

SECOND DIVISION

[G.R. No. 195956. March 11, 2015.]

ABS-CBN CORPORATION, *petitioner*, vs. FELIPE GOZON, GILBERTO R. DUAVIT, JR., MARISSA L. FLORES, JESSICA A. SOHO, GRACE DELA PEÑA-REYES, JOHN OLIVER T. MANALASTAS, JOHN DOES AND JANE DOES, *respondents*.

DECISION

LEONEN, J.:

The main issue in this case is whether there is probable cause to charge respondents with infringement under Republic Act No. 8293, otherwise known as the Intellectual Property Code. The resolution of this issue requires clarification of the concept of "copyrightable material" in relation to material that is rebroadcast live as a news story. We are also asked to rule on whether criminal prosecution for infringement of copyrightable material, such as live rebroadcast, can be negated by good faith.

ABS-CBN Corporation (ABS-CBN) filed the Petition for Review on *Certiorari* [1] to assail the November 9, 2010 Decision [2] and the March 3, 2011 Resolution [3] of the Court of Appeals. The Court of Appeals reinstated the Department of Justice Resolution dated August 1, 2005 that ordered the withdrawal of the Information finding probable cause for respondents' violation of Sections 177 [4] and 211 [5] of the Intellectual Property Code. [6] Respondents are officers and employees of GMA Network, Inc. (GMA-7). They are: Felipe Gozon (Gozon), GMA-7 President; Gilberto R. Duavit, Jr. (Duavit, Jr.), Executive Vice-President; Marissa L. Flores (Flores), Vice-President for News and Public Affairs; Jessica A. Soho (Soho), Director for News; Grace Dela Peña-Reyes (Dela Peña-Reyes), Head of News and Public Affairs; John Oliver Manalastas (Manalastas), Program Manager; and others.

The controversy arose from GMA-7's news coverage on the homecoming of Filipino overseas worker and hostage victim Angelo dela Cruz on July 22, 2004. As summarized by the Court of Appeals:

Overseas Filipino worker Angelo dela Cruz was kidnapped by Iraqi militants and as a condition for his release, a demand was made for the withdrawal of Filipino troops in Iraq. After negotiations, he was released by his captors and was scheduled to return to the country in the afternoon of 22 July 2004. Occasioned by said homecoming and the public interest it generated, both

...GMA Network, Inc. ...and [petitioner] made their respective broadcasts and coverage of the live event. [7]

ABS-CBN "conducted live audio-video coverage of and broadcasted the arrival of Angelo dela Cruz at the Ninoy Aquino International Airport (NAIA) and the subsequent press conference." [8] ABS-CBN allowed Reuters Television Service (Reuters) to air the footages it had taken earlier under a special embargo agreement. [9]

ABS-CBN alleged that under the special embargo agreement, any of the footages it took would be for the "use of Reuter's international subscribers only, and shall be considered and treated by Reuters under 'embargo' against use by other subscribers in the Philippines. ...[N]o other Philippine subscriber of Reuters would be allowed to use ABS-CBN footage without the latter's consent." [10]

GMA-7, to which Gozon, Duavit, Jr., Flores, Soho, Dela Peña-Reyes, and Manalastas are connected, "assigned and stationed news reporters and technical men at the NAIA for its live broadcast and non-live news coverage of the arrival of dela Cruz." [11] GMA-7 subscribes to both Reuters and Cable News Network (CNN). It received a live video feed of the coverage of Angelo dela Cruz's arrival from Reuters. [12]

GMA-7 immediately carried the live newsfeed in its program "Flash Report," together with its live broadcast. [13] Allegedly, GMA-7 did not receive any notice or was not aware that Reuters was airing footages of ABS-CBN. [14] GMA-7's news control room staff saw neither the "No Access Philippines" notice nor a notice that the video feed was under embargo in favor of ABS-CBN. [15]

On August 13, 2004, ABS-CBN filed the Complaint for copyright infringement under Sections 177 [16] and 211 [17] of the Intellectual Property Code. [18]

On December 3, 2004, Assistant City Prosecutor Dindo Venturanza issued the Resolution [19] finding probable cause to indict Dela Peña-Reyes and Manalastas. [20] Consequently, the Information [21] for violation of the Intellectual Property Code was filed on December 17, 2004. It reads:

That on or about the 22nd of July 2004, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping each other, being the Head of News Operations and the Program Manager, respectively, for the News and Public Affairs Department of GMA Network, Inc., did then and there, willfully, unlawfully and feloniously use and broadcast the footage of the arrival of Angelo [d]ela Cruz at the Ninoy Aquino International Airport of which ABS-CBN holds the exclusive ownership and copyright by then and there using, airing, and broadcasting the said footage in its news program "FLASH REPORT" without first obtaining the consent or authority of said copyright owner, to their damage and prejudice.

