**INTELLECTUAL PROPERTY LAW**

* Republic Act No. 8293, “Intellectual Property Code of PH
* Senator Raul Roco
* June 6, 1997, effect on January 1, 1998

**INTELLECTUAL PROPERTY RIGHTS**

* given to persons over the creation of their minds
* **Copyright** – creations in literary and artistic domain from moment of creation. Lifetime + 50 years
* **Trademark**/**service** **mark** – sign to distinguish goods. 10 years from approval
* **Patent** – new, inventive, and industrial. 20 years from filing of application

**CHARACTERISTICS OF INTELLECTUAL PROPERTY RIGHT**

* **Statutory in Nature** – provided by and limited under law
* **Incorporeal Right** – separate from attached object
* **Private Right** – enforced by owner
* **Not Absolute**

**PATENTS**

* Right to sell, use, an invention commercially/industrially
* Seeks to foster and reward invention
* Promotes disclosure of inventions to stimulate further innovation and permit the public to practice the invention once patent expires
* Ensure that ideas in the public domain remain there for the free use of the public and it is only after exhaustive examination that a patent is issued

**NOVELTY**

* Not new if it has been used prior
* No patent = public usage

**INVENTIVE STEP**

* Not obvious to average skilled person in the field

**NON-PATENTABLE INVENTIONS**

* Mere discovery
* Games, programs, methods, rules
* Biological variety
* Aesthetic creation
* Against public morality

**RIGHT TO PATENT**

* Inventor, heir, assign (joint ownership)
* First-to-File Rule
* Once issued, presumed valid

**Commission** – commissioner owns patent, unless stated in contract

**EE-ER Relationship** – employee owns patent if not part of duty, employer owns patent if it is result of duty, unless stated in contract

**CANCELLATION OF PATENT**

* Not new
* No disclosure of information
* Against public morality
* Once cancelled, rights shall be terminated

**REMEDIES OF ACTUAL INVENTOR**

* After 3 months, prosecute the application
* File new patent
* Request refusal of false application
* Seek cancellation of patent, if already issued

**RIGHTS CONFERRED BY A PATENT**

* Presumed valid
* Owner has exclusive rights (prohibit unauthorized usage)
* Owners can transfer, assign, conclude licensing contracts for the patent

**LIMITATIONS TO PATENT RIGHTS**

* Private, non-commercial act for non-commercial purpose
* Experimental, scientific, educational purpose
* Uses the patent in good faith prior to filing date
* Public interest as determined by appropriate agency of gov’t

**PATENT INFRINGEMENT**

* **Literal Infringement Test** – copying of all material elements
* **Doctrine of Equivalents Test** – perform same function with modifications. Function-Means-and-Result Test.
* Civil & Criminal Action
* **Malum prohibitum** – an act which is immoral because it is illegal; not necessarily illegal because it is immoral.

**COPYRIGHT**

* An intangible, incorporeal right granted by statute to the author of certain literary or artistic productions with sole and exclusive privilege of multiplying copies of the same and publishing and selling them.

**CHARACTERISTICS OF A COPYRIGHT**

* Granted to creator of work
* Original intellectual creation in literary, artistic, scientific domain
* Exclusive moral, economic rights to creator specified by law
* Moral right of attribution is perpetuity
* Statutory grant

**Copyright Protection** – once created, regardless of mode or form

**ORIGINAL LITERARY AND ARTISTIC WORKS**

* Basically anything written
* Basically anything composed
* Basically anything made from the hands of a person
* Programs, articles, photographs, etc…

**USEFUL ARTICLE**

* Excluded from copyright eligibility
* **Denicola Test** – if elements are merged, cannot be copyrighted

**DERIVATIVE WORKS**

* Considered as new works, shall not affect original work
* Must be authorized by owner of original work

**UNPROTECTED SUBJECT MATTER**

* News of the day
* Official text from gov’t
* Any gov’t work
* Anything said in public
* Ideas, principles, data

**ECONOMIC RIGHTS**

* Prevent reproduction
* Authorize derivatives
* Carry out first public distribution
* Authorize/prevent copies
* Authorize public display/performance

**MORAL RIGHTS**

* Right of Attribution – perpetuity
* Make alterations or withhold it from publication
* Right to Integrity
* Right against False Attribution

**RULES ON COPYRIGHT OWNERSHIP**

* Belong to author, joint ownership, unless parts specified
* Employee owner, if work is not part of duty
* Employer owner, if work is result of duty
* Commissioner shall be owner, copyright to creator, unless specified
* Writer shall own copyright

**LIMITATIONS ON COPYRIGHT**

* Performance of work if done privately and for free or for charity/religious institution
* Communication to public by mass media on current issues, public natured information with source
* As long as no profit, any public performance, any published articles
* Fair use of the copyright work

**FAIR USE DOCTRINE**

* Use of copyright material in reasonable manner without consent of owner
* For criticism/comment, news reporting, teaching, and scholarly articles
* **FACTORS**
  + Non-profit purpose, Nature of work, Amount used, Effect of use

**COPYRIGHT INFRINGEMENT**

* Usage of copyright material without consent of owner
* Goes against economic and moral rights of owner
* FILSCAP vs Anrey – use of music to enhance profit
* Google vs Oracle America – Google phone is not a market competitor for Java. Does not affect it in terms of economy