

The Development of Philippine Copyright Law

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I. HISTORY OF PHILIPPINE COPYRIGHT LAWS

A. Spanish Copyright Law

The Spanish Law on Intellectual Property of January 10, 1879¹ was the first known copyright law in the country. In principle, the Spanish viewed copyright as a right of property which was to be governed by civil law, albeit with special legislative provisions. Article 5 of the Spanish Copyright Act stated, "[I]ntellectual property shall be governed by civil law without other restrictions than those imposed by the Act."²

Copyright law, therefore, enjoyed autonomy in details, but not in principles with respect to the right of property, which the Spanish Civil Code recognized. The Copyright Act expressly stated this principle:

The Act on Intellectual Property determines the persons to whom the said right belongs, the manner and the duration of its enjoyment. In cases not provided for, by the said special Act, the general rules on property apply as laid down in the present code.³

When Spain ceded the Philippines to the United States of America under the Treaty of Paris of December 10, 1898, the U.S. Copyright Law became the applicable law.

B. Act No. 3134

On March 6, 1924, the Philippine Legislature enacted the country's very own copyright law, Act No. 3134, entitled, "An Act to Protect Intellectual Property." The Act was based on the U.S. Copyright Law of 1909. The U.S. Copyright Act of 1909 finds its foundation in the United States Constitution, which empowers Congress to promote the progress of Science and Useful Arts; by securing to authors and inventors the exclusive right to their respective writings and discoveries for limited times.⁴

The U.S. Copyright Act was created in order to satisfy two closely related principles: fostering the creation and dissemination of intellectual works for the benefit of the public, and rewarding authors for their contribution to society.⁵

Section 3 of Act No. 3134 had set forth the rights included in copyright. The Act required registration and deposit of the work with the Philippine Library and Museum in order that a copyright be granted.⁶ Copyright

1. This law was extended to the Philippines by the Royal Decree of May 5, 1887.
2. The Spanish Copyright Act, art. 5 (1879).
3. *Id.* art. 429.
4. U.S. CONST. art. I, § 8.
5. THE COPYRIGHT SOCIETY OF THE U.S.A., 2 STUDIES ON COPYRIGHT 1205 (1963).
6. An Act to Protect Intellectual Property, Act No. 3134, § 11 (1924).

protection was granted to foreigners on the basis of reciprocity.⁷ The copyright term was THIRTY years from registration, renewable for an additional term of THIRTY years.⁸ Infringement remedies included injunctions,⁹ damages,¹⁰ criminal liability,¹¹ and liability for those contributing to infringement.¹²

C. The Berne Convention

On August 1, 1951, the Philippines acceded to the Berne Convention for the Protection of Literary and Artistic Works as revised in Brussels in 1948,¹³ and adopted the national treatment principle. According to the national treatment principle, authors of member nations shall enjoy, with respect to their works in countries other than the country of origin of the work, the rights which the laws of the said countries grant to their nationals, and the rights specially granted by the Convention.¹⁴ Furthermore, the enjoyment and exercise of these rights shall not be subject to any formality.¹⁵

D. Presidential Decree No. 49

On December 15, 1972, Presidential Decree No. 49,¹⁶ the Decree on Intellectual Property, took effect.¹⁷ The Decree settled the no-formality issue by providing that copyright subsists from the moment of creation.¹⁸

E. The Rome Convention

On September 25, 1984, the Philippines acceded to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations which was adopted in Rome on October 26, 1961,

7. *Id.* § 10 (c).

8. *Id.* § 18.

9. *Id.* § 19 (a).

10. *Id.* § 19 (b).

11. *Id.* § 20.

12. *Id.*

13. The Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 828 U.N.T.S. 221, 50 O.G. 1208 [hereinafter Berne Convention].

14. *Id.*

15. *Id.* art. 4 (2).

16. 68 O.G. 9062 (1972).

17. This decree was issued by former President Ferdinand Marcos, pursuant to the legislative powers he enjoyed as President during the Martial Law regime.

18. Ignacio S. Sapalo, *Copyright and Neighboring Rights*, in BACKGROUND READING MATERIAL ON THE INTELLECTUAL PROPERTY SYSTEM OF THE PHILIPPINES 137 (1994).

also known as the Rome Convention.¹⁹ The rights granted by Presidential Decree No. 49 to performers, producers of sound recordings and broadcasting organizations were substantially the same as those granted under the Convention.²⁰

F. The 1987 Philippine Constitution

The 1987 Philippine Constitution, similar to the United States Constitution, recognized the important nature of intellectual property by requiring that 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.²¹

G. US-RP Exchange of Notes

On April 6, 1993, the Philippine and U.S. Governments entered into an Exchange of Notes²² regarding the protection and enforcement of intellectual property rights in the Philippines.

Under the Note, the Philippine Government committed itself to provide adequate and effective protection to intellectual property. In turn, the U.S. removed the Philippines from the "special 301" priority watch list which would have otherwise subjected the country to U.S. trade retaliatory sanctions.

In the area of copyright and neighboring rights, the Philippine Government committed to undertake the following:

First, the formulation of rules and regulations to bring them in conformity with the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works. The amendments would include the repeal of the Textbook Reprint Law which allowed local publishers to seek reprint licenses directly from the Philippine Government without having to notify the foreign copyright owner. Included among the books reprinted under the Textbook Reprint Law were computer manuals;

Second, the increase in the term of protection of phonograms to at least 50 years from the date of first fixation or publication;

Third, the abolishment [sic] of registration and deposit requirements for sound recordings;

Fourth, the narrowing of the scope of the private use of exemptions currently found in the Copyright Law to certain special cases which do not conflict with normal

19. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Oct. 26, 1961, 496 U.N.T.S. 43 [hereinafter Rome Convention].

20. Sapalo, *supra* note 18.

21. PHIL. CONST. art. XIV, § 13 (1987).

22. The agreement was reached after extensive consultations between the two governments.

exploitation of the work and unreasonably prejudice the legitimate interests of the right holder;

Fifth, the grant of an exclusive right for authors of computer programs and their successors-in-interest to authorize or prohibit the rental to the public, for the purpose of direct or indirect commercial advantage, of originals or copies of their works;

Sixth, the making of an express statement that computer programs are protected as literary works; and

Seventh, the addressing of the situation of cable television operators that infringe copyright through the unauthorized retransmission of copyrighted works.