Contrary to law. [22]

On January 4, 2005, respondents filed the Petition for Review before the Department of Justice. [23] In the Resolution (Gonzalez Resolution) dated August 1,

2005, Department of Justice Secretary Raul M. Gonzalez (Secretary Gonzalez) ruled in favor of respondents and held that good faith may be raised as a defense in the case. [24] The dispositive portion of the Resolution reads:

WHEREFORE,THE PETITION FOR REVIEW FILED BY GMA-7 in I.S. No. 04-10458 is considered meritorious and is hereby **GRANTED**.This case is hereby **Dismissed**,the resolution of the City Prosecutor of Quezon City is hereby reversed and the same is ordered to withdraw the information if any and report action taken to this office within ten (10) days. [25] (Emphasis in the original)

Both parties moved for reconsideration of the Gonzalez Resolution. [26]

Meanwhile, on January 19, 2005, the trial court granted the Motion to Suspend Proceedings filed earlier by Dela Peña-Reyes and Manalastas. [27] The trial court Order reads:

Perusing the motion, the court finds that a petition for review was filed with the Department of Justice on January 5, 2005 as confirmed by the public prosecutor. Under Section 11 (c), Rule 116 of the Rules of Criminal Procedure, once a petition for review is filed with the Department of Justice, a suspension of the criminal proceedings may be allowed by the court.

Accordingly, to allow the Department of Justice the opportunity to act on said petition for review, let the proceedings on this case be suspended for a period of sixty (60) days counted from January 5, 2005, the date the petition was filed with the Department of Justice. The arraignment of the accused on February 1, 2005 is accordingly cancelled. Let the arraignment be rescheduled to March 8, 2005 at 8:30 a.m. The accused through counsel are notified in open court.

SO ORDERED. [28]

On June 29, 2010, Department of Justice Acting Secretary Alberto C. Agra (Secretary Agra) issued the Resolution (Agra Resolution) that reversed the Gonzalez Resolution and found probable cause to charge Dela Peña-Reyes and Manalastas for violation of the Intellectual Property Code. [29] Secretary Agra also found probable cause to indict Gozon, Duavit, Jr., Flores, and Soho for the same violation. [30] He ruled that:

[w]hile good faith may be a defense in copyright infringement, the same is a disputable presumption that must be proven in a full-blown trial. Disputable presumptions may be contradicted and overcome by other evidence. Thus, a full-blown trial is the proper venue where facts, issues and laws are evaluated and considered. The very purpose of trial is to allow a party to present evidence to overcome the disputable presumptions involved. [31]

The dispositive portion of the Agra Resolution provides:

WHEREFORE,premises considered:

(a) The **Motion for Reconsideration** filed by appellees ABS-CBN Broadcasting Corporation (ABS-CBN) of our Resolution promulgated on August 1, 2005 (Resolution No. 364, Series of 2005) and the **Petition for Review** filed by complainant-appellant ABS-CBN in I.S. No. 04-10458 on April 10, 2006, are GRANTED and the City Prosecutor of Quezon City is hereby ordered to file the necessary Information for violation of Sections 177 and 211 of Republic Act No. 8293 against GMA-7. Felipe L. Gozon, Gilberto R. Duavit, Jr., Marisa L. Flores, Jessica A. Soho, Grace Dela Peña-Reyes, John Oliver T. Manalastas[.]

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SO ORDERED.^[32] (Emphasis in the original)

Respondents assailed the Agra Resolution through the Petition for *Certiorari* with prayer for issuance of a temporary restraining order and/or Writ of Preliminary Injunction on September 2, 2010 before the Court of Appeals. In the Resolution dated September 13, 2010, the Court of Appeals granted the temporary restraining order preventing the Department of Justice from enforcing the Agra Resolution. ^[33]

On November 9, 2010, the Court of Appeals rendered the Decision granting the Petition and reversing and setting aside the Agra Resolution. ^[34] The Court of Appeals held that Secretary Agra committed errors of jurisdiction in issuing the assailed Resolution. Resolving the issue of copyright infringement, the Court of Appeals said:

Surely, private respondent has a copyright of its news coverage. Seemingly, for airing said video feed, petitioner GMA is liable under the provisions of the Intellectual Property Code, which was enacted purposely to protect copyright owners from infringement. *However, it is an admitted fact that petitioner GMA had only aired a five (5) second footage of the disputed live video feed that it had received from Reuters and CNN as a subscriber. Indeed, petitioners had no notice of the right of ownership of private respondent over the same. Without notice of the "No Access Philippines" restriction of the live video feed, petitioner cannot be faulted for airing a live video feed from Reuters and CNN.*

Verily, as aptly opined by Secretary Gonzalez in his earlier Resolution, the act of petitioners in airing the five (5) second footage was undeniably attended by good faith and it thus serves to exculpate them from criminal liability under the Code. *While the Intellectual Property Code is a special law, and thus generally categorized as **malum prohibitum**, it bears to stress that the provisions of the Code itself do not ipso facto penalize a person or entity for copyright infringement by the mere fact that one had used a copyrighted work or material.*

Certainly so, in the exercise of one's moral and economic or copyrights, the very provisions of Part IV of the Intellectual Property Code provide for the scope and limitations on copyright protection under Section 184 and in fact permit fair use of copyrighted work under Section 185. With the aforesaid statutory limitations on one's economic and copyrights and the allowable instances where the other persons can legally use a copyrighted work, criminal

culpability clearly attaches only when the infringement had been knowingly and intentionally committed. [35] (Emphasis supplied)

The dispositive portion of the Decision reads:

WHEREFORE,the foregoing considered, the instant petition is hereby **GRANTED** and the assailed Resolution dated 29 June 2010 **REVERSED** and **SET ASIDE**. Accordingly, the earlier Resolution dated 1 August 2005, which ordered the withdrawal of the Information filed, if any, against the petitioners for violation of Sections 177 and 211 of the Intellectual Property Code, is hereby **REINSTATED**.No costs.

