

**Research Paper on the Current Teaching and Learning**

**in the Field of Intellectual Property in**

**The PHILIPPINES**

**By**

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## I. General Data

### A. Country data

#### 1. Foreign Direct Investment

**Manufacturing Industry.** For the last six (6) years, the manufacturing industry is the highest form of foreign direct investment in the Philippines, totalling more than 50% of the total foreign direct investment.<sup>1</sup> This means that technology transfer, licensing and confidentiality agreements play an important role in the manufacturing industry.

**Information and Communication Technology Sub-Industry.** Information and Communication Technology Sub-Industry is a big part of foreign direct investment.<sup>2</sup> The Philippines has been producing high caliber software programmers and mask designers, supplying the needs of a good number of high-technology content companies worldwide. This is supported by a growing number of information technology and computer schools all over the country. Patent, Design and Copyright laws are necessary components in protecting the inventions, designs and intellectual creations in this information and communication technology industry.

#### 2. Foreign Trade

In terms of foreign trade, there is an almost balance of trade between exports and imports with exports catching up in the last three years.<sup>3</sup> The bulk of exported goods are on handicrafts, agricultural and fisheries products, and high-technology content products.<sup>4</sup> All fields of intellectual property laws are applied in protecting the intellectual creation in these exported and imported goods.

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<sup>1</sup> Data compiled/prepared by the National Statistics Coordination Board of the Philippines.

<sup>2</sup> *ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> For handicrafts, the Philippines is a big exporter of wrought iron and abaca products to Europe and the U.S. On agricultural products, the Philippines is known worldwide for its mangoes, bananas and pineapple produce. Also, the Philippines export high quality agricultural products such as canned and fresh tuna, shrimps, carrageen, etc. High technology products include computers and accessories, cameras, cellular phones, etc.

## **B. IP Legislation and Practice**

### **1. National Legislation**

#### **a. Industrial Property**

Patents:

- Republic Act No. 8293, the Intellectual Property Code of the Philippines, adopted in June 1997, and took effect on 1 January 1998.
- Rules and Regulations on Inventions, December 1998.

Trade Marks:

- Republic Act No. 8293, the Intellectual Property Code of the Philippines, adopted in June 1997, and took effect on 1 January 1998.
- Rules and Regulations on Trademarks, Service Marks, Trade Names and Marked or Stamped Containers, September 1998.
- Office Orders amending the Rules and Regulations on Trademarks, Service Marks, Trade Names and Marked or Stamped Containers.

Industrial Designs:

- Republic Act No. 8293, the Intellectual Property Code of the Philippines, adopted in June 1997, and took effect on 1 January 1998.
- Rules and Regulations on Utility Models and Industrial Designs, December 1998.

#### **b. Copyright and Related Rights**

Copyright:

- Republic Act No. 8293, the Intellectual Property Code of the Philippines, adopted in June 1997, and took effect on 1 January 1998.
- Copyright Safeguards and Regulations.

Related Rights:

- Republic Act No. 8293, the Intellectual Property Code of the Philippines, adopted in June 1997, and took effect on 1 January 1998.

### c. Other Legislation or Activities

#### Utility Models:

- Republic Act No. 8293, the Intellectual Property Code of the Philippines, adopted in June 1997, and took effect on 1 January 1998.

#### Appellations of Origin / Geographical Indications / Indications of Source:

- Republic Act No. 8293, the Intellectual Property Code of the Philippines, adopted in June 1997, and took effect on 1 January 1998.

#### Transfer of Technology:

- Republic Act No. 8293, the Intellectual Property Code of the Philippines, adopted in June 1997, and took effect on 1 January 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, October 1998.
- Rules and Regulations on Voluntary Licensing, October 1998.

#### Computer Programs

- Republic Act No. 8293, the Intellectual Property Code of the Philippines, adopted in June 1997, and took effect on 1 January 1998.
- Republic Act No. 8792, Electronic Commerce Act, June 2000.

#### Protection of Undisclosed Information:

- Republic Act No. 8293, the Intellectual Property Code of the Philippines, adopted in June 1997, and took effect on 1 January 1998.

#### Layout Designs (Topographics) of Integrated Circuits:

- Republic Act No. 9150, an Act providing for the Protection of Layout Designs (Topographies) of Integrated Circuits, amending certain sections of RA 8293, IP Code.

#### Plant Variety Protection:

- Republic Act No. 9168, an Act to Provide Protection to New Plant Varieties, Establishing National Plant Variety Protection Board, June 2002.