Under the Note, the government reiterated its pledge to ensure the effective enforcement of intellectual property rights by having taken, or by taking, various steps in line with such goal.

One of those steps was the establishment of an Inter-Agency Oversight Committee on Intellectual Property Rights, engaged in recommending, coordinating, enforcement, oversight, and program implementation for intellectual property rights. Also created on August 25, 1992 was a Department of Justice Special Task Force to handle the inquest and prosecution of piracy and counterfeiting cases.

Amendments to each of the relevant laws were submitted to Congress, increasing the available penalties in criminal infringement cases. The maximum period of imprisonment was increased from a period of six months to one year to a maximum of at least three years, while the minimum fine was established to reflect the seriousness of the infringement. Other actions involved the formulation of measures to prevent the importation of infringing goods through the issuance of Bureau of Customs guidelines that, among others, allowed the Bureau to make an initial determination of infringement and permit copyright or trademark owners to notify the Bureau of suspected infringing shipments.

H. Accession of the Philippines to WTO

On December 15, 1994, the Philippines adhered to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS),²³ which entered into force on Jan. 1, 1995. The TRIPS Agreement effectively incorporates, and then builds upon the level of protection afforded in the Berne Convention, the Paris Convention,²⁴ and the Rome Convention. Member States are generally required to apply the provisions of the Agreement within one year from this date. This period, however, is extended for developing country members, least developed country members, and members which are in the process of

23. Apr. 15, 1994, 33 I.L.M. 81 (1995) [hereinafter TRIPS Agreement].

24. Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, 828 U.N.T.S. 11851 [hereinafter Paris Convention].

transformation from a centrally-planned economy into a market, free-enterprise economy.

The TRIPS Agreement is based on three fundamental principles. First, the creation of minimum standards for the protection and enforcement of intellectual property rights; second, the principle of national treatment, in that each country must protect nationals of other member states at the same level as domestic right holders, both as to scope of protection and enforcement; and third, the "most favored nation" principle, to ensure that any benefits to one member state be granted to all member states.

The proposed Copyright Act of 1995 was crafted, taking into consideration the Philippines' obligations under TRIPS. The national treatment, most favored nation, and reciprocity clauses found in the TRIPS Agreement were reproduced in what eventually became the Intellectual Property Code of 1998.²⁵

I. The Proposed Copyright Act of 1995

The government, under the stewardship of the Bureau of Patents, Trademarks, and Technology Transfer, realized the importance of updating the country's outmoded intellectual property laws. The government also considered its commitment to the international community under both the Exchange of Notes with the U.S. Government, and the country's membership in the World Trade Organization. It then undertook to modify its intellectual property laws to make them more relevant to international and technological developments.

On July 27, 1995, then Senator Gloria Macapagal-Arroyo filed Senate Bill No. 964, entitled, "The Copyright Act of 1995." The proposed legislation was crafted after extensive consultations with the Department of Trade and Industry, the Copyright Office, and concerned private sectors and industry associations.

In her Explanatory Note, then Senator Macapagal-Arroyo stated that the proposed law:

1. Aims to align our copyright law with international developments in such field to the extent that they are compatible with our national interests. It also considers recent technological developments that have not been taken into account when the existing copyright law was promulgated twenty-four years ago. The proposed amendments make the provision of the existing law compatible with the Berne Convention by modifying the deposit and notice requirements as a condition to copyright protection;
2. The proposed amendments include a definition of terms that will clarify certain provisions of the law, e.g., the definitions of "rental" and "public lending" under the TRIPS Agreement. It takes into account the fact that technology has given rise to the creation of works which are in some ways akin to traditional

25. The Intellectual Property Code, Republic Act No. 8293 (1998).

cinematographic works. For example, there are now "multimedia works" which may not come within the definition of "cinematographic works" since they do not necessarily involve the making of an "audio-visual recording;"

3. It clarifies that copyright includes not just the positive right of exploitation of the work but also the negative right to prevent the unauthorized exploitation of the work;
4. It increases the term of protection for sound recordings, cinematographic and audio-visual works, newspapers and periodicals to international standards;
5. It grants an exclusive rental right which has been incorporated in the TRIPS Agreement. The grant is based on the observation of certain quarters that the right to authorize or prevent rental and public lending of copies of certain types of works and productions, such as computer programs, databases and sound recordings, has become an important means of economic exploitation of such works and productions. The risk of unauthorized copying increases due to the public lending of the protected works without the permission of the owner of the right;
6. It protects "databases which are original by reason of the selection or coordination of arrangement of their contents." Under Presidential Decree No. 49, the definition of literary, scholarly or artistic works may not be broad enough to include collections of materials in the form of commercial databases, including those made available in electronic form distributed in hard copy or CD-ROM's or through on-line networks, *i.e.*, using telephone lines. The same databases may be composed of works which are subject to copyright protection in their own right, such as the individual articles included in an encyclopedia, but an increasing number of databases are composed of individual bits of data or factual materials that may not be on the same level of originality necessary to qualify for works under most copyright laws;
7. It grants a new economic right of "other communication to the public of the work." This takes into account recent technological advances that made possible the widespread circulation of works through various forms of media to the broadest possible audience;
8. It deletes the provision of Presidential Decree No. 49 on the translation of works which is not compatible with the obligations of the Philippines under the Berne Convention. In terms of the right of translation, Article 8 of the Convention establishes the general rule that the right of translation is an exclusive right of the author, and Article 7(1) establishes the general rule that the term of protection for such rights is the author's life and 50 years after his death. Likewise, Article 9 of the Convention establishes the right of reproduction as an exclusive right.

In lieu of a provision on translation and reproduction of protected works, the proposed law provides for a possible availment by the Philippines of the special provisions regarding developing countries, including provisions for licenses granted by competent authorities.

Deliberations on the proposed legislation ensued. It was the consensus of the Philippine Legislature to consolidate all pending intellectual property laws into a Code. In the first quarter of 1997, the consolidated bill was presented to both houses of Congress for enactment into law.