SO ORDERED. [36] (Emphasis in the original)

ABS-CBN's Motion for Reconsideration was denied. [37] It then filed its Petition for Review before this court assailing the Decision and Resolution of the Court of Appeals. [38]

The issues for this court's consideration are:

First, whether Secretary Agra committed errors of jurisdiction in the Resolution dated June 29, 2010 and, therefore, whether a petition for *certiorari* was the proper remedy in assailing that Resolution;

Second, whether news footage is copyrightable under the law;

Third, whether there was fair use of the broadcast material;

Fourth, whether lack of knowledge that a material is copyrighted is a defense against copyright infringement;

Fifth, whether good faith is a defense in a criminal prosecution for violation of the Intellectual Property Code; and

Lastly, whether the Court of Appeals was correct in overturning Secretary Agra's finding of probable cause.

I

The trial court granted respondents' Motion to Suspend Proceedings and deferred respondents Dela Peña-Reyes and Manalastas' arraignment for 60 days in view of the Petition for Review filed before the Department of Justice.

Rule 116, Section 11 (c) of the Rules of Criminal Procedure allows the suspension of the accused's arraignment in certain circumstances only:

SEC. 11. *Suspension of arraignment*.— Upon motion by the proper party, the arraignment shall be suspended in the following cases: (a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose;

(b) There exists a prejudicial question; and

(c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; provided, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office. (12a) (Emphasis supplied)

In *Samson v. Daway*,^[39] this court acknowledged the applicability of Rule 116, Section (c) in a criminal prosecution for infringement under the Intellectual Property Code. However, this court emphasized the limits of the order of deferment under the Rule:

While the pendency of a petition for review is a ground for suspension of the arraignment, the ...provision limits the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office. It follows, therefore, that after the expiration of said period, the trial court is bound to arraign the accused or to deny the motion to defer arraignment.^[40]

We clarify that the suspension of the arraignment should always be within the limits allowed by law. In *Crespo v. Judge Mogul*,^[41] this court outlined the effects of filing an information before the trial court, which includes initiating a criminal action and giving this court "authority to hear and determine the case":^[42]

The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court, the only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.

However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possibly be designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.

The answer is simple. The role of the fiscal or prosecutor as We all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he abandon the prosecution of the case leaving it to the hands of a private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he may turn over the presentation of the evidence to the private prosecutor but still under his direction and control.

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation. [43] (Emphasis supplied, citations omitted)

The doctrine in *Crespo* was reiterated in *Mayor Balindong v. Court of Appeals*,^[44] where this court reminded the Department of Justice Secretary to refrain from entertaining petitions for review when the case is already pending with this court:

[I]n order to avoid a situation where the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in the Court. The matter should be left entirely for the determination of the Court. ^[45]

The trial court should have proceeded with respondents Dela Peña-Reyes and Manalastas' arraignment after the 60-day period from the filing of the Petition for Review before the Department of Justice on March 8, 2005. It was only on September 13, 2010 that the temporary restraining order was issued by the Court of Appeals. The trial court erred when it did not act on the criminal case during the interim period. It had full control and direction of the case. As Judge Mogul reasoned in denying the motion to dismiss in *Crespo*, failure to proceed with the arraignment "disregards the requirements of due process [and] erodes the Court's independence and integrity." ^[46]

II

According to ABS-CBN, the Court of Appeals erred in finding that: a motion for reconsideration was not necessary before a petition for *certiorari* could be filed; the Department of Justice Secretary committed errors of jurisdiction since the Agra Resolution was issued within its authority and in accordance with settled laws and jurisprudence; and respondents were not liable for copyright infringement.

In its assailed Decision, the Court of Appeals found that respondents committed a procedural error when they failed to file a motion for reconsideration before filing the Petition for *Certiorari*. However, the Court of Appeals held that a motion for reconsideration was unnecessary since the Agra Resolution was a patent nullity and it would have been useless under the circumstances:

Given that a reading of the assailed Resolution and the instant records readily reveals errors of jurisdiction on the part of respondent Secretary, direct judicial recourse is warranted under the circumstances. Aside from the fact that said Resolution is a patent nullity having been issued in grave abuse of discretion amounting to lack or excess of jurisdiction, the filing of a motion for reconsideration is evidently useless on account of the fact that the issues and arguments before this Court have already been duly raised and accordingly delved into by respondent Secretary in his disposition of the petition *a quo*.^[47] (Emphasis in the original)

In *Elma v. Jacobi*,^[48] this court ruled that a petition for *certiorari* under Rule 65 of the Rules of Court is proper when assailing adverse resolutions of the Department of Justice stemming from the determination of probable cause. ^[49] However, grave abuse of discretion must be alleged. ^[50]

In *Sanrio Company Limited v. Lim*,^[51] this court stressed the prosecutor's role in determining probable cause. Judicial review will only lie when it is shown that the prosecutor acted with grave abuse of discretion amounting to lack or excess of jurisdiction:

A prosecutor alone determines the sufficiency of evidence that will establish probable cause justifying the filing of a criminal information against the respondent. By way of exception, however, judicial review is allowed where respondent has clearly established that the prosecutor committed grave abuse of discretion. Otherwise stated, such review is appropriate only when the prosecutor has exercised his discretion in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law. ^[52] (Citations omitted)

Grave abuse of discretion refers to:

such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal

hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. [53]

Resorting to *certiorari* requires that there be there be "no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law[,]" [54] such as a motion for reconsideration. Generally, "a motion for reconsideration is a condition *sine qua non* before a petition for *certiorari* may lie, its purpose being to grant an opportunity for the [tribunal or officer] to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case." [55]