Optical Media:

- Republic Act No. 9239, An Act Creating the Optical Media Board, 2004

## **2. Membership in International Bodies**

- WIPO Convention, since July 1980.
- Paris Convention (Industrial Property), since September 1965.
- Berne Convention (Literary and Artistic Works), since August 1951.
- PCT (Patents), since August 2001.
- Rome Convention (Performers, Producers of Phonograms and Broadcasting Organizations), since September 1984.
- Budapest Treaty (Deposit of Micro-organisms), since October 1981.
- WCT (WIPO Copyright Treaty), since October 2002.
- WPPT (WIPO Performances and Phonograms Treaty), since October 2002.
- WTO: Member and Signatory to TRIPS Agreement, since January 1995.
- Member of APEC since November 1989.
- Member of ASEAN since August 1967.
- Member of UCC since August 1955.

## **3. Patent, Utility Models, Design and Trademark Registrations**

### **a. Patents, Utility Models and Designs**

In 2002, the Intellectual Property Office received 2,198 applications,<sup>5</sup> 1,079 of which are foreign applications and 1,119 are local applications.<sup>6</sup> Of the 2,198 applications, 954 were for inventions, 561 for utility models and 783 for industrial designs.

In 2003, the Intellectual Property Office received 2,082 applications, 797 of which are foreign applications and 1,285 are local applications. Of the 2,082 applications, 574 were for inventions, 498 were for utility models and 1,010 were for industrial designs. On the other hand, the IPO granted 1,287 patents, of which 1,173 were for inventions, 29 for utility models and 85 for industrial designs.

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<sup>5</sup> All figures in this section were taken from the 2003 Annual Report of the Intellectual Property Office.

<sup>6</sup> Foreign applications refer to applications filed by foreign nationals or residents; local applications refer to applications filed by Philippine nationals or residents.

The Philippines became a member of the Patent Cooperation Treaty in August 2001. In 2002, the Intellectual Property Office received only 63 patent applications through the PCT route. In 2003, the applications increased to 1,367.

#### **b. Trademarks**

In 2003, the IPO received 12,032 applications, 4,958 of which are foreign applications and 7,074 are local applications. The IPO noted a 12.5% increase in the number of local applications from 6,286 in 2002 to 7,074 in 2003. According to the IPO, this increase can be attributed to the growing awareness of the local business community in the importance of IP protection and enforcement.

In the same year, the IPO registered 4,841 trademarks, 3,852 (or 80%) of which are foreign marks and 989 (or 20%) are local marks.

### **4. Enforcement of IPR in the Philippines**

#### **a. Enforcement Agencies**

The Philippine National Police (PNP) and National Bureau of Investigation (NBI) are the main enforcement arms of the government. Both agencies have a special division assigned to investigate IP violations. In 2003, the PNP reported having undertaken 418 operations involving IP violations which resulted in 371 arrests and the filing of 257 cases.<sup>7</sup> The PNP claims to have confiscated counterfeit goods amounting to PhP17 million (around €300,000).

On the other hand, in 2003 the NBI raided some 402 establishments engaged in the sale or manufacture of counterfeit goods. The raids resulted in the seizure of around PhP500 million (around €6.7 million) and the filing of 177 cases.

Majority of the counterfeit goods seized in the operations included medicines, liquor, garments, cigarettes, cellular phone accessories, musical recordings and movies or films in CD and DVD formats.

Another important factor in IP enforcement is effective border control. To address this concern, the Bureau of Customs (BOC) had created a special IP Unit tasked to focus on border control. However, the very geographic nature of the Philippines makes it very difficult to secure

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<sup>7</sup> All figures were taken from the 2003 Annual Report of the Intellectual Property Office.

the border from importation of counterfeit goods.<sup>8</sup> In 2003, the BOC intercepted 8 shipments of counterfeit goods.

On cases involving optical media, a new agency called the Optical Media Board (OMB) was created last year under Republic Act No. 9239. The OMB has the power to inspect retailers and seize unlicensed optical discs including CDs and DVDs. With the creation of the OMB, it is expected that movie and music piracy will be reduced in the coming years.

#### **b. Prosecuting Agency**

The Department of Justice (DOJ) is the prosecuting arm of the government. The DOJ has created a special task force on anti-intellectual property piracy. The members of the task force are trained on IP courses from time to time. In 2003, the DOJ received 430 complaints in addition to 312 cases carried over from 2002.

#### **c. Adjudicating Agency**

There are several remedies for an IP right-holder in case of violations of his rights. He can file an action either before judicial courts [criminal or civil action] or administrative bodies. The Supreme Court has designated special commercial courts in the different judicial regions to hear and decide IPR cases.<sup>9</sup> These special courts have exclusive jurisdiction over IPR cases.

On administrative action, the Bureau of Legal Affairs of the IPO has exclusive jurisdiction for cases where the damages claimed are at least Two Hundred Thousand Pesos. For cases less than Two hundred Thousand Pesos, the Department of Trade & Industry has concurrent jurisdiction with the IPO.