J. *The Intellectual Property Code of 1998*

On June 6, 1997, the Intellectual Property Code of 1998²⁶ was approved and passed into law. The current law, which took effect on January 1, 1998, expressly repealed Presidential Decrees No. 49 and 285, which formerly contained the copyright laws of the Philippines. As stated earlier, Presidential Decree No. 49 was the former general copyright law; Presidential Decree No. 285 granted compulsory license to reprint any textbook or reference book, whether of domestic or foreign origin, which had been prescribed by the curriculum and certified by the registrar of an academic institution to have an exorbitant price.²⁷

The Intellectual Property Code reiterates the basic concept that copyright protection arises from the moment of creation of the work that is entitled to such protection.²⁸ Such protection attaches regardless of the mode or form of expression of the creator, or the content, quality, and purpose of the work. Similarly, it reaffirms the basic principle that no protection shall extend to any idea, procedure, system, method of operation, discovery, concept, or mere data.²⁹ However, it is generally legally desirable to deposit copies of the work with the National and Supreme Court Libraries.³⁰ Finally, the remedies available to the copyright owner of the penalties, that may be imposed on the infringer, have also been significantly increased.

II. NEW CONCEPTS IN COPYRIGHT LAW

In keeping with international and technological developments, the Code now extends copyright protection to multimedia works and databases which were not included in Presidential Decree No. 49.³¹ Furthermore, the copyrighting of labels containing trademarks, which had been a source of abuse by infringers, is no longer allowed. Labels are no longer copyrightable subject matter.³²

The Code grants new rights of first distribution or first sale which includes the first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership, and an exclusive rental right to audio-visual works, works embodied in sound recordings, computer programs, database or musical works in graphic format.³³

26. *Id.*

27. *Id.* § 239.

28. *Id.* § 172.2.

29. *Id.* § 175.

30. *Id.* § 191.

31. *Id.* § 172 (n).

32. Prior to the passage of the Intellectual Property Code, infringers would use their copyright registration for famous trademarks as a defense in an infringement suit.

33. The Intellectual Property Code, § 177.3.

Under the Code, "the person who commissioned a work shall have ownership of the work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary."³⁴ This is a significant change in the law. Under the old law, copyright to a commissioned work belongs in joint ownership to the person who commissioned the work and the creator, unless there is a contrary stipulation.³⁵

A fair use provision, similar to that found in the U.S. Copyright Act, is now contained in the Code.³⁶ This provision was not found in the old law. The Code also provides that the decompilation or "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 constitute fair use.³⁷ However, the reproduction of one back-up copy or adaptation of computer programs, is allowed under certain conditions.³⁸

There is a significant typographical error in the Code. It was the intention of the bill's framers that the deposit requirement refer only to the first three classes of works, namely: (a) books, pamphlets, articles, and other writings; (b) periodicals and newspapers; and (c) lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced to writing or other material form.

Unfortunately, in the final version, all works enumerated in the Code, including paintings, sculptures, ornamental designs, three-dimensional works, software programs, data bases, sound recordings, audio-visual, cinematographic works," and other literary, scholarly, scientific, and artistic works" should be deposited with both the National Library and the Supreme Court.³⁹

The Code slightly expands the moral rights provisions in the former law by using the terms "distortion, mutilation, or other modification" to replace "alteration."⁴⁰ It also limits the term of the moral rights provisions.⁴¹

The civil remedies for infringement were expanded by the Code and the criminal penalties were significantly increased to:

1. Imprisonment of one to three years plus a fine ranging from Fifty Thousand Pesos to One Hundred Fifty Thousand Pesos for the first offense;

34. *Id.* § 178.4.

35. Decree on the Protection of Intellectual Property, Presidential Decree No. 49, § 6 (1972).

36. The Intellectual Property Code, § 185.

37. *Id.*

38. *Id.* § 189.

39. *Id.* § 191.

40. *Id.* § 198.

41. *Id.*

2. Imprisonment of three years and one day to six years plus a fine ranging from One Hundred Fifty Thousand Pesos to Five Hundred Thousand Pesos for the second offense; and
3. Imprisonment of six years and one day to nine years plus a fine ranging from Five Hundred Thousand Pesos to One Million Five Hundred Thousand Pesos for the third and subsequent offenses.⁴²

A new provision in the Code provides that any person who has in his possession an article which he knows, or ought to know, to be an infringing copy of the work, for purposes of selling, letting for hire, offering, or exposing for sale or hire; distributing for any purpose to an extent that will prejudice the rights of the copyright owner in the work; or trade exhibit of the article in public, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned.⁴³

Finally, the Code provides that an affidavit of copyright ownership stating that copyright subsists in the work, that the person named is the copyright owner, and that a copy of the work annexed thereto is a true copy, shall constitute *prima facie* proof sufficient to establish one's right to the work.⁴⁴ The National Library will no longer issue copyright registration certificates as proof of ownership.⁴⁵

III. WORKS PROTECTED UNDER INTERNATIONAL TREATIES

A. The Berne Convention

Article 2 of the Berne Convention reads in part as follows:

The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture; sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science. Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work. Collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected

42. *Id.* § 217.

43. *Id.* § 217.3.

44. *Id.* § 218 (a-c).

45. Presidential Decree No. 49, § 50.

as such, without prejudice to the copyright in each of the works forming part of such collections.⁴⁶

The variety of material that can be protected under copyright law is very broad. It includes materials that can be seen as well as materials that can be heard. It may be in the form of literary material, such as poetry, books, plays, magazines, bulletins, newsletters, personal and business correspondence, speeches, scripts, research reports, computer programs, product packaging, promotional material, and advertising copy. It may also be in the form of motion pictures, photographs, audio-visual programs, music, art, sculpture, cartoon strips, scientific and technical drawings such as architect's plans, maps, dolls, and sounds.

Although not included in the list contained in the Berne Convention, computer programs are undoubtedly included in the notion of a "production in the literary, scientific and artistic domain" within the meaning of Article 2 of the Convention. A computer program is a set of instructions which control the operations of a computer in order to enable it to perform a specific task, such as storage and retrieval of information.