However, exceptions to the rule exist:

(a) where the order is a patent nullity, as where the Court *a quo* had no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial Court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved. [56] (Emphasis in the original, citations omitted)

As argued by respondents, "[a] second motion for reconsideration would have been useless and futile since the D[epartment] [of] J[ustice] had already passed upon the same issues twice." [57] Equally pressing under the circumstances was the need to resolve the matter, as the Information's filing would lead to respondents' imminent arrest. [58]

Moreover, Department of Justice Department Circular No. 70 dated July 3, 2000, or the 2000 NPS Rules on Appeal, provides that no second motion for reconsideration of the Department of Justice Secretary's resolution shall be entertained:

SECTION 13. *Motion for reconsideration.*— The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal, furnishing the adverse party and the Prosecution Office concerned with copies thereof and submitting proof of such service. No second or further motion for reconsideration shall be entertained.

The Agra Resolution was the result of respondents' Motion for Reconsideration assailing the Gonzalez Resolution. To file a motion for reconsideration of the Agra

Resolution would be superfluous. Respondents were, therefore, correct in filing the Petition for *Certiorari* of the Agra Resolution before the Court of Appeals.

III

The Court of Appeals ruled that Secretary Agra committed errors of jurisdiction, which then required the grant of the writ of *certiorari*:

So viewed, by ordering the filing of information without proof that probable cause exists to charge petitioners with a crime, respondent Secretary clearly committed an error of jurisdiction thus warranting the issuance of the writ of *certiorari*. Surely, probable cause cannot be had when the very provisions of the statute exculpates criminal liability in cases classified as fair use of copyrighted materials. The fact that they admittedly used the Reuters live video feed is not, as a matter of course, tantamount to copyright infringement that would justify the filing of an information against the petitioners. [59]

Error of jurisdiction must be distinguished from error of judgment:

A line must be drawn between errors of judgment and errors of jurisdiction. An error of judgment is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction renders an order or judgment void or voidable. Errors of jurisdiction are reviewable on *certiorari*; errors of judgment, only by appeal. [60]

In *People v. Hon. Sandiganbayan*: [61]

An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. An *error of jurisdiction* is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. [62] (Emphasis supplied)

This court has adopted a deferential attitude towards review of the executive's finding of probable cause. [63] This is based "not only upon the respect for the investigatory and [prosecutorial] powers granted by the Constitution to the executive department but upon practicality as well." [64] Review of the Department of Justice Secretary's decision or resolution will be allowed only when grave abuse of discretion is alleged:

The full discretionary authority to determine probable cause in a preliminary investigation to ascertain sufficient ground for the filing of information rests with the executive branch. Hence, judicial review of the resolution of the Secretary of Justice is limited to a determination whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction. Courts cannot substitute the executive branch's judgment.

It is only where the decision of the Justice Secretary is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction that the Court of Appeals may take cognizance of the case in a petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure. The Court of Appeals decision may then be appealed to this Court by way of a petition for review on certiorari.^[65] (Emphasis supplied, citations omitted)

In this case, it must be shown that Secretary Agra exceeded his authority when he reversed the findings of Secretary Gonzalez. This court must determine whether there is probable cause to file an information for copyright infringement under the Intellectual Property Code.

IV

Probable cause pertains to "such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof." ^[66] Preliminary investigation is the inquiry or proceeding to determine whether there is probable cause. ^[67]

In Webb v. De Leon,^[68] this court ruled that determination of probable cause during preliminary investigation does not require trial-like evaluation of evidence since existence of probable cause does not equate to guilt:

It ought to be emphasized that in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil. Rather, he relies on the calculus of common sense of which all reasonable men have an abundance.

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...A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt. ^[69]

In Reyes v. Pearlbank Securities, Inc.,^[70] finding probable cause is not equivalent to finding with moral certainty that the accused committed the crime:

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. ^[71]

During preliminary investigation, a public prosecutor does not adjudicate on the parties' rights, obligations, or liabilities. ^[72]

In the recent case of Estrada v. Office of the Ombudsman, et al.,^[73] we reiterated Webb on the determination of probable cause during preliminary investigation and traced the history of probable cause as borrowed from American jurisprudence:

The purpose in determining probable cause is to make sure that the courts are not clogged with weak cases that will only be dismissed, as well as to spare a person from the travails of a needless prosecution.

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...In the United States, from where we borrowed the concept of probable cause, the prevailing definition of probable cause is this:

In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved.

"The substance of all the definitions" of probable cause "is a reasonable ground for belief of guilt." *McCarthy v. De Armit*, 99 Pa. St. 63, 69, quoted with approval in the *Carroll* opinion, 267 U. S. at 161. And this "means less than evidence which would justify condemnation" or conviction, as Marshall, C. J., said for the Court more than a century ago in *Locke v. United States*,⁷ Cranch 339, 348. Since Marshall's time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where "the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed. *Carroll v. United States*, 267 U. S. 132, 162.

