

[IPO, October 02, 1998]

**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. 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) *"Chief Mediator"* means the Officer within the Bureau who exercises immediate supervision over the Mediation Officer. The title or official designation of such officer may differ from the words "Chief Mediator" depending on the structure of the Office;
- (d) *"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;

(e) *"Computer software developed for mass market"* shall mean computer software, that:

(i) is produced, made and marketed for a broad range of purposes and users including end-users and commercial users;

(ii) is sold over the counter or via standard delivery mechanisms;

(iii) involves payments that are not based on royalty;

(iv) generally provides for an indefinite term for the use of the software; and

(v) does not need any customization by the supplier or distributor.

(f) *"Director General"* means the head of the Intellectual Property office;

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

(h) *"Intellectual Property Rights"* means:

1. Copyright and Related Rights;
2. Trademarks and Service Marks;
3. Geographic Indications;
4. Industrial Designs;
5. Patent;
6. Layout-Designs (Topographies) of Integrated Circuits; and;
7. Protection of Undisclosed Information

(i) *"IP Code"* means Republic Act No. 8293 otherwise known as the intellectual Property Code of the Philippines;

(j) *"Mediation Officer"* means the Officer within the Bureau authorized to exercise the functions in these Regulations. The title or official designation of such officer may differ from the words "Mediation Officer" as the structure of the Office may be set;

(k) *"Office"* means the Intellectual Property Office;

(l) *"IPO Gazette"* means the Intellectual Property Office's own publication where all matters required to be published under the IP Code shall be published;

(m) *"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 with the meaning of "communication to the public" or "communicate to the public"

(n) *"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.

(o) *"Undisclosed Information"* shall mean information which:

(i) Is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(ii) has commercial value because it is secret; and

(iii) has been subject to reasonable steps under the circumstances to keep it secret, by the person lawfully in control of the information.

Section 2. Original Jurisdiction. — The Director General shall exercise 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 3. Jurisdiction to Settle Disputes on Royalties. — 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 4. Who may File a Complaint. — The aggrieved party or his duly authorized representative may file a verified complaint with the Director upon payment of the required filing fee. The verification portion of the complaint shall include a statement that to the best of his knowledge, the party commencing the action has not filed any other administrative action or proceeding involving the same issue or issues before any tribunal or agency nor such action or proceeding is pending in other quasi-judicial bodies; provided, however, that if any such action is pending, the status of the same must be stated and should knowledge thereof be acquired after the filing of the complaint, the party concerned undertakes to notify the Office thereof within five (5) days from such knowledge.

Section 5. Complaint Format. — The complaint shall be typewritten with the title reflecting the names of all the parties concerned and shall state the following:

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

(b) Nature of the complaint and a concise statement of the ultimate facts