Another recent example of a type of work not listed in Article 2 of the Berne Convention, but which is clearly included in the notion of a creation "in the literary, scientific and artistic domain," is a multimedia production. While no acceptable legal definition had been developed, there was a consensus that the combination of sound, text, and images in a digital format and made accessible by a computer program, embodies an original expression of authorship. This was sufficient to justify the protection of multimedia productions under the umbrella of copyright.⁴⁷

B. The TRIPS Agreement

The TRIPS Agreement outlines and mandates standards and principles for the scope, use, and enforcement of intellectual property rights. Aside from the protected works under the Berne Convention, the following new works are protected:

- a. Computer programs whether in source or object code shall be protected as literary works.⁴⁸

In stating that they must be protected as literary works, the provision basically prohibits a qualification of computer programs as works of "applied art," which would have allowed a limitation of the term and other conditions of protection. Finally, by specifying that computer programs are protected whether in source

46. Berne Convention, *supra* note 13, art. 2.

47. *Id.*

48. TRIPS Agreement, *supra* note 23, art. 10 (1).

or object code, the Agreement also eliminates an argument which surfaced mostly during the 1980's to the effect that only the source code could possibly be a literary work, and not the purely utilitarian object code.

b. Compilation of Data⁴⁹

As regards databases and compilation of data, Article 10(2) of the TRIPS Agreement confirms the application of copyright to the database. The test may be summarized as the need for the maker of the database to use creativity in the selection or arrangement, an intellectual effort to choose the material or to arrange it in the database.⁵⁰

IV. DEVELOPMENTS IN COPYRIGHT LAW

The development of Philippine copyright law is also reflected in the decisions of the Supreme Court.

A. *Philippine Education Co. v. Sotto and Alindada*⁵¹

In 1929, in the case of *Philippine Education Co. v. Sotto and Alindada*, the Philippine Supreme Court was asked to rule on whether exclusive rights could only be acquired by effecting copyright in the manner provided by law. The case was decided under Act No. 3134.⁵² The main issue to be resolved was whether the principle under U.S. Copyright Law, that after an article is once published without a copyright it becomes public property, is likewise applicable under Philippine copyright laws.

The plaintiff Philippine Education Company, Inc. was the owner and publisher of a monthly magazine, the *Philippine Education Magazine*. Defendants Vicente Sotto and V.R. Alindada, on the other hand, were the proprietor/publisher and editor, respectively, of a weekly newspaper known as *The Independent*. Sometime in 1927, plaintiff contracted with Austin Craig for the preparation and publication of an original article concerning Mrs. Jose Rizal to be published exclusively in the *Philippine Education Magazine*. Craig prepared and wrote an article entitled "The True Story of Mrs. Jose Rizal" and delivered it to plaintiff who paid him for the article. Plaintiff printed and published the article in its December 1927 issue, giving notice in said issue that "all rights thereto were reserved." Defendants reproduced and published the same article in the weekly issues of *The Independent*, particularly in its

49. *Id.* art. 10 (2).

50. *Id.*

51. 52 Phil. 680 (1929).

52. Act No. 3134, which was based on the U.S. Copyright Law of 1909, required that the copyright owner register his copyright to the work with the Philippine Library and Museum within 30 days from publication, failing which, it became part of the public domain.

December 24 and December 31, 1927 issues, without citing the source of its reproduction.

Plaintiff wrote the editor of *The Independent* protesting the fact that the article was published "without permission or even the courtesy of an ordinary credit line,"⁵³ and requested that the next issue state that the article was taken from plaintiff's magazine. Defendant replied that plaintiff had not registered such rights under the copyright law and that "any newspaper can reprint the article of Professor Craig without permission from anybody."⁵⁴

Plaintiff thus filed a complaint to perpetually enjoin defendants from the publication of any further articles without plaintiff's knowledge or consent. Defendant filed a general demurrer on the ground that the complaint did not state facts sufficient to constitute a cause of action. During the trial, the parties admitted the fact that the article, which was prepared by Mr. Austin Craig and published in the *Philippine Education Magazine*, was not registered in the Copyright Office, although in the same magazine, there may be read a note "All Rights Reserved." The trial court disagreed with the defendant and rendered judgment against him. On appeal, the Supreme Court affirmed the judgment of the trial court.

Defendant argued that under the copyright law of the United States, after the article has been once published without a copyright in plaintiff's magazine, it becomes public property. As such, defendant had a legal right to publish it in his magazine, without giving the source of the reproduction. Since Act No. 3134 was based on the U.S. Copyright Law, it followed that defendant had the same legal right.

The Supreme Court, however, held that, unlike the U.S. Copyright Law, Act No. 3134 contained the following provision:

Section 5. Lines, passages, or paragraphs in a book or other copyrighted works may be quoted or cited or reproduced for comment, dissertation, or criticism.

*News items, editorial paragraphs, and articles in periodicals may also be reproduced unless they contain a notice that their publication is reserved or a notice of copyright, but the source of the reproduction or original reproduced shall be cited. In case of musical works, parts of little extent may also be reproduced.*⁵⁵

The Court held that the language of Section 5 implies first, that such news items, editorial paragraphs, and articles in periodicals may be reproduced, unless they contain a notice that their publication is reserved, or second, that they may also be reproduced even if they contain a notice of copyright.

53. *Philippine Education Co.*, 52 SCRA at 682.

54. *Id.*

55. Act 3134, § 5, cited in *Philippine Education Co. v. Sotto and Alindada*, 52 Phil. 680, 685-686 (1929) [emphasis supplied].

However, in either case, the source of the reproduction or original reproduced shall be cited. Thus, the Court stated that:

But in either event, the law specifically provides that "the source of the reproduction or original reproduced shall be cited," and is not confined or limited to a case in which there is "a notice of copyright," and specifically says that in either event "the source of the reproduction or original reproduced shall be cited."⁵⁶

The Court was of the opinion that the language in question in Act No. 3134, not found in the Copyright Law of the United States, was inserted for a specific purpose, and that it was intended to prohibit the very thing which the defendant did in this case.⁵⁷

However, this decision was not rendered unanimously. Dissenting from the majority opinion, Justice Street stated that:

[i]t is rudimentary in copyright law that publication without copyright constitutes a dedication to the public and leaves any and everybody free to utilize the matter, with or without giving credit. In other words, publication without copyright terminates the literary property which the author had while the material was unpublished. This rule is universal.⁵⁸

Thus, Justice Street maintained that even under our statute, exclusive rights could only be acquired by effecting copyright in the manner provided by law. That is, the only way of acquiring an exclusive right to reproduce published matter was to effect copyright. But the interpretation adopted by the majority decision seemed to imply that there was another way to acquire the same exclusive right, which is simply not to take copyright but merely to reserve the right of publication.

It should be noted, however, that the majority opinion was careful not to make such a categorical statement. The reason may be that the Court was careful not to make a ruling that would be contrary to what the prevailing law, Act No. 3134, provided. The majority opinion, in several instances, emphasized that:

The second paragraph of this section [Section 5 of Act No. 3134] is confined to news items, editorial paragraphs, and articles in periodicals, which may also be reproduced, "unless they contain a notice that their publication is reserved or a notice of copyright, but the source of the reproduction or original reproduced shall be cited."⁵⁹

It was contended that this construction would nullify the use and value of the whole Copyright Law, but it will be noted that this exception is specifically confined and

56. *Philippine Education Co.*, 52 SCRA at 687.