These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

In the Philippines, there are four instances in the Revised Rules of Criminal Procedure where probable cause is needed to be established:

- (1) In Sections 1 and 3 of Rule 112: By the investigating officer, to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. A preliminary investigation is required before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months and one day without regard to the fine;
- (2) In Sections 6 and 9 of Rule 112: By the judge, to determine whether a warrant of arrest or a commitment order, if the accused has already been arrested, shall be issued and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice;
- (3) In Section 5(b) of Rule 113: By a peace officer or a private person making a warrantless arrest when an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (4) In Section 4 of Rule 126: By the judge, to determine whether a search warrant shall be issued, and only upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

In all these instances, the evidence necessary to establish probable cause is based only on the likelihood, or probability, of guilt. [\[74\]](#)

Estrada also highlighted that a "[p]reliminary investigation is not part of the criminal action. It is merely preparatory and may even be disposed of in certain situations." [\[75\]](#)

To determine whether there is probable cause that respondents committed copyright infringement, a review of the elements of the crime, including the existing facts, is required.

V

ABS-CBN claims that news footage is subject to copyright and prohibited use of copyrighted material is punishable under the Intellectual Property Code. It argues that the new footage is not a "newsworthy event" but "merely an account of the arrival of Angelo dela Cruz in the Philippines — the latter being the newsworthy event": [\[76\]](#)

To be clear, it is the event itself or the arrival of Angelo dela Cruz which is not copyrightable because that is the newsworthy event. However, any footage created from the event itself, in this case the arrival of Angelo dela Cruz, are intellectual creations which are copyrightable. Thus, the footage

created by ABS-CBN during the arrival of Angelo dela Cruz, which includes the statements of Dindo Amparo, are copyrightable and protected by the laws on copyright. [77]

On the other hand, respondents argue that ABS-CBN's news footage of Angelo dela Cruz's arrival is not copyrightable or subject to protection:

Certainly, the arrival of Angelo [d]ela Cruz, which aroused public attention and the consciousness of the Filipino people with regard to their countrymen, OFWs working in foreign countries and how the Philippine government responds to the issues concerning them, is "**news**". There is no ingenuity or inventiveness added in the said news footage. The video footage of this "news" is not copyrightable by any legal standard as facts of everyday life depicted in the news and items of press information is part of the public domain. [78] (Emphasis in the original)

The news footage is copyrightable.

The Intellectual Property Code is clear about the rights afforded to authors of various kinds of work. Under the Code, "works are protected by the sole fact of their creation, *irrespective of their mode or form of expression*, as well as of their content, quality and purpose." [79] These include "[a]udiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings." [80]

Contrary to the old copyright law, [81] the Intellectual Property Code does not require registration of the work to fully recover in an infringement suit. Nevertheless, both copyright laws provide that copyright for a work is acquired by an intellectual creator from the moment of creation. [82]

It is true that under Section 175 of the Intellectual Property Code, "news of the day and other miscellaneous facts having the character of mere items of press information" are considered unprotected subject matter. [83] However, the Code does not state that *expression* of the news of the day, particularly when it underwent a creative process, is not entitled to protection.

An *idea* or event must be distinguished from the expression of that idea or event. An idea has been likened to a ghost in that it "must be spoken to a little before it will explain itself." [84] It is a concept that has eluded exact legal definition. [85] To get a better grasp of the idea/expression dichotomy, the etymology of the term "idea" is traced:

The word "idea" is derived from a Greek term, meaning "a form, the look or appearance of a thing as opposed to its reality, from *idein*, to see." In the *Timaeus*, Plato saw ideas as eternal paradigms, independent objects to which the divine demiurge looks as patterns in forming the world. This was later modified to the religious conception of ideas as the thoughts of God. "It is not a very long step to extend the term 'idea' to cover patterns, blueprints, or plans in anyone's mind, not only in God's." The word entered the French and English vernacular in the 1600s and possessed two meanings. The first was the Platonic meaning

of a perfect exemplar or paradigm. The second, which probably has its origin with Descartes, is of a mental concept or image or, more broadly, any object of the mind when it is active. Objects of thought may exist independently. The sun exists (probably) before and after you think of it. But it is also possible to think of things that have never existed, such as a unicorn or Pegasus. John Locke defined ideas very comprehensively, to include: all objects of the mind. Language was a way of translating the invisible, hidden ideas that make up a person's thoughts into the external, perceptible world of articulate sounds and visible written symbols that others can understand. [86] (Citations omitted)

There is no one legal definition of "idea" in this jurisdiction. The term "idea" is mentioned only once in the Intellectual Property Code. [87] In Joaquin, Jr. v. Drilon, [88] a television format (*i.e.*, a dating show format) is not copyrightable under Section 2 of Presidential Decree No. 49; [89] it is a mere concept:

P.D. No. 49, §2, in enumerating what are subject to copyright, *refers to finished works and not to concepts. The copyright does not extend to an idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.* Thus, the new INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES provides:

SEC. 175. Unprotected Subject Matter. — Notwithstanding the provisions of Sections 172 and 173, no protection shall extend, under this law, to any idea, procedure, system, method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof.

What then is the subject matter of petitioners' copyright? This Court is of the opinion that petitioner BJPI's *copyright covers audio-visual recordings of each episode of Rhoda and Me, as falling within the class of works mentioned in P.D. 49, §2(M), to wit:*

Cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;

The copyright does not extend to the general concept or format of its dating game show. Accordingly, by the very nature of the subject of petitioner BJPI's copyright, the investigating prosecutor should have the opportunity to compare the videotapes of the two shows.