In terms of exercising their options, IP right-holders more often choose criminal actions<sup>10</sup> mainly because of their immediate effect in stopping the violation through seizure of the infringing products and the machines and tools used in the criminal activities. Another important reason is the deterrent effect in view of possible arrest during trial and imprisonment after conviction. Recently, however, some IP right-holders have started using administrative bodies particularly the IPO because of its expertise and its ability to act relatively faster than the courts. In 2003,

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<sup>8</sup> The Philippines is an archipelago consisting of 7,100 islands. This means that it is almost impossible to patrol all the shores to control entry of counterfeit goods.

<sup>9</sup> Supreme Court Administrative Matter No. 03-03-03-SC

<sup>10</sup> Ex parte application for Search and Seizure Warrants followed by the filing of criminal complaint before the Department of Justice.

the IPO received 42 administrative cases involving violations of intellectual property rights.

On cases involving optical media products, the Optical Media Board has the power to hear and resolve administrative cases against violators and impose administrative sanctions. *Section 20* of Republic Act 9239 lays down the rule for the imposition of administrative penalties, enabling the Board to impose fines.

#### **d. Comments**

As can be seen from the enforcement activities, violation of intellectual property rights is still a major concern in the Philippines. For this reason, and despite its efforts and accomplishments, the Philippines has landed in the Special 301 list of the United States Trade Representative for some years now. Of particular concern is the rampant piracy of music, audiovisual and cinematographic products. Government authorities estimate a whopping piracy rate of 89% in the cinematographic industry.<sup>11</sup> For example, police authorities recently raided four facilities in Metro Manila seizing an estimated PhP100 million worth of pirated Sony PlayStation game software.<sup>12</sup> It is hoped that the creation of the OMB would reduce this piracy rate and remove the Philippines from the Special 301 list.

There are reasons that can be considered to explain this high counterfeiting and piracy rate in the Philippines. The first is lack of IP education on the part of the business community and on the part of the consumers. The other factor could be attributed to the bad economic condition in the Philippines. People tend to justify counterfeiting and piracy with the poor bargaining power of the Philippine Peso.

To address these concerns, IP education should be improved vastly and at the same time an effective IPR enforcement should be in place.

## **II. IP Education in Particular**

### **A. Introduction**

Intellectual property practice in the Philippines is basically a legal discipline. As such, only law students in universities and colleges<sup>13</sup> take up intellectual property education. Bachelor of laws is a 4-year postgraduate

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<sup>11</sup> IP News entitled VIDEO COUNTERFEITING, IPR PIRACY WORSENING taken from [www.iplaw.ph](http://www.iplaw.ph).

<sup>12</sup> Please see attached page of IP News entitled simultaneous raids in QC, Manila yield fake PlayStation software taken from [www.iplaw.ph](http://www.iplaw.ph).

<sup>13</sup> Currently, there are 89 law schools in different universities and colleges throughout the country.

course, only students who have finished a 4-year bachelor degree can take up law studies.

In the late 1950s, the Philippine Patent Office started requiring lawyers to pass an examination to practice as patent attorneys before the Office. This was challenged by some lawyers. Below is a summary of the Supreme Court decision on the matter.

### **EN BANC**

**[G.R. No. L-12426. February 16, 1959.]**

**PHILIPPINE LAWYER'S ASSOCIATION, petitioner, vs. CELEDONIO AGRAVA, in his capacity as Director of the Philippines Patent Office, respondent.**

On May 27, 1957, the Director of Patents issued a circular announcing that he had scheduled for June 27, 1957 an examination for the purpose of determining who are qualified to practice as patent attorneys before the Philippines Patent Office, the said examination was to cover patent law and jurisprudence and the rules of practice before said office. According to the circular, members of the Philippine Bar, engineers and other persons with sufficient scientific and technical training are qualified to take the said examination.

The Philippine lawyers' association challenged the circular. The Supreme Court said:

The Supreme Court has the exclusive and constitutional power with respect to admission to the practice of law in the Philippines and any member of the Philippine Bar in good standing may practice law anywhere and before any entity, whether judicial or quasi-judicial or administrative, in the Philippines. Naturally, the question arises as to whether or not appearance before the Patent Office and the preparation and prosecution of patent applications, etc., constitutes or is included in the practice of law.