57. *Id.* at 688.

58. *Id.* at 689 (Street, J., dissenting).

59. *Id.* at 687.

limited to "news items, editorial paragraphs, and articles in periodicals," and hence, could not be made to apply to any other provision of the Copyright Law.⁶⁰

This construction [adopted in the majority decision] does not in the least impair the Copyright Law, except as to "news items, editorial paragraphs, and articles in periodicals." On the other hand, such construction protects an enterprising newspaper or magazine that invests its money and pays for the right to publish an original article.⁶¹

By emphasizing that the construction adopted in the majority decision is in fact the exception rather than the general rule in copyright law, the Court sought to make clear that the registration of copyright still remains the most important step in protecting one's rights over his creation. Also, it emphasized that the construction herein adopted applies only to "news items, editorial paragraphs, and articles in periodicals." The Court made clear that the majority opinion did not attempt to deviate from the general principle that the essence of a publishing contract is the authorization to make copies.⁶² In fact, the Supreme Court even noted that in the instant case, the defendant had the legal right to publish the article in question by giving "the source of the reproduction."⁶³

With the abolition of copyright notice under Act No. 3134 and Presidential Decree No. 49, and with the full implementation of the Berne Convention requirement that copyright protection shall not be conditioned on compliance with any formality, the foregoing decision becomes applicable with even greater reason.⁶⁴

B. *Santos v. McCullough Printing Company*⁶⁵

In 1964, the Supreme Court was again confronted with a case of publication without copyright. The issue to be resolved was whether the creator of an artistic design may prevent its reproduction by another where the artistic design has been previously published without a copyright.

The facts of the case are simple enough. Plaintiff Mauro Malang Santos created for former Ambassador Felino Neri, an artistic design of a Christmas card for the latter's personal Christmas card greetings for the year 1959. The following year, the defendant McCullough Printing Company, without the knowledge and authority of plaintiff, displayed the very design in its album of Christmas cards and offered it for sale.

60. *Id.* at 688.

61. *Id.*

62. VICENTE B. AMADOR, COPYRIGHT UNDER THE INTELLECTUAL PROPERTY CODE 261 (1998).

63. *Philippine Education Co.*, 52 SCRA at 688.

64. AMADOR, *supra* note 62, at 393.

65. 12 SCRA 321 (1964).

Claiming that defendant's act of unauthorized reproduction placed plaintiff's professional integrity and ethics under serious question, and caused him grave embarrassment, plaintiff Santos filed an action for damages against the defendant. The defendant set up the defense that the design did not contain a clear notice that it belonged to plaintiff, nor that he had prohibited its use by others. Further, the design in question as published did not contain a notice of copyright, as in fact the plaintiff had never obtained a copyright for it. Thus, for this reason, defendant concluded that plaintiff's action was barred by the copyright law.

The trial court agreed with the defendant and held that plaintiff's complaint did not state a cause of action against the defendant. In so ruling, the trial court stated that:

The plaintiff in this case did not choose to protect his intellectual creation by a copyright. The fact that the design was used in the Christmas card of Ambassador Neri, who distributed eight hundred copies thereof among his friends during the Christmas season of 1959, shows that the same was published.

Unless satisfactorily explained, a delay in applying for a copyright of more than thirty days from the date of its publication, converts the property into one of public domain.

Since the name of the author appears in each of the alleged infringing copies of the intellectual creation, the defendant cannot be said to have pirated the work nor [be] guilty of plagiarism. Consequently, the complaint does not state a cause of action against the defendant.⁶⁶

On appeal to the Supreme Court, the Court affirmed that plaintiff is not entitled to protection since he did not copyright his design. The Court reiterated that an intellectual creation should be copyrighted within thirty days after its publication, the failure of which renders such creation public property.⁶⁷

Plaintiff also contended that notwithstanding his failure to secure a copyright, the publication of his artistic design in this case was a limited publication so as to prohibit its use by others or its general publication. Rejecting plaintiff's contention, the Supreme Court held that there was no limited publication since the same was not shown on the face of the design.

When the purpose is a limited publication, but the effect is general publication, irrevocable rights thereupon become vested in the public in consequence of which enforcement of the restriction becomes impossible...When Ambassador Neri distributed 800 copies of the design in controversy, the plaintiff lost control of his design and the necessary implication was that there had been a general publication, there having been no showing of a clear indication that a limited publication was intended. The author of a literary composition has a right to the first publication thereof. He has a right to determine whether it shall be published at all, and if

66. *Id.* at 324.

67. *Id.* at 324-25.

published, when, where, by whom, and in what form. This exclusive right is confined to the first publication. When once published, it is dedicated to the public, and the author loses the exclusive right to control subsequent publication by others, unless the work is placed under the protection of the copyright law.⁶⁸

It is important to note that this case was decided under Act No. 3134, which required that the copyright owner register his copyright to the work with the Philippine Library and Museum within THIRTY days from publication, failing which, it became part of the public domain. Thus, plaintiff's failure to obtain a copyright over his creation was fatal to his cause of action.

Significantly, although these first two cases on copyright contain essentially the same set of facts, the Supreme Court nevertheless reached two different conclusions. In both cases, the plaintiff failed to obtain a copyright over his published work. However, in *Philippine Education Co.*, the Supreme Court ruled in favor of the plaintiff and enjoined defendants from further acts of reproduction. In *Santos*, the Supreme Court held that plaintiff was not entitled to any protection because of his failure to secure a copyright over his work.

These two seemingly contradictory decisions, however, may still be reconciled. In *Philippine Education Co.*, the Supreme Court emphasized the fact that in the original publication, there was a notice that publication was reserved. Also, since the article in question was an article appearing in a magazine, the same fell within the scope of Section 5 of Act No. 3134, which only allowed the conditional reproduction of "news items, editorial paragraphs, and articles in periodicals." These works could be reproduced provided that the source of the reproduction is given, even though the same contains a notice of copyright or of reservation of publication. Therefore, notwithstanding the fact that plaintiff had not acquired a copyright over the work in question, he was still entitled to some form of protection against unauthorized reproduction because of Section 5 of Act No. 3134.

