

# Philippines: IPOPHL issues implementing rules and regulations on the term of copyright protection and the public domain

## In brief

The Intellectual Property Office of the Philippines ("IPOPHL") recently issued **Memorandum Circular No. 2023-021** or the Implementing Rules and Regulations on the Term of Copyright Protection and the Public Domain or the Public Domain Rules ("Circular"). The Circular took effect on **12 November 2023**.

The Circular streamlines the requirements and procedures for copyright protection, and clarifies the term and period of such protection. The Circular also provides rules in relation to works in the public domain.

## In more detail

### Coverage and exclusions

The Circular applies to original literary, artistic, scientific, and derivative works whose authors are nationals or habitual residents of: (1) the Philippines; (2) countries that are parties to the Berne Convention for the Protection of Literary and Artistic Works; or (3) countries that extend reciprocal rights to Philippine nationals or otherwise grant, by bilateral agreement, copyright protection substantially equal to the protection secured to such foreign nationals under the Intellectual Property Code of the Philippines ("**IP Code**"). It also applies to original literary, artistic, scientific, and derivative works which are first published in: (1) the Philippines; or (2) another contracting party to the Berne Convention and the Trade-Related Aspects of Intellectual Property Rights ("**TRIPS**") Agreement.

However, the Circular does not apply to performances, sound recordings, and broadcasts, which are covered by separate IRRs on related or neighboring rights.<sup>1</sup>

### General principles of copyright protection

The Circular provides the following guiding principles of copyright protection:

1. Original literary and artistic works are copyright protected from the moment of creation.
2. Works are not required to be fixed in order to vest copyright protection. However, fixation is required for purposes of copyright registration and deposit.
3. Works are protected irrespective of their mode or form of expression.
4. Works are protected irrespective of their content, quality, morality, and purpose.

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<sup>1</sup> Please also see our [Client Alert on the recently issued IRRs on the Rights of Sound Performers and Producers of Sound Recordings](#).

5. Works in the public domain do not enjoy copyright protection.

## Rights of a copyright owner

The Circular outlines the following rights of authors and copyright owners:

### 1. Moral rights

- (a) *Right of attribution.* The owner may require that the authorship of their work be attributed to them. This right shall last during the lifetime of the author and in perpetuity after their death.
- (b) *Right against false attribution.* The owner may restrain the use of their name with respect to any work which is not their own creation or in a distorted version of their work. This right shall be co-terminus with the author's economic rights.
- (c) *Right of integrity.* The right shall be co-terminus with the author's economic rights and includes the following:
  - *Right of alteration.* The owner may make alterations to their work prior to publication and may also withhold it from publication.
  - *Right of objection to modification.* The owner may object to any distortion, mutilation, or other modification of, or other derogatory action in relation to their work which would be prejudicial to their honor or reputation.

The moral rights of an author shall not be assignable or subject to license.

### 2. Economic rights

The copyright owner shall have the exclusive right to carry out, authorize, or prevent any of the following acts:

- (a) Reproduction of the work or a substantial portion thereof
- (b) Dramatization, translation, adaptation, abridgment, arrangement, or other transformation of the work
- (c) The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership
- (d) 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
- (e) Public display of the original or a copy of the work
- (f) Public performance of the work
- (g) Other communication to the public of the work

Authors shall enjoy exclusive economic rights to their creations for such period of time as outlined in the table below:

Category of copyrighted works	Duration of copyright protection
Original literary, artistic, and scientific works	Lifetime of the author and for 50 years after death
Works of joint authorship	Lifetime of the last surviving author and for 50 years after death
Anonymous <sup>2</sup> or pseudonymous <sup>3</sup> works	Published: 50 years from date of first lawful publication of the work
	Unpublished: 50 years from date of making
Works of applied art	25 years from date of making
Photographic works	Published: 50 years from date of publication
	Unpublished: 50 years from date of making

<sup>2</sup> In case the identity of the author is revealed or is no longer in doubt before the expiration of the protection period, the provisions on original works by individuals or joint authorship shall apply, as may be applicable.

<sup>3</sup> Posthumous works have been rendered ineffective by the principle that works are protected from the moment of creation. As such, the general period of protection for original literary and artistic works shall apply.

Category of copyrighted works	Duration of copyright protection
Audiovisual works, including those produced by a process analogous to cinematography or any process for making audiovisual recordings	Published: 50 years from date of publication Unpublished: 50 years from date of making

The Circular further provides that the term of protection subsequent to the death of the author or the publication of the work shall always be deemed to begin on the first day of January of the year following the event which gave rise to them.

The foregoing rights of authors and copyright owners are subject to the fair use limitations and exceptions under the IP Code.

