

Philippines: IPOP HL issues implementing rules and regulations on the rights of sound performers and producers of sound recordings

In brief

The Intellectual Property Office of the Philippines ("IPOP HL") recently issued **Memorandum Circular No. 2023-023** or the Implementing Rules and Regulations on the Rights of Sound Performers and Producers of Sound Recordings or the IRR on Sound Recording Rights ("**Circular**"). The Circular took effect on **12 November 2023**.

The Circular outlines the rules on sound recording rights, as well as the guidelines on Single Equitable Remuneration ("**SER**") to be paid by users in case a sound recording falls within the works mentioned below.

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In more detail

Coverage and exclusions

- I. Performances, whether live or fixed¹ in a sound recording, where the performers are as follows:
 - a. Nationals or habitual residents of the Philippines
 - b. Nationals or habitual residents of another contracting state to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations ("**Rome Convention**") or the World Intellectual Property Organization Performances and Phonograms Treaty ("**WPPT**") ("**Contracting State**")
 - c. Neither nationals nor habitual residents of the Philippines or another Contracting State, but whose performances:
 - (1) take place in the Philippines or another Contracting State, or
 - (2) are incorporated in sound recordings or carried by broadcasts protected under the IP Code and Articles 5 and 6 of the Rome Convention
- II. Sound recordings that are:
 - a. Produced by any of the following:
 - i. Nationals or habitual residents of the Philippines
 - ii. Nationals or habitual residents of another Contracting State
 - iii. Juridical entities incorporated under Philippine laws
 - b. First published in either of the following:

¹ "Fixation" shall refer to the embodiment of sounds or representations thereof, from which they can be perceived, reproduced, or communicated through a device. It may refer to the finalization of a master tape or other similar procedure.

- i. In the Philippines
- ii. In another contracting state, provided that if the sound recording was first published in a non-contracting state but was also published in Philippines or a contracting state within 30 days from first publication, it shall be considered as first published in the Philippines or Contracting State

However, it does not apply to: (1) performances generated by performers other than natural persons; and (2) performances executed or sound recordings recorded earlier than 1 January 1978.

Rights of performers

I. Moral rights

A performer shall have the following moral rights in relation to his or her live aural performances or performances fixed in sound recordings:

- a. Right of attribution – This shall refer to the right to be identified as the performer of his or her performances including the listing of their names in the inserts or in any manner according to industry standards and best practices, except where omission is dictated by the manner of the use of the performance. A performer also has the right to not be identified as the performer of his or her performances.
- b. Right of integrity – This shall refer to the right to object to any distortion, mutilation, or other modification of his or her performances that would be prejudicial to his or her reputation.

The moral right granted to performers shall, after his or her death, be maintained until the expiry of economic rights, and shall be exercisable by the heirs or the government where protection is claimed.

II. Economic rights

A performer shall have the following economic rights:

- a. Live aural performances
 - i. Exclusive right to authorize the broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast performance
 - ii. Exclusive right to authorize the fixation of their unfixed performances

The term of protection for performances not incorporated in sound recordings shall be 50 years from the end of the year in which the performance took place.²

- b. Performances fixed in sound recordings³
 - i. Right of reproduction – This refers to the exclusive right to authorize the direct or indirect reproduction of their performances fixed in sound recordings, in any manner or form.

² However, please note that an unrecorded performance exists only momentarily when it takes place. It can neither be perceived, fixed or reproduced after that.

³ Once performers have authorized the broadcasting to the public of their performances or the fixation of their unfixed performances, these economic rights shall have no further application.

- ii. Right of distribution – This refers to the exclusive right to authorize the first public distribution of the original and copies⁴ of their performances fixed in sound recordings through sale or other forms of transferring ownership with the Philippine territory or in any foreign country.
- iii. Right of rental – This refers to the right to authorize the commercial rental to the public of the original and copies of their performances fixed in sound recordings even after distribution of them, by or pursuant to the authorization by the producer.
- iv. Making available right – This refers to the right to authorize the making available to the public of their performances fixed in sound recordings in such a way that members of the public may access the sound recording from a place and at a time individually chosen or selected by them, as well as other transmissions of a sound recording with similar effect.

The term of protection of performances incorporated in sound recordings shall be 50 years from the end of the year in which the recording took place.

Rights of sound recording producers

Producers of sound recordings shall have the following exclusive rights:

- I. Economic rights
 - i. Right of reproduction – This refers to the right to authorize the direct or indirect reproduction of their sound recordings, in any manner or form.
 - ii. Right of distribution – This refers to the right to authorize the first public distribution of the original and copies of their sound recordings through sale or other forms of transferring ownership with the Philippine territory or in any foreign country.
 - iii. Right of rental – This refers to the right to authorize the commercial rental to the public of the original and copies of their sound recordings even after distribution of them, by or pursuant to the authorization by the producer.
 - iv. Making available right – This refers to the right to authorize the making available to the public of their sound recordings in such a way that members of the public may access the sound recording from a place and at a time individually chosen or selected by them, as well as other transmissions of a sound recording with similar effect.

The foregoing rights of performers and producers are subject to the fair use limitations and exceptions under the IP Code.

Single Equitable Remuneration (SER)

The Circular illustrates the rules on SER, which apply to sound recordings published for commercial purposes⁵ or the reproduction of these sound recordings used directly for broadcasting or for other communication to the public, or are publicly performed with the intention of making and enhancing profit. The payment of the SER shall be the obligation of the user of the sound recording.

⁴ The copies refer to fixed copies that can be put into circulation as tangible objects.

⁵ A fixed performance or sound recording made available to the public by wire or wireless means in such a way that the public may access them from a place and at a time individually chosen by them may be considered as published for commercial purposes.

Performers, producers and broadcast organizations may enter into a written contract setting the amount of remuneration, provided that the agreement should be carefully designed to be more favorable to the performers, considering attending circumstances.

Persons liable shall pay one SER per use of a sound recording to the performer/s and the producer rather than two amounts of money per use directed to the performer and producer separately. In the absence of any agreement, the performer and producer shall share the remuneration equally.

The user may pay the SER to the performer, producer or their respective collective management organization (CMO), to the exclusion of others pursuant to a prior agreement made by the rightsholders, provided written consent is obtained from the other parties. A One Stop Licensing System (OSLS) shall also be established and monitored by the Bureau of Copyright and Other Related Rights in case there is a failure to comply with payment of the SER.

Lastly, the user cannot withhold payment unless the claimant is patently not entitled to it. A certified true copy of the local CMO's accreditation certificate with the IPOPHL or the foreign CMO's membership list, or both, as well as the reciprocal agreement with the locally accredited CMO, shall be considered as sufficient evidence of entitlement.

Recommended actions

Clients are advised to take note of the IPOPHL's rules and regulations to ensure that the rights of performers and producers of sound recordings are protected and respected.

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