However, this exceptional protection under Section 5 did not extend to the artistic creation in *Santos*. In that case, the artistic creation was a Christmas card design, not a news item, an editorial paragraph, or an article in a periodical. Thus, the failure of the plaintiff Santos to register a copyright over his work was fatal to his claim for protection against unauthorized publication.

The difference between a limited publication and a general publication may likewise explain the different conclusions reached by the Supreme Court in these two cases. It will be recalled that in *Santos*, plaintiff raised the contention that the publication of the design was a limited one, such that there was still a general prohibition against its use by others or its general publication. The Court, however, found that the face of the design did not show that the purpose thereof was merely a limited publication. Such being the case, it was

68. *Id.* at 325.

held that plaintiff had lost the right to control subsequent publication by others. Although the issue of limited publication was not raised in *Philippine Education Co.*, the same may be implied from the fact that the article was published with a notice that its publication was reserved. Thus, the inclusion of such notice may be held to have effected a limited publication of the article, such that the plaintiff therein may still control its subsequent publication by others.

Another reason may be that in *Philippine Education Co.*, the defendant therein reproduced the article in question *without giving the source of the reproduction*, notwithstanding the fact that the plaintiff had previously published the article with a notice that it was reserving the right of publication. On the other hand, in *Santos*, the defendant therein reprinted the artistic design in question, which carried the pen name of the plaintiff. Thus, in the latter, there was reproduction of an artistic work, but the source of such reproduction was indicated therein.

These early cases were both decided under the copyright regime of Act No. 3134. In November 14, 1972, Presidential Decree No. 49 or the Intellectual Property Decree was enacted. P.D. No. 49 revolutionized Philippine copyright law in that under its regime, copyright for a work was acquired from the moment of creation. Unlike Act No. 3134, which required that the copyright owner register his copyright to the work with the Philippine Library and Museum to acquire copyright protection, P.D. No. 49 only required registration and deposit to entitle the copyright owner the right to recover damages in an infringement suit.

*C. 20th Century Fox Film Corporation v. Court of Appeals*⁶⁹

20th Century Fox Film Corporation is an infringement case decided under P.D. No. 49. Although the case did not deal directly with the issue of copyright infringement, the Supreme Court's discussions on copyright provided a background for future cases that dealt directly with copyright infringement, particularly, cases involving anti-film piracy.

The main issue in the case was the validity of the searches and seizures conducted in connection with the government's anti-film piracy campaign. The application for search warrants was directed against videotape outlets that were allegedly engaged in the unauthorized sale and rental of copyrighted films belonging to the petitioner pursuant to P.D. No. 49. The trial court issued an order lifting the search warrants. One reason cited by the trial court was the fact that the master tapes of the copyrighted films, from which the pirated films were allegedly copies, were not shown to the court during the application.⁷⁰

69. 164 SCRA 655 (1988).

70. *Id.* at 663.

In affirming the order of the trial court, the Supreme Court held that:

The presentation of the master tapes of the copyrighted films from which the pirated films were allegedly copied, was necessary for the validity of search warrants against those who have in their possession the pirated films ... The court cannot presume that duplicate or copied tapes were necessarily reproduced from master tapes that it owns.⁷¹

On the issue of copyright infringement, the Court ruled that:

The essence of a copyright infringement is the similarity or at least substantial similarity of the purported pirated works to the copyrighted work. Hence, the applicant must present to the court the copyrighted films to compare them with the purchased evidence of the video tapes alleged pirated to determine whether the latter is an unauthorized reproduction of the former. This linkage of the copyrighted films to the pirated films must be established to satisfy the requirements of probable cause. Mere allegations as to the existence of the copyrighted films cannot serve as basis for the issuance of a search warrant.⁷²

D. *Columbia Pictures, Inc. v. Court of Appeals*⁷³

In 1996, the Supreme Court was again asked to resolve the issue of whether the master tapes alleged to have been copied must be presented during the application for a search warrant. On this procedural matter, the Supreme Court clarified its previous ruling in *20th Century Fox Film Corporation*. More to the point, the Supreme Court felt that the reasonableness of the added requirement in said case, calling for the production of the master tapes of the copyrighted films for determination of probable cause in copyright infringement cases, needed revisiting and clarification.⁷⁴

Explaining its pronouncement in *20th Century Fox Film Corporation*, the Court stated that its ruling in the case should, at most, be understood to merely serve as a guidepost in determining the existence of probable cause in copyright infringement cases where there is doubt as to the true nexus between the master tape and the pirated copies.⁷⁵ The Court declared that a blind espousal of the requisite of presentation of the master tapes in copyright infringement cases, as the prime determinant of probable cause, is too exacting and impracticable a requirement to be complied with in a search warrant application, which is only an ancillary proceeding.⁷⁶

Of more importance is the Supreme Court's judicial recognition of the changes brought about by P.D. No. 49 to Philippine copyright law,

71. *Id.*

72. *Id.* at 664.

73. 261 SCRA 144 (1996).

74. *Id.* at 169.

75. *Id.*

76. *Id.* at 181.

particularly with respect to the acquisition of copyright over one's creation. It will be recalled that under Act No. 3134, for a copyright owner to be entitled to protection over his works, it was necessary for him to register his work within THIRTY days from publication. Registration, therefore, was necessary to obtain copyright. However, P.D. No. 49 revised this principle and declared that copyright for a work was acquired from the moment of creation. Registration was now required only to entitle the owner to claim damages in infringement cases. Thus, the Supreme Court stated that:

[A] closer review of Presidential Decree No. 49 reveals that even with respect to works which are required under Section 26 thereof to be registered and with copies to be deposited with the National Library, such as books, including composite and cyclopedic works, manuscripts, directories and gazetteers; and periodicals, including pamphlets and newspapers; lectures, sermons, addresses, dissertations prepared for oral delivery; and letters, the failure to comply with said requirements does not deprive the copyright owner of the right to sue for infringement. Such non-compliance merely limits the remedies available to him and subjects him to the corresponding sanction.