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In our opinion, the practice of law includes such appearance before the Patent Office, the representation of applicants, oppositors, and other persons, and the prosecution of their applications for patent, their oppositions thereto, or the enforcement of their rights in patent cases. In the first place, although the transaction of business in the

Patent Office involves the use and application of technical and scientific knowledge and training, still, all such business has to be conducted and all orders and decisions of the Director of Patents have to be rendered in accordance with the Patent Law, as well as other laws, including the Rules and Regulations promulgated by the Patent Office in accordance with law. Not only this, but practice before the Patent Office involves the interpretation and application of other laws and legal principles, as well as the existence of facts to be established in accordance with the law of evidence and procedure....

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In conclusion, we hold that under the present law, members of the Philippine Bar authorized by this Tribunal to practice law, and in good standing, may practice their profession before the Patent Office, for the reason that much of the business in said office involves the interpretation and determination of the scope and application of the Patent Law and other laws applicable, as well as the presentation of evidence to establish facts involved; that part of the functions of the Patent Director are judicial or quasi-judicial, so much so that appeals from his orders and decisions are, under the law, taken to the Supreme Court.

For the foregoing reasons, the petition for prohibition is granted and the respondent Director is hereby prohibited from requiring members of the Philippine Bar to submit to an examination or tests and pass the same before being permitted to appear and practice before the Patent Office.

Because of this ruling, the IPO can only administer at present an optional registration for lawyers to appear before the IPO as trademark or patent attorney. As it is only an optional requirement, lawyers who did not apply for registration as patent attorneys are not barred from practicing and appearing before the Bureau of Patents. The only practical effect of registering as Patent Attorney is the advertising exposure as the names of the registered patent attorneys are listed in the website of the IPO.

### ***B. Educational Institutions Teaching IP in the Philippines***

As mentioned, IP is basically a legal discipline and therefore only law students study IP. But intellectual property law is a very small part of the more general subject of commercial law offered to second or third year law students. It comes with no surprise that intellectual property is often ignored in the entire legal training of the students. In recent years, however, intellectual property

questions have started appearing in the bar examinations. For this reason, some law schools have started offering more detailed teachings in intellectual property.

Most of the professors teaching IP are practicing lawyers in the field of intellectual property in different law offices. Some professors are working with government agencies like the Intellectual Property Office. In general, all law schools in the Philippines follow the Socratic Method of teaching. Some professors combine this Socratic Method with lectures.<sup>14</sup> Normally, students are assigned cases decided by the Supreme Court and are required to recite these cases in class. Recitations are graded and the average recitation grade carries a weight of 25%-50% of the final grade. Mid-term exams, if given, carry 25%-33% of the final grade. Final exams carry a weight of 33%-75%.

Commercial Law carries a 20% weight in the bar examinations.<sup>15</sup> There are about 3,000-3,500 students graduating every year from the different law schools throughout the Philippines. These students have somehow taken intellectual property law courses as part of Commercial Law. But the depth of learning is very superficial to a majority of these students.

In this regard, some students from at least twelve (12) law schools<sup>16</sup> have taken up specialized courses in intellectual property. These twelve law schools offer intellectual property either as a mandatory subject or as an elective course.

Most professors interviewed for this paper claim that they teach only the basics of IP law<sup>17</sup> with few discussions on International Treaties and Conventions to which the Philippines is a member. Only few of the professors assign cases decided by foreign jurisdictions. This means that international aspects of IP law are barely discussed.

Except for Ateneo de Manila University, none of the 12 schools have separate specialized professors for the 3 major IP subjects.<sup>18</sup> The following is a brief evaluation of the intellectual property law courses in these 12 law schools.

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<sup>14</sup> Full academic freedom is recognized in the Philippines. This means that professors are generally free to determine their method and style of teaching.

<sup>15</sup> For example, a 10-point question in IP would translate to 2 points weight in the final score of the candidate. This 2 points can make or unmake a candidate in passing the bar examinations and becoming a lawyer. Only 15-20% of the candidates pass the bar examinations given every year.

<sup>16</sup> These law schools are: (1) Ateneo Law School, Ateneo de Manila University, (2) University of the Philippines College of Law, (3) San Beda College of Law, (4) Lyceum of the Philippines, (5) Arellano University Foundation, (6) Manuel L. Quezon University, (7) Cagayan Colleges of Tuguegarao, (8) University of Perpetual Help–Rizal, (9) San Carlos University in Cebu City, (10) San Sebastian College, (11) Jose Rizal University, and (12) Manila Law Colleges Foundation. Two other schools, the Joint MBA-JD Program of FEU-La Salle which is designed for students who are interested in corporate practice, and Adamson University College of Law are set to offer IP in the next school year.

<sup>17</sup> i.e. basic trademark, patent and copyright concepts. Still, the primary objective is to prepare the students for possible questions on IP in the bar examinations.

<sup>18</sup> i.e. trademarks, patents and copyrights.