Mere description by words of the general format of the two dating game shows is insufficient; the presentation of the master videotape in evidence was indispensable to the determination of the existence of probable cause. As aptly observed by respondent Secretary of Justice:

A television show includes more than mere words can describe because it involves a whole spectrum of visuals and effects, video and audio, such that no similarity or dissimilarity may be found by merely describing the general copyright/format of both dating game shows.^[90] (Emphasis supplied, citations omitted)

Ideas can be either abstract or concrete. ^[91] It is the concrete ideas that are generally referred to as expression:

The words "abstract" and "concrete" arise in many cases dealing with the idea/expression distinction. The *Nichols* court, for example, found that the defendant's film did not infringe the plaintiff's play because it was "too generalized an abstraction from what plaintiff wrote ...only a part of her ideas." In *Eichel v. Marcin*, the court said that authors may exploit facts, experiences, field of thought, and general ideas found in another's work, "provided they do not substantially copy a concrete form, in which the circumstances and ideas have been developed, arranged, and put into shape." Judge Hand, in *National Comics Publications, Inc. v. Fawcett Publications, Inc.* said that "no one infringes, unless he descends so far into what is concrete as to invade ..'expression.'"

These cases seem to be distinguishing "abstract" ideas from "concrete" tangible embodiments of these abstractions that may be termed expression. However, if the concrete form of a work means more than the literal expression contained within it, it is difficult to determine what is meant by "concrete." *Webster's New Twentieth Century Dictionary of the English Language* provides several meanings for the word concrete. These include: "having a material, perceptible existence; of, belonging to, or characterized by things or events that can be perceived by the senses; real; actual;" and "referring to a particular; specific, not general or abstract." ^[92]

In *Pearl & Dean (Phil.), Incorporated v. Shoemart, Incorporated*,^[93] this court, citing the American case of *Baker v. Selden*, distinguished copyright from patents and illustrated how an idea or concept is different from the expression of that idea:

In the oft-cited case of *Baker vs. Selden*, the United States Supreme Court held that *only the expression of an idea is protected by copyright, not the idea itself*. In that case, the plaintiff held the copyright of a book which expounded on a new accounting system he had developed. The publication illustrated blank forms of ledgers utilized in such a system. The defendant reproduced forms similar to those illustrated in the plaintiff's copyrighted book. The US Supreme Court ruled that:

"There is no doubt that a work on the subject of book-keeping, though only explanatory of well known systems, may be the subject of a copyright; but, then, it is claimed only as a book. ... *But there is a clear distinction between the books, as such, and the art, which it is, intended to illustrate.* The mere

statement of the proposition is so evident that it requires hardly any argument to support it. The same distinction may be predicated of every other art as well as that of bookkeeping.

A treatise on the composition and use of medicines, be they old or new; on the construction and use of ploughs or watches or churns; or on the mixture and application of colors for painting or dyeing; or on the mode of drawing lines to produce the effect of perspective, would be the subject of copyright; but no one would contend that the copyright of the treatise would give the exclusive right to the art or manufacture described therein. The copyright of the book, if not pirated from other works, would be valid without regard to the novelty or want of novelty of its subject matter. The novelty of the art or thing described or explained has nothing to do with the validity of the copyright. To give to the author of the book an exclusive property in the art described therein, when no examination of its novelty has ever been officially made, would be a surprise and a fraud upon the public. That is the province of letters patent, not of copyright. The claim to an invention or discovery of an art or manufacture must be subjected to the examination of the Patent Office before an exclusive right therein can be obtained; and a patent from the government can only secure it.

The difference between the two things, letters patent and copyright, may be illustrated by reference to the subjects just enumerated. *Take the case of medicines. Certain mixtures are found to be of great value in the healing art. If the discoverer writes and publishes a book on the subject (as regular physicians generally do), he gains no exclusive right to the manufacture and sale of the medicine; he gives that to the public. If he desires to acquire such exclusive right, he must obtain a patent for the mixture as a new art, manufacture or composition of matter. He may copyright his book, if he pleases; but that only secures to him the exclusive right of printing and publishing his book. So of all other inventions or discoveries.*

The copyright of a book on perspective, no matter how many drawings and illustrations it may contain, gives no exclusive right to the modes of drawing described, though they may never have been known or used before. By publishing the book without getting a patent for the art, the latter is given to the public.

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Now, whilst no one has a right to print or publish his book, or any material part thereof, as a book intended to convey instruction in the art, any person may practice and use the art

itself which he has described and illustrated therein. The use of the art is a totally different thing from a publication of the book explaining it. The copyright of a book on bookkeeping cannot secure the exclusive right to make, sell and use account books prepared upon the plan set forth in such book. Whether the art might or might not have been patented, is a question, which is not before us. It was not patented, and is open and free to the use of the public. And, of course, in using the art, the ruled lines and headings of accounts must necessarily be used as incident to it.

The plausibility of the claim put forward by the complainant in this case arises from a confusion of ideas produced by the peculiar nature of the art described in the books, which have been made the subject of copyright. In describing the art, the illustrations and diagrams employed happened to correspond more closely than usual with the actual work performed by the operator who uses the art. ...The description of the art in a book, though entitled to the benefit of copyright, lays no foundation for an exclusive claim to the art itself. The object of the one is explanation; the object of the other is use. The former may be secured by copyright. The latter can only be secured, if it can be secured at all, by letters patent." [94] (Emphasis supplied)

News or the event itself is not copyrightable. However, an event can be captured and presented in a specific medium. As recognized by this court in *Joaquin*, television "involves a whole spectrum of visuals and effects, video and audio." [95] News coverage in television involves framing shots, using images, graphics, and sound effects. [96] It involves creative process and originality. Television news footage is an expression of the news.