The reason for this is expressed in Section 2 of the decree which prefaces its enumeration of copyrightable works with the explicit statement that "the rights granted under this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works." This means that under the present state of the law, the copyright for a work is acquired by an intellectual creator from the moment of creation even in the absence of registration and deposit. As has been authoritatively clarified:

The registration and deposit of two complete copies or reproductions of the work with the National Library within three weeks after the first public dissemination or performance of the work, as provided for in Section 26 (P.D. No. 49, as amended), is not for the purpose of securing a copyright of the work, but rather to avoid penalty for non-compliance of the deposit of said two copies and in order to recover damages in an infringement suit.⁷⁷

In line with this new principle, the Supreme Court quoted the following from the decision of the lower court with respect to the issue of filing an infringement case despite non-compliance with the registration and deposit requirements:

[Presidential Decree No. 49], as amended, does not require registration and deposit for a creator to be able to file an action for infringement of his rights. These conditions are merely pre-requisites to an action for damages. So, as long as the proscribed acts are shown to exist, an action for infringement may be initiated.⁷⁸

The Court also expounded on the issue of infringement. First, the Court defined the term "infringement" as "the doing by any person without the consent of the owner of the copyright of anything the sole right to do which,

77. *Id.* at 187.

78. *Id.* at 186.

is conferred by statute on the owner of the copyright."⁷⁹ The Court then laid down the following rules to determine whether infringement exists:

1. A copy of a piracy is an infringement of the original, and it is no defense that the pirate, in such cases, did not know what works he was indirectly copying, or did not know whether or not he was infringing any copyright; he at least knew that what he was copying was not his, and he copied at his peril.
2. In determining the question of infringement, the amount of matter copied from the copyrighted work is an important consideration. To constitute infringement, it is not necessary that the whole or even a large portion of the work shall have been copied. If so much is taken that the value of the original is sensibly diminished, or the labors of the original author are substantially and to an injurious extent appropriated by another, that is sufficient in point of law to constitute piracy.
3. The question of whether there has been an actionable infringement of a literary, musical or artistic work in motion pictures, radio or television, being one of fact, it should properly be determined during the trial. That is the stage calling for conclusive or prepondering evidence, and not the summary proceeding for the issuance of a search warrant wherein both lower courts erroneously require the master tapes.⁸⁰

These doctrinal pronouncements illustrate the valuable contributions of the case of *Columbia Pictures, Inc. v. Court of Appeals*⁸¹ to the development of Philippine copyright law.

*E. Joaquin, Jr. v. Drilon*⁸²

At issue in this case was whether the format of a show is entitled to copyright protection. Furthermore, the requirement of presenting copyrighted master videotapes was once again raised.

Petitioner BJ Productions, Inc. was the holder/grantee of a Certificate of Copyright of *Rhoda and Me*, a dating game show aired from 1970 to 1977. In 1973, BJ Productions, Inc. submitted to the National Library an addendum to its Certificate of Copyright specifying the show's format and style of presentation.⁸³

Sometime in 1991, BJ Productions, Inc. discovered that another television show, *It's a Date*, with a similar format to *Rhoda and Me*, was being aired on RPN Channel 9. *It's a Date* was produced by IXL Productions, Inc. BJ Productions, Inc. then wrote a letter to the president of IXL Productions, Inc., informing them that BJ Productions, Inc. had a copyright to *Rhoda and Me*, and demanding that the latter discontinue airing *It's a Date*. IXL Productions,

Inc. sought a meeting with BJ Productions, Inc. but nevertheless continued airing *It's a Date*. Meanwhile, IXL Productions, Inc. sought to register its copyright to the first episode of *It's a Date*, for which a Certificate of Copyright was issued by the National Library on August 14, 1991.⁸⁴

Upon complaint of BJ Productions, Inc., an information for violation of P.D. No. 49 was filed against the officers of IXL Productions, Inc. and RPN Channel 9. However, upon the petition of IXL Productions, Inc., the complaint was eventually dismissed by then Secretary of Justice Franklin Drilon. BJ Productions, Inc. thereafter filed a petition with the Supreme Court questioning this decision of Secretary Drilon.⁸⁵

Respondents anchored the dismissal on the ground that petitioners had failed to establish probable cause for their failure to present the copyrighted master tapes of *Rhoda and Me*.⁸⁶ Petitioners, on the other hand, claimed that the presentation of the master tapes was not necessary, since written descriptions of the formats of the two television shows were presented during the preliminary investigation.⁸⁷ In fact, it was based on said descriptions that the investigating prosecutor found substantial similarities between the two programs, and ruled that there was indeed copyright infringement, as the two shows were practically exact copies of the other.⁸⁸

Respondents also contended that BJ Production, Inc.'s copyright covered only a specific episode of *Rhoda and Me* and that the format or concepts of dating game shows are not covered by copyright protection under P.D. No. 49.⁸⁹ Petitioners, on the other hand, asserted that the format of *Rhoda and Me* is a product of ingenuity and skill, and is thus entitled to copyright protection.⁹⁰

The Supreme Court ruled that the format of a show is not copyrightable. Section 2 of P.D. No. 49, which enumerated the classes of work entitled to copyright protection, did not include the format or mechanics of a television show in the list of protected works. Copyright, being a mere statutory right, may be obtained and enjoyed only with respect to the subjects and by the persons, and on terms and conditions specified in the statute. For this reason, the protection afforded by the law could not be extended to the format of a television program.⁹¹

84. *Id.*

85. *Id.*

86. *Id.* at 230.

87. *Id.* at 234.

88. *Id.* at 236.

89. *Id.* at 230.

90. *Id.* at 236.

91. *Id.*

79. *Id.* at 184.

80. *Id.*

81. 164 SCRA 655 (1988).

82. 302 SCRA 225 (1999).

83. *Id.* at 229.

Section 2 of P.D. No. 49 refers to finished works and not to concepts. The class of works mentioned by the statute pertains only to cinematographic works, and works produced by a process analogous to cinematography, or any process for making audio-visual recordings. The copyright does not extend to an idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.⁹² In fact, the new Intellectual Property Code even provides that no protection shall extend to any *idea*, procedure, system, method or operation, *concept*, principle, discovery or mere data, as such, *even if they are expressed, explained, illustrated, or embodied in a work*.⁹³ Clearly, under the law, the format of a dating game show is "unprotected subject matter."