As can be seen in the evaluation, these 12 schools offer IP law as a two- or three-unit subject.<sup>19</sup>

### **1. Ateneo de Manila University Law School**

Ateneo de Manila University is one of the foremost law schools in the country in terms of performance in the bar examinations.<sup>20</sup> As such, it attracts the brightest students and admits only the best applicants through rigorous entrance examinations. Intellectual property is offered to third and fourth year students as an elective subject.

Intellectual Property was first taught as a separate subject<sup>21</sup> in the school year 1990-1991 when the school started to adopt the Juris Doctor curriculum as against the Liberal Arts.<sup>22</sup> It carried 2 units credit. In the school year 1999-2000, the subject was divided between 2 teachers. In the school year 2000-2001, the subject was taught by three teachers in 3 modules as follows: (1) Copyright Law, (2) Patent Law and (3) Trademark and the Internet.<sup>23</sup> In the school year 2001-2002, IP became a 3-unit subject.

In the school year 2004-2005, Ateneo introduced a new treatment to the subject matter. IP was divided into three independent subjects with 1 unit credit each. Out of 332 3<sup>rd</sup> and 4<sup>th</sup> year students, 38 enrolled for Patents and 34 for Copyright. However, Trademark Law & the Internet was abolished because there were not enough enrollees.

### **2. Manuel L. Quezon University (MLQU) School of Law**

MLQU started to offer Intellectual Property Law (IPL) in 1991. The then Dean Norberto Gonzales, being an IP practitioner himself, saw the need to offer the subject to third year students. He believed that the IPL is becoming an important aspect in legal practice.

According to Director Estrellita Beltran-Abelardo<sup>24</sup> IPL is considered a “compulsory elective course.” Though it is actually an elective course, it

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<sup>19</sup> Two or three units means that the students have 2 or 3 hours respectively of classes per week in a semester.

<sup>20</sup> Measured by the success rate and landing in the highest 10 scores obtained by the candidates.

<sup>21</sup> Previously IP was taught within the subject of Commercial Law as is done in other law schools to this day.

<sup>22</sup> Ateneo Law School is currently the only school offering the 4-year JD program.

<sup>23</sup> The writer teaches Trademark Law & the Internet. Atty. Ignacio Sapalo, the former Director of the then Bureau of Patents Trademarks and Technology Transfer, handles Patent Law. Atty. Christopher Lim, a partner at Quisumbing Torres law Offices, handles Copyright Law.

<sup>24</sup> Atty. Estrellita Beltran-Abelardo teaches the entire IP subject at MLQU. She is currently the Director of the Bureau of Legal Affairs of the Intellectual Property Office.

is the only elective subject offered to the law students. This means that every student has to take IPL. IPL is offered during the first semester to an average of 130 students divided into three sections. However, one section is opened during the second semester to accommodate the irregular students (such as those in their 2<sup>nd</sup> and 4<sup>th</sup> year). Of the number of students enrolled, about a third either fail or drop the subject. This makes MLQU the institution with the second most number of students taking up IP every year.

The IPL course is composed of the basic IP laws (i.e. Patent, Trademark and Copyright). However at the beginning of the semester Director Abelardo makes an introduction of the international laws affecting the Philippine IP code. The students are evaluated based on the result of their examinations, recitation and submission of case digests.

Presently, IPL is a 2-unit subject. However, Director Abelardo believes that it should carry 3 units in order to have a more thorough discussion of the subject matter including the international laws. As it is, she is having difficulty covering the entire subject matter because of lack of time.

### **3. University of the Philippines (UP) College of Law**

UP is the only state university offering IP as a separate subject. Its College of Law is always compared to Ateneo de Manila College of Law in terms of quality of legal education.

UP offers IP as an elective course and is open to all levels of law students. Most of the students are junior or senior law students. It is an elective subject and is equivalent to 2 units. The class averages about 40-50 students a year.

According to Atty. Susan D. Villanueva:<sup>25</sup> “I try to emphasize the primary purpose of the IP system and the need to regulate private rights in order to achieve the public good. The system, in order to be effective, must achieve an equilibrium---overprotection results in non-compliance and has a chilling effect on innovation while under-protection results in lack of innovation. I also make sure that IP students understand the Philippine context of development and emphasize that IP is merely a tool of development and not the end in itself. I know, ---these are not what one may expect from an IP lawyer but we also have a stake in an effective IP system.”

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<sup>25</sup> Atty. Susan Villanueva is a partner at Villaraza & Cruz Law Offices. She teaches the entire IP subject at UP.

#### **4. San Beda College of Law**

San Beda is also one of the top law schools in the Philippines.