In the United States, a line of cases dwelt on the possibility of television newscasts to be copyrighted. [97] Most of these cases focused on private individuals' sale or resale of tapes of news broadcasts. Conflicting decisions were rendered by its courts. Noteworthy, however, is the District Court's pronouncement in *Pacific & Southern Co. v. Duncan*, [98] which involves a News Monitoring Service's videotaping and sale of WXIA-TV's news broadcasts:

It is axiomatic that copyright protection does not extend to news "events" or the facts or ideas which are the subject of news reports. *Miller v. Universal City Studios, Inc.*, 650 F.2d 1365, 1368 (5th Cir. 1981); *Wainwright Securities, Inc. v. Wall Street Transcript Corp.*, 558 F.2d 91, 95 (2d Cir. 1977), cert. denied, 434 U.S. 1014, 98 S.Ct. 730, 54 L.Ed.2d 759 (1978). ***But it is equally well-settled that copyright protection does extend to the reports themselves, as distinguished from the substance of the information contained in the reports.*** *Wainwright*, 558 F.2d at 95; *International News Service v. Associated Press*, 248 U.S. 215, 39 S.Ct. 68, 63 L.Ed. 211 (1918); see *Chicago Record-Herald Co. v. Tribune Assn.*, 275 F. 797 (7th Cir. 1921); 1 Nimmer on

Copyright § 2.11[B] (1983). *Copyright protects the manner of expression of news reports, "the particular form or collocation of words in which the writer has communicated it."* *International News Service*, 248 U.S. at 234, 39 S.Ct. at 70. Such protection extends to electronic news reports as well as written reports. See 17 U.S.C. § 102(a) (5),(6),and (7); see also *Iowa State University Research Foundations, Inc. v. American Broadcasting Cos.*, 621 F.2d 57, 61 (2d Cir. 1980).^[99] (Emphasis supplied)

The idea/expression dichotomy has long been subject to debate in the field of copyright law. Abolishing the dichotomy has been proposed, in that non-protectibility of ideas should be re-examined, if not stricken, from decisions and the law:

If the underlying purpose of the copyright law is the dual one expressed by Lord Mansfield, the only excuse for the continuance of the idea-expression test as a judicial standard for determining protectibility would be that it was or could be a truly useful method of determining the proper balance between the creator's right to profit from his work and the public's right that the "progress of the arts not be retarded."

...[A]s used in the present-day context[,] the dichotomy has little or no relationship to the policy which it should effectuate. Indeed, all too often the sweeping language of the courts regarding the nonprotectibility of ideas gives the impression that this is of itself a policy of the law, instead of merely a clumsy and outdated tool to achieve a much more basic end. ^[100]

The idea/expression dichotomy is a complex matter if one is trying to determine whether a certain material is a copy of another. ^[101] This dichotomy would be more relevant in determining, for instance, whether a stage play was an infringement of an author's book involving the same characters and setting. In this case, however, respondents admitted that the material under review — which is the subject of the controversy — is an exact copy of the original. Respondents did not subject ABS-CBN's footage to any editing of their own. The news footage did not undergo any transformation where there is a need to track elements of the original.

Having established the protectible nature of news footage, we now discuss the concomitant rights accorded to authors. The authors of a work are granted several rights in relation to it, including copyright or economic rights:

SECTION 177. Copyright or Economic Rights. — Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

- 177.1. *Reproduction of the work or substantial portion of the work;*
- 177.2. *Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;*
- 177.3. *The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;*

- 177.4. 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; (n)
- 177.5. Public display of the original or a copy of the work;
- 177.6. Public performance of the work; and
- 177.7. *Other communication to the public of the work.*(Sec. 5, P. D. No. 49a) (Emphasis supplied)

Under Section 211 of the Intellectual Property Code, broadcasting organizations are granted a more specific set of rights called related or neighboring rights:

SECTION 211. Scope of Right. — Subject to the provisions of Section 212, *broadcasting organizations shall enjoy the exclusive right to carry out, authorize or prevent any of the following acts:*

- 211.1. *The rebroadcasting of their broadcasts;*
- 211.2. The recording in any manner, including the making of films or the use of video tape, of their broadcasts for the purpose of communication to the public of television broadcasts of the same; and
- 211.3. The use of such records for fresh transmissions or for fresh recording. (Sec. 52, P.D. No. 49) (Emphasis supplied)

Section 212 of the Code provides:

CHAPTER XV LIMITATIONS ON PROTECTION

Section 212. *Limitations on Rights.*— Sections 203, 208 and 209 shall not apply where the acts referred to in those Sections are related to:

- 212.1. The use by a natural person exclusively for his own personal purposes;
- 212.2. Using short excerpts for reporting current events;
- 212.3. Use solely for the purpose of teaching or for scientific research; and
- 212.4. Fair use of the broadcast subject to the conditions under Section 185. (Sec. 44, P.D. No. 49a)

The Code defines what broadcasting is and who broadcasting organizations include:

202.7. "Broadcasting" means the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is also "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

202.8. "Broadcasting organization" shall include a natural person or a juridical entity duly authorized to engage in broadcasting[.]

