or licensing of all forms of intellectual property rights,

including licensing of computer software except computer software developed for mass market.

The licensing of copyright is considered a technology transfer arrangement only if it involves the transfer of systematic knowledge.

Section 3. Jurisdiction of the Director General. – The Director General exercises original jurisdiction to resolve disputes relating to the terms of a license involving the author's right to public performance or other communication of his work.

Section 4. Jurisdiction of the Director. - The Director shall exercise quasi-judicial jurisdiction in the settlement of disputes between parties to a technology transfer arrangement arising from technology transfer payments, including the fixing of appropriate amount or rate of royalty.

Section 5. Who may File a Complaint. - Any aggrieved party may file a complaint with the Bureau upon payment of the required filing fee.

Section 6. Contents of Complaint. - The complaint shall be in writing and shall state the following:

(a) Name and address of the complainant and the name and address of the respondent;

(b) Brief statement of the nature of the complaint;

(c) The demands or reliefs sought for.

Section 7. Escrow. – Should any party elect to avail of the provisions of the Civil Code of the Philippines on consignment with respect to the royalty or any sum of money that may be involved in the dispute, the complainant shall submit to the Bureau a certified copy of the Contract of Escrow.

Section 8. Mediation Process. Within one (1) day from receipt of the complaint and payment of the required fees, the Bureau shall docket the complaint and the Director shall refer the same to the Dispute Settlement Division for mediation.

Section 9. Notice to Settle. Within five (5) days from the docketing of the complaint, the Mediator shall call the parties to a Mediation Conference by sending each party a Notice to Settle, stating the date, time and venue of the conference, and attaching thereto a copy of the complaint for the respondent. The Mediation Conference shall be set within ten (10) days from date of the said notice.

Section 10. Mediation Conference. During the mediation conference, the Mediator shall

encourage the parties to arrive at a fair and mutually beneficial compromise that will resolve the dispute. The Mediator shall explain the mediation proceedings stressing the benefits of an early settlement of the dispute and shall attempt immediate settlement.

If no settlement is reached, another session shall be set within ten (10) days therefrom to consider various options proposed by the Mediator to resolve the dispute. If necessary, the Mediator may hold separate conferences with each party before the next session to explore alternative points of agreement between the parties.

Section 11. Appearance of Parties. It shall be the duty of the parties to appear at the Mediation Conference. During the conference, presence of counsel is not necessary and is even discouraged.

Section 12. Effect of Failure to Appear at Mediation Conference. The failure of the complainant to appear at the Mediation Conference shall be cause for the dismissal of the complaint. The dismissal shall be with prejudice, unless otherwise ordered by the Mediator. A similar failure on the part of the respondent shall be cause to allow the complainant to submit his affidavit within ten (10) days therefrom and the complaint shall be deemed submitted for resolution.

However, within ten (10) days from receipt of the order of dismissal or default, the concerned party or parties may file a motion to set aside said order, if the failure to appear was by reason of fraud, accident, mistake or excusable negligence.

Section 13. Venue of the Mediation Conference. The Mediation Conference and any session thereof shall be held within the premises of the Office. However, upon written request and payment of the required fee, the Director may authorize that the Mediation Conference or any session thereof be held outside the premises of the Office provided that the same is necessary and will enhance the proceedings and the other party, if the request was made by only one party, agrees thereto. The parties shall not unreasonably withhold their consent to such request. The total cost to hold the Mediation Conference or any session thereof outside the premises of the Office, including air transportation, accommodation and per diem, shall be borne by the party requesting; and, if the request was made by all parties, the total cost shall be shared by them equally or in such other proportion as they may state in their request.

Section 14. Proceedings in case of Successful Settlement. If the mediation is successful, the parties shall submit the original Compromise Agreement to the Mediator within five (5) days from date of the last conference. The Mediator shall, within one (1) day from receipt thereof, review and determine whether the compromise agreement is in accordance with law and public interest, and shall submit the compromise agreement together with his recommendations, to the Director General or Director who shall, within fifteen (15) days therefrom, issue a judgment by compromise which shall be immediately executory.

Section 15. Confidentiality of Records. To encourage the spontaneity that is conducive to effective communication and successful mediation efforts, the mediation proceedings and all incidents thereto shall be kept strictly confidential including any admissions, statements, or

other evidence adduced therein. Any notes taken by the Mediator during the proceedings shall be disposed of after the resolution of the dispute.

Section 16. Proceedings in case of Failure of Mediation. If the mediation is not successful, the Mediator shall declare failure of mediation and direct the parties to submit their respective affidavit, with supporting documents, if any, within a non-extendible period of ten (10) days from the last mediation conference. The mediator shall issue the corresponding "Certificate of Failed Mediation" and directive.

Section 17. Clarificatory Hearing. If necessary, the Mediator may, within five (5) days from receipt of the last affidavit, call the parties to a clarificatory hearing.

Section 18. Decision of Director General or Director. Within thirty (30) days after receipt of the last affidavit or after the clarificatory hearing, the Mediator shall submit his findings including a draft decision to the Director General or the Director who shall consider the same for approval, disapproval or other actions within thirty (30) days therefrom.

Section 19. Appeal to the Director General. The decision or final order of the Director on disputes involving technology transfer payments shall become final and executory fifteen (15) days after receipt of a copy thereof by the parties unless within the said period, a motion for reconsideration is filed with the Director or an appeal to the Director General has been perfected by filing a notice of appeal and payment of the required fee.

Only one motion for reconsideration of the decision or order of the Director shall be allowed. If the motion is denied, the movant shall file his appeal within the balance of the period prescribed above to which he was entitled at the time of serving his motion.

Section 20. Appellant's brief required. – The appellant shall, within one (1) month from the date of filing of the notice of appeal, file a brief of the authorities and arguments on which he relies to maintain his appeal. On failure to file the brief within the time allowed, the appeal shall stand dismissed.

Section 21. Director's comment. The Director shall submit his comments on the appellant's brief within one (1) month from receipt of the order of the Director General requiring him to comment.

Section 22. Appeal to the Secretary of Trade and Industry. The decision of the Director General shall be final and executory fifteen (15) days after receipt of a copy thereof by the parties unless an appeal to the Secretary of the Department of Trade and Industry is perfected by filing a notice of appeal and payment of the required fee. No motion for reconsideration of the decision or order of the Director General shall be allowed.

FINAL PROVISIONS

Section 23. Suppletory Application of the Rules of Court. These rules and regulations shall

primarily govern the settlement of disputes before the Bureau. However, relevant provisions of the Rules of Court shall apply suppletorily.

Section 24. Amendment. All rules and regulations, office orders, memoranda, circulars and memorandum circulars and parts thereof inconsistent with these rules are hereby amended.

Section 25. Separability. If any provision in these Regulations or application of such provision to any circumstance is held invalid, the remainder of these Regulations shall not be affected thereby.

Section 26. Furnishing of Certified Copies. Mr. Eduardo Josen, Records Officer II, is hereby directed to immediately file three (3) certified copies of these rules with the University of the Philippines Law Center, and one (1) certified copy each to the Office of the President, the Senate of the Philippines, the House of Representatives, the Supreme Court of the Philippines, and the National Library.

Section 27. Effectivity. These rules and regulations shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Done this 24th day of April 2001.

Approved:

EMMA C. FRANCISCO,

Director General

Recommended by:

CARMEN G. PERALTA,

Director, Documentation, Information

and Technology Transfer Bureau