The subject, the Law on Intellectual Property, was introduced sometime in 1999 upon the suggestion of Atty. Riciel Castillo-Tallon. The Law on Intellectual Property was then one of the aspects in Commercial Law but which was fast gaining importance and popularity. Besides, it is deemed as a lucrative practice.

The subject the Law on Intellectual Property is mandatory to third year students and is taken during the first semester. The subject covers Trademarks, Patent, Copyright and Intellectual Creation and carries 2 units.

For the past three years, the third year level has 4 sections with an average of 35 students per section. Previously it had 3 sections. This makes San Beda the institution with the most number of students taking IP every year. Two professors handle the subject, Atty. Tallon and Atty. Ulpiano Sarmiento. Both of them are in private practice.

#### **5. Arellano University Law Foundation**

Arellano University started offering "Copyright Law" sometime in 1995. Seeing that the trend in business and economics was toward the development of IP rights, IP was offered as a mandatory subject to its third year students. It carries 2 units. Although the subject is known as "Copyright Law" various aspects of IP concerning not only copyright, but trademark, patents, utility models - from registration, inter-partes cases to enforcement, are discussed.

In 1998, Arellano University offered Computers for Lawyers to their first year students. The initial intention was to make the students computer literate. The university, however soon found out that the students are already computer literate. Thus, presently, in the same subject, the students are also given an overview on IP rights on internet, programming and computer technology.

Since 2002, the subject "Copyright Law" was made an elective subject offered to 3<sup>rd</sup> year students and 2<sup>nd</sup> year students (irregular) who have taken the pre-requisite subjects, such as civil procedure, Civil Code, Property, Torts and Damages, etc. Aside from "Copyright Law" Arellano also offers International Trade Law, wherein TRIPS, WTO, Bern and other international law related to IP are discussed. This subject is offered as an elective and carries 2 units.

“Copyright Law” is offered to an average of 200 3<sup>rd</sup> year students on the 1<sup>st</sup> and 2<sup>nd</sup> semester, and about 35-40 students enroll to take the elective. According to the College Secretary, Atty. De La Peña, the School Board is considering to revert to the old curriculum making Copyright Law as a mandatory subject.

## **6. Lyceum of the Philippines College of Law**

Lyceum of the Philippines, opened its law school in 1952. Today, it has a total of 388 enrollees. In the year 2003, Lyceum revised its curriculum to include Intellectual Property Law as a mandatory subject replacing Problem Areas in Legal Ethics. Even transfer students who have taken the same subject as a 2-unit elective in their former schools are required to take it again when they enrol at Lyceum.

At Lyceum, the subject Intellectual Property Law is a 3-unit subject offered during the 2<sup>nd</sup> semester to 3<sup>rd</sup> year students which currently has 3 sections. For the past two years, the third year level has a population of 104 students. Of the total number of enrollees on the subject, at least 10% would either drop the subject or fail.

Currently, Intellectual Property Law is being handled by Atty. Adoracion Umipig.<sup>26</sup> Atty. Umipig sets aside one meeting to discuss the various international laws related to IP protection. She also lectures on e-commerce, which she considers as an important aspect in the present business situation. The major discussions, however, are on the basic IP laws, i.e. patent, copyright and trademark. Students are graded based on their attendance, and the results of written quizzes and final exams.

## **7. San Sebastian College Recoletos Manila Institute of Law**

San Sebastian College Recoletos Manila was established in 1945. In 1953 it opened the College of Commerce and Institute of Law. In 1996 the Institute of Law started to offer Intellectual Property as a mandatory subject to 3<sup>rd</sup> years students. Intellectual Property subject comprises a study of existing laws for the protection of intellectual properties (trademark, patent, copyrights, etc.) and the rationale for said laws.

The Institute of Law has an average student population of 656 students, 130 are third years students, while about 100 students are enrolled in IP subject. It being a mandatory subject, students who have

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<sup>26</sup> Atty. Umipig is a hearing officer [administrative judge] of the Bureau of Legal Affairs of the Intellectual Property Office.

passed the requisite subjects, such as Law on Property and Civil Procedure, can take the course.

At present IP is being handled by Atty. Solano, member of the editorial board of Rex Bookstore. Dean Willard Riano of the Institute of Law admits that they need more professors to handle the subject.

#### **8. Cagayan Colleges of Tuguegarao (CCT) College of Law**

CCT is one of the few law schools located in the northern-most part of the Philippines. IP is a compulsory subject under CCT's curriculum. It is a two-unit subject taught by Father Rahnilio Aquino.<sup>27</sup> For lack of time, Fr. Aquino could cover only the IP Code and significant Supreme Court doctrines.