## Public domain

The Circular provides that the following works shall belong to the public domain:

1. Unprotected subject matter under the IP Code, such as:
  - (a) Any idea, procedure, system, method of operation, concept, principle, discovery, or mere data as such, even if they are expressed, explained, illustrated, or embodied in a work
  - (b) News of the day and other miscellaneous facts having the character of mere items of press information
  - (c) Any official text of a legislative, administrative, or legal nature, as well as any official translation thereof
2. Works with expired copyright protection
3. Works dedicated to the public domain

In relation to works dedicated to the public domain under (c) above, note the following salient provisions in the Circular:

1. Co-owned works may not be dedicated to the public domain, except when all co-owners agree to such dedication.
2. The dedication shall not carry with it a waiver of the right to attribution unless reduced in writing submitted to the Bureau of Copyright and Other Related Rights ("**Bureau**"). However, it does not include a waiver: (1) to use the name of the author, or the title of their work, or otherwise to make use of their reputation with respect to any version of adaptation of their work which, because of alterations, would substantially tend to injure the literary or artistic reputation of another author; or (2) to use the name of the author with respect to a work they did not create.
3. To be valid, dedication shall be made by the copyright owner by surrendering a copy of the registration certificate to the Bureau, if previously registered, and by submitting a notarized copy of the filled-out form for such purpose. No fees shall be required for the process of the dedication.
4. The decision to dedicate a work to the public domain shall be irrevocable.
5. No license agreements relative to the work may be entered into after its dedication to the public domain.

## Works of the government

No copyright subsists in any of the works of the government of the Philippines.

## Public domain registry

A public domain registry shall be managed and maintained by the Bureau within one year from the effectivity of the Circular.

## Copyright term assessment request

The Circular outlines the procedure for requesting an assessment from the Accreditation and Standards Division (ASDiv) of the Bureau to determine whether a work is in the public domain, through the submission of a form and payment of assessment fees.

The following information should be provided in the form:

1. Identity of the author
2. Title of the work
3. Authorship of the work
4. Date of death of the author

5. Country of origin or first publication, whichever is applicable
6. Other facts necessary to establish the lapse of copyright protection

Within 20 days from receipt of the last document sufficient to determine whether the subject work is in the public domain, the ASDiv shall submit an evaluation report to the Director of the Bureau stating the results of the assessment. Within seven days from receipt of the evaluation report, the Director may either approve or disapprove the findings of the ASDiv. Notice of the approved evaluation report shall be transmitted to the applicant through personal service or, if not practicable, registered or electronic mail.

### Copyright claim challenge

The Circular further outlines the procedure for any person prevented from using a work believed to be in the public domain, where they may challenge the copyright claim of another party at any time, subject to the rules on prescription of actions under the Civil Code of the Philippines. The challenge may be made by filling out a prescribed form and paying the filing fees. The form must be notarized and include the following information: (1) name and address of challenging parties; (2) brief narrative of the facts that led to the filing of the challenge; (3) title of the disputed work; (4) name of the author of the disputed work; (5) country of origin or first publication, whichever is applicable; (6) date of death of the author, if applicable; and (7) other relevant facts.

The ASDiv may dismiss the challenge within seven days from receipt upon examination of the form, without the need for a hearing or submission of additional documents. The ASDiv may also dismiss the challenge in case an action for infringement has been filed concerning the same work, regardless of whether or not the challenging party is involved. In both cases, the dismissal shall require the confirmation of the Bureau Director.

In case a notice of challenge is issued to the challenged party by the ASDiv within five days from receipt of the challenge form, a response in the form of an affidavit together with supporting evidence shall be submitted by the challenged party within 10 days from receipt of the notice to challenge. Within 10 days from receipt of the response, the ASDiv may call the parties to a clarificatory hearing.

Within 20 days from receipt of the last document or clarificatory hearing, the ASDiv shall submit an evaluation report to the Bureau Director stating the results of its assessment of the claims of the concerned parties. Within 20 days from receipt of evaluation report, the Director may either approve or disapprove the findings of the ASDiv. Notice of the approved evaluation report shall be transmitted to the applicant through personal service or, if not practicable, registered or electronic mail.

### Review of evaluation report

The Circular provides for the procedure for aggrieved parties under copyright term assessment requests or claim challenges to request the review of an evaluation report within 10 days from its receipt, through the submission of a letter to the Office of the Bureau Director accompanied by evidence to support the reconsideration of the evaluation, along with the payment of assessment fees. Within 15 days, the Director will issue a decision on the request for review without the necessity of waiting for a response from the opposing party. The decision shall be deemed final and will be served to the parties through personal service or, if not practicable, registered or electronic mail. Within five days from issuance of the decision, the work shall be entered into the Public Domain Registry.

### Recommended actions

Clients are advised to take note of the IPOPHL's new regulations/guidelines for copyright protection and the public domain. Clients may likewise consider availing of the procedures outlined above to determine whether or not a work is within the public domain.

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