Thus, the Supreme Court ruled that the subject of BJ Production, Inc.'s copyright covered only the audio-visual recordings of each episode of *Rhoda and Me*. This being the case, the Court ruled that the master tape should have been presented to provide the investigating prosecutor the opportunity to compare the videotapes of the two shows. The Court held that:

Mere description by words of the general format of the two dating game shows is insufficient; the presentation of the master videotape in evidence was indispensable to the determination of the existence of probable cause. As aptly observed by respondent Secretary of Justice:

A television show includes more than mere words can describe because it involves a whole spectrum of visuals and effects, video and audio, such that no similarity or dissimilarity may be found by merely describing the general copyright/format of both dating game shows.⁹⁴

F. *Habana v. Robles*⁹⁵

This case involves the question of plagiarism and the possible infringement of copyrighted materials in a textbook. Petitioners Pacita Habana, Alicia Cinco, and Jovita Fernando are the authors and copyright owners of duly issued certificates of copyright registration covering their published works, *College English for Today, Books 1 and 2*, and *Workbook for College Freshman English, Series 1*. Respondents Felicidad Robles and Goodwill Trading Co., Inc. are the author/publisher and distributor/seller of another published work entitled *Developing English Proficiency, Books 1 and 2*, which was covered by copyrights issued to them.⁹⁶

92. *Id.* at 239.

93. Intellectual Property Code, § 175.

94. *Joaquin*, 302 SCRA at 239.

95. 310 SCRA 511 (1999).

96. *Id.* at 516.

In the course of revising their published works, petitioners discovered that respondents' books were strikingly similar to the contents, scheme, or presentation, illustrations, and illustrative examples in their own book. Petitioners found that several pages of the respondents' book were similar, if not altogether a copy of petitioners' books, which was a case of plagiarism and copyright infringement. After their demand that respondent pay damages and cease and desist from selling the infringing copies went unheeded, petitioners filed a complaint for infringement and unfair competition against the respondent.⁹⁷

The Supreme Court ruled that, at the outset, respondents' act of lifting substantial portions of the discussion and examples from the book of petitioners, and their failure to acknowledge the same in her book was an infringement of petitioners' copyright.⁹⁸

On the question of when substantial reproduction of a book exists, the Supreme Court laid down the following principle:

When is there a substantial reproduction of a book? It does not necessarily require that the entire copyrighted work, or even a large portion of it, be copied. If so much is taken that the value of the original work is substantially diminished, there is an infringement of copyright and to an injurious extent, the work is appropriated.

In determining the question of infringement, the amount of matter copied from the copyrighted work, is an important consideration. To constitute infringement, it is not necessary that the whole or even a large portion of the work shall have been copied. If so much is taken that the value of the original is sensibly diminished, or the labours of the original author are substantially and to an injurious extent appropriated by another, that is sufficient in point of law to constitute piracy.

The essence of intellectual piracy should be essayed in conceptual terms in order to underscore its gravity by an appropriate understanding thereof. 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 [is conferred by statute on the owner of the copyright].⁹⁹

The respondents further claimed that the copied portions of the book, did not constitute copyright infringement since these were also found in foreign books and other grammar books, and that the similarity between their styles could not be avoided since plaintiffs and respondents come from the same background and orientation. The Supreme Court held that this would be true had the respondents acknowledged the source and the name of the author in

97. *Id.* at 516-17.

98. *Id.* at 524.

99. *Id.* at 525.

the book.¹⁰⁰ The Court quoted Section 184 of Republic Act No. 8295, which provides that:

Section 184.1 *Limitations on Copyright*.— Notwithstanding the provisions of Chapter V, the following shall not constitute infringement of copyright: . . .

(c) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: *Provided*, That the source and the name of the author, if appearing on the work, are mentioned.

Thus, according to the Court, a copy of a piracy is an infringement of the original, and it is no defense that the pirate, in such cases, did not know he was infringing any copyright; he at least knew that what he was copying was not his, and he copied at his peril.¹⁰¹ Nevertheless, one who copies or quotes from a published work will not be held to be guilty of copyright infringement where he mentions the source and the name of the author of the published work.

Another issue resolved by the Court was the question: to what extent can copying be injurious to the author of the book being copied? In this case, the Court held that the fact that the numerous pages presented by petitioners, showing similarity in the style and the manner the books were presented, and the identical examples, were a mark of copying. Also, assuming a similarity in backgrounds in terms of teaching and orientation, the Court held that this did not excuse the identity of even the examples contained in these books.¹⁰²

Lastly, the Court found an indicia of guilt on the part of the respondent. In this case, the Court found that the respondent had pulled out from Goodwill bookstores her book upon learning of petitioners' complaint while denying petitioners' demand. The Court further noted that when the respondent's book was reissued as a revised version, all the pages cited by petitioners to contain portions of their book were conspicuously eliminated.¹⁰³

In ruling that petitioners were entitled to the damages prayed for, the Supreme Court held:

In cases of infringement, copying alone is not what is prohibited. The copying must produce an "injurious effect." Here the injury consists in that respondent Robles lifted from petitioners' book materials that were the result of the latter's research work and compilation and misrepresented them as her own. She circulated the book DEP for commercial use and did not acknowledge petitioners as her source.

Hence, there is a clear case of appropriation of copyrighted work for her benefit that respondent Robles committed. Petitioners' work as authors is the product of their long and assiduous research and for another to represent it as her own is injury

100. *Id.*

101. *Id.* at 526.

102. *Id.* at 526-27.

103. *Id.* at 527.

enough. In copyrighting books, the purpose is to give protection to the intellectual product of an author. This is precisely what the law on copyright protects, under Section 184.1(b).¹⁰⁴ Quotations from a published work, if they are compatible with fair use and only to the extent justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries, are allowed provided that the source and the name of the author, if appearing on the work, are mentioned.¹⁰⁵

As a last note, the Supreme Court stated, "the final product of an author's toil is her book. To allow another to copy the book without appropriate acknowledgment is injury enough."¹⁰⁶

CONCLUSION

The foregoing is an overview of the more important areas of the Code as it relates to copyright. Our legislators saw a need to modernize our intellectual property laws. This has been achieved as the Code provisions on copyright now take into account technological developments such as multimedia works, digitization rights, the Internet, and other wire and non-wire modes of transmitting or communicating works to the public.

The discussion on Philippine copyright jurisprudence also provides a guide to the nuances of copyright law and its development through several copyright regimes. Most importantly, it provides an insight on how the Supreme Court has interpreted issues concerning copyright, so as to predict how the Court will rule in the future on analogous cases.

104. Section 184.1 (b) states:

Section 184. Limitations on Copyright. — 184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright: . . .

(b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: *Provided*, That the source and the name of the author, if appearing on the work, are mentioned.

105. *Habana*, 310 SCRA at 527.

106. *Id.*