#### **9. San Carlos University (SCU) in Cebu City**

At SCU, the IP course is a compulsory subject introduced since the school year 1995-1996. It is offered to second year students on the first semester. Average number of enrollees for the last five years is 100. There is an official course syllabus but Atty. Andrew Ong does not use it because he says he realized that the students had difficulty appreciating the relevance of IP. Instead, Atty. Ong teaches the subject from a business perspective, starting with a strategic framework for business and discuss how each IP is used in the business. He also emphasizes more the provisions of the law rather than the jurisprudence because he says the courts have not been consistent or accurate in their discussions on the IP laws.

#### **10. Jose Rizal University**

The subject Intellectual Property Law was first offered at JRU sometime in 1986. It was about this time when questions on Intellectual Property Law began appearing in the Bar Examinations. Thus, in order to help the students respond properly to questions relating to Intellectual Property Laws, the subject is offered to 2<sup>nd</sup> year students during the first semester. The subject carries 2 units and is mandatory.

Atty. Celso Tabobo, who handles the subject, finds the law to be rather technical. He admits that he himself is having difficulty handling the subject, not only because of its technical nature, but due to a dearth of

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<sup>27</sup> Fr. Rahnilio Aquino is currently the Head of Academic Affairs at the Philippine Judicial Academy of the Supreme Court. He is also Dean of the Graduate School of Law of San Beda College.

local jurisprudence on the subject. He comments that it really takes an expert to teach the subject, and that not all lawyers understand the law.

Thus, Atty. Tabobo requires his students to memorize the provisions of the law on Intellectual Property. The subject covers the basic topics, i.e. copyright, patent and trademark. He handles about 30 students and evaluates them based on the results of their periodic examinations. The final examination covers 25% copyright and 75% trademarks. At the end of the semester, almost 50% of the class either fails or drops the subject.

### **11. Manila Law College Foundation**

The college started to offer the subject Intellectual Property in 1990. The college revised its curriculum based on the curriculum for law schools designed by the Commission on Higher Education. Presently, Intellectual Property is offered to 4<sup>th</sup> year students on the second semester as an elective. The college has an average of 60 enrollees for the 4<sup>th</sup> year. About half, or thirty students enroll for the subject. Of those who enroll, only 90% are able to pass the course.

Atty. Jose R. Cabangon has been handling the subject since 1990. He was offered to teach the subject by the dean of the college. He finds the subject challenging considering that it is not his area of expertise. He admits that the law on Intellectual Property is very technical and difficult to comprehend especially after the law was amended to conform to the WTO-TRIPs.

### **12. University of Perpetual Help - Rizal**

University of Perpetual Help offers IP course as a 2 unit subject. This writer did not receive any other information on this school.

### ***C. IP Training for Administrators and Judges***

There are special IP courses for special commercial court judges at the Philippine Judicial Academy. These courses cover about fifty or so judges who preside over special commercial courts that have also been made IP courts by Supreme Court circular. The courses for judges center on the IP Code, as well as related laws. The emphasis is on applying the law and adjudicating IP Cases.

Recently, Father Rahnilio Aquino<sup>28</sup> produced a Handbook for Judges in Intellectual Property Cases. This Handbook is now published by the Supreme Court. The Handbook covers not only the IP Code, but the law creating the Optical Media Board, the law on plant varieties and the amendment on the topography of integrated circuits.

Funding for the Academy's programs on IP usually comes from USAID. Recently, the Philippine Judicial Academy collaborated with the Intellectual Property Office under a grant from the European Commission.

On the other hand, the IPO takes charge in training the hearing officers [administrative judges] and examiners. From time to time, these administrative judges and examiners have the opportunity to attend seminars, conferences and round table discussions sponsored by different IP organizations, the IPO and other foreign intellectual property offices.

Following is a partial list of recent seminars/conferences conducted by the ECAP.

- a. Workshop on "Relative Grounds for Refusal and Opposition Proceedings," Manila, 8-9 March 2004.

The workshop addressed procedures and practices that the Bureau of Trade Marks, IPO, applies on substantive examination on relative grounds for refusal and opposition proceedings. Two experts from OHIM shared with the participants the procedures applied within the EU. Part of the curriculum featured interactive case studies in which concrete examples were analyzed in an exercise that would help increase the coherence, consistency and efficiency of processing trademark applications by the IPO. In addition, the experts informed participants of recent developments concerning EU case law in this area, along with trends in Europe to follow the Community Trade Mark (CTM) system of not examining relative grounds for refusal.

- b. "Training on IP Valuation and Commercialization," Manila, 22-23 March 2004.

Local and European experts discussed the economic value of and how to commercialize IP assets. This exercise— organized in conjunction with the "Commercialization of Intangible Assets" workshop in Bangkok during 17-18 March 2004-- sought to raise awareness among the SMEs,

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<sup>28</sup> Fr. Rahnilio Aquino is currently the Head of Academic Affairs at the Philippine Judicial Academy of the Supreme Court. He is also Dean of the Graduate School of Law of San Beda College. He teaches IP in CCT College of Law. He is an author of a book on IP.

research institutes, universities, and financial institutions on the economic importance of IP assets.

c. Colloquia for Judges on IP, Manila, 7-9 April 2004.

European and Philippine judges held a series of technical sessions on how to improve enforcement structures in the Philippines. The forum focused on cases on IP infringements.

d. Seminar for Public Prosecutors on Industrial Property and Copyright, Manila 22-23 April 2004.

This series of lectures and round-table discussions addressed the importance of IP enforcement to local industry and thus for economic development. Local and European participants exchanged views on how to implement in the Philippines an efficient enforcement structure.

e. Promotion of the IP Attorney Profession, Manila 3-14 May 2004

A qualified European Patent Attorney, and an expert from the European Patent Office undertook a two-week mission to investigate the situation in the Philippines. The mission was to draw a proposal for a suitable accreditation system for patent attorneys, and to produce the first draft of rules and regulations for the proposed system on the accreditation and registration of patent attorneys. It is interesting to know the proposal in view of the Supreme Court decision discussed above.

### **III. Evaluation and Recommendations**

Quality and quantity of teaching institutions in the Philippines have plenty of room for improvement in terms of teaching IP. As discussed in the Introduction under Part II of this paper, IP education is viewed mainly as a legal discipline. Even with this focus, legal education does not require extensive or intensive studies in the IP field. Law schools have to be encouraged, if not required, to offer extensive and intensive IP subjects in their curriculum. This can be done only through collaboration with and cooperation by the Supreme Court and/or the Association of Law Schools of the Philippines. With the help of IPO, it may take about 2-3 years to start implementing this proposal.

Another important aspect of IP education in the Philippines is to offer the subject to engineering, science and technical schools on one hand and to business schools on the other hand. This can be done only through collaboration with and cooperation from the Commission on Higher Education which approves curriculum for colleges and universities. With the help of IPO, it may take about 3-5 years to start implementing this proposal.

Aside from IP education in schools, people from the business sector, authors, inventors and even the IP professionals including judges and examiners also need basic and advanced training on the different aspects of IP that are relevant to them. This can be done by setting up a center or institution that will provide continuing IP education and research. This requires extensive and careful planning. Experience from other established institutions all over the world would be a big help. There is no need to re-invent the wheel, as the saying goes. It needs only to be adjusted to address the particular needs of the IP education in the Philippines. This center or institution may be a part of an already established college or university.<sup>29</sup> The other possibility is to attach the center or institution with the IPO which has a mandate to conduct IP information dissemination.<sup>30</sup>

Setting up a center or institution also requires big funding. Funding may be sourced from IP organizations, local and multinational companies who would most benefit in IP education or from other organizations. It may take about 3-5 years to set up this IP center or institution.

There are sufficient lawyers in the field of IP who can teach this course in the schools or institutions mentioned here. Also, the lecturers and professors from established international institutions may be invited on a regular basis to conduct lectures. As a starting point, professors from the different colleges and universities may be trained on the subject of IP.<sup>31</sup>

Schools should have assistant lecturers and tutors to help teach the students. The assistant lecturers and tutors would also double as backup professors in case the main professor is not available or retires from teaching.

The final step would be the establishment of a regional IP institution<sup>32</sup> that would be truly representative of the region's needs in IP education. This may take some time, about 5-7 years to implement. Cooperation from different countries and institutions is vital to the success of this big project. The ASEAN University Network (AUN) can be a good starting point. Experience can be drawn from EIPIN. Creation of a common IP Curriculum is the first step toward this project.

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<sup>29</sup> This writer had discussed this possibility with Dean Cesar Villanueva of Ateneo Law School and he is very interested of the idea. Another possible school is the Joint MBA-JD Program of FEU-La Salle which is designed for students who are interested in corporate practice. Dean Andres Bautista of this Joint MBA-JD Program is also the President of the Association of Law Schools of the Philippines.

<sup>30</sup> This writer had discussed this as well with the IPO consultants doing a study on administration of IPO as a business concern.

<sup>31</sup> The writer has started discussing the organization of IP professors and teachers with other professors in the course of his research for this paper. He received positive interest from the professors.

<sup>32</sup> An ASEAN or Asian Institution would be ideal.

## **IV. CONCLUSION**

Education is the key to harness intellectual property by creating an environment which is favourable to innovation and investment, leading to economic development and prosperity. The government, educational institutions, the business sector and other key IP players must all come together towards the goal of achieving quality education in intellectual property that is globally competitive. The time to act is now.