Developments in technology, including the process of preserving once ephemeral works and disseminating them, resulted in the need to provide a new kind of protection as distinguished from copyright. [102] The designation "neighboring rights" was abbreviated from the phrase "rights neighboring to copyright." [103] Neighboring or related rights are of equal importance with copyright as established in the different conventions covering both kinds of rights. [104]

Several treaties deal with neighboring or related rights of copyright. [105] The most prominent of these is the "International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations" (Rome Convention).[106]

The Rome Convention protects the rights of broadcasting organizations in relation to their broadcasts. Article XIII of the Rome Convention enumerates the minimum rights accorded to broadcasting organizations:

Article 13

Minimum Rights for Broadcasting Organizations

Broadcasting organizations shall enjoy the right to authorize or prohibit:

- (a) the rebroadcasting of their broadcasts;
- (b) the fixation of their broadcasts;
- (c) the reproduction:
 - (i) of fixations, made without their consent, of their broadcasts;
 - (ii) of fixations, made in accordance with the provisions of Article 15, of their broadcasts, if the reproduction is made for purposes different from those referred to in those provisions;
- (d) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; it shall be a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised.

With regard to the neighboring rights of a broadcasting organization in this jurisdiction, this court has discussed the difference between broadcasting and rebroadcasting:

Section 202.7 of the IP Code defines **broadcasting** as "the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is also 'broadcasting' where the means for decrypting are provided to the public by the broadcasting organization or with its consent."

On the other hand, **rebroadcasting** as defined in Article 3(g) of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, otherwise known as the 1961 Rome Convention, of which the Republic of the Philippines is a signatory, is "the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization."

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Under the Rome Convention, rebroadcasting is "the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization." The Working Paper prepared by the Secretariat of the Standing Committee on Copyright and Related Rights defines broadcasting organizations as "entities that take the financial and editorial responsibility for the selection and arrangement of, and investment in, the transmitted content." [107] (Emphasis in the original, citations omitted)

Broadcasting organizations are entitled to several rights and to the protection of these rights under the Intellectual Property Code. Respondents' argument that the subject news footage is not copyrightable is erroneous. The Court of Appeals, in its assailed Decision, correctly recognized the existence of ABS-CBN's copyright over the news footage:

Surely, private respondent has a copyright of its news coverage. Seemingly, for airing said video feed, petitioner GMA is liable under the provisions of the Intellectual Property Code, which was enacted purposely to protect copyright owners from infringement. [108]

News as expressed in a video footage is entitled to copyright protection. Broadcasting organizations have not only copyright on but also neighboring rights over their broadcasts. Copyrightability of a work is different from fair use of a work for purposes of news reporting.

VI

ABS-CBN assails the Court of Appeals' ruling that the footage shown by GMA-7 falls under the scope of Section 212.2 and 212.4 of the Intellectual Property Code:

The evidence on record, as well as the discussions above, show that the footage used by [respondents] could hardly be characterized as a short excerpt, as it was aired over one and a half minutes.

Furthermore, the footage used does not fall under the contemplation of Section 212.2 of the Intellectual Property Code. A plain reading of the provision would reveal that copyrighted material referred to in Section 212 are short portions of an artist's performance under Section 203, or a producer's sound recordings under Sections 208 and 209. Section 212 does not refer to actual use of video footage of another as its own.

The Angelo dela Cruz footage does not fall under the rule on Section 212.4 of the Intellectual Property Code on fair use of the broadcast.

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In determining fair use, several factors are considered, including the nature of the copyrighted work, and the amount and substantiality of the person used in relation to the copyrighted work as a whole.

In the business of television news reporting, the nature of the copyrighted work or the video footages, are such that, footage created, must be a novelty to be a good report. Thus, when the ...Angelo dela Cruz footage was used by [respondents],the novelty of the footage was clearly affected.

Moreover, given that a substantial portion of the Angelo dela Cruz footage was utilized by GMA-7 for its own, its use can hardly be classified as fair use.

Hence, [respondents] could not be considered as having used the Angelo dela Cruz [footage] following the provisions on fair use.

It is also worthy to note that the Honorable Court of Appeals seem to contradict itself when it relied on the provisions of fair use in its assailed rulings considering that it found that the Angelo dela Cruz footage is not copyrightable, given that the fair use presupposes an existing copyright. Thus, it is apparent that the findings of the Honorable Court of Appeals are erroneous and based on wrong assumptions. [\[109\]](#) (Underscoring in the original)

On the other hand, respondents counter that GMA-7's use of ABS-CBN's news footage falls under fair use as defined in the Intellectual Property Code. Respondents, citing the Court of Appeals Decision, argue that a strong statutory defense negates any finding of probable cause under the same statute. [\[110\]](#) The Intellectual Property Code provides that fair use negates infringement.

Respondents point out that upon seeing ABS-CBN's reporter Dindo Amparo on the footage, GMA-7 immediately shut off the broadcast. Only five (5) seconds passed before the footage was cut. They argue that this shows that GMA-7 had no prior knowledge of ABS-CBN's ownership of the footage or was notified of it. They claim that the Angelo dela Cruz footage is considered a short excerpt of an event's "news" footage and is covered by fair use. [\[111\]](#)

Copyright protection is not absolute. [\[112\]](#) The Intellectual Property Code provides the limitations on copyright:

CHAPTER VIII LIMITATIONS ON COPYRIGHT

Section 184. Limitations on Copyright. — 184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

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184.2. The provisions of this section shall be interpreted in such a way as to allow the work to be used in a manner which does not conflict with the normal

exploitation of the work and does not unreasonably prejudice the right holder's legitimate interests.

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CHAPTER XVI LIMITATIONS ON PROTECTION

Section 212. Limitations on Rights. — Sections 203, 208 and 209 shall not apply where the acts referred to in those Sections are related to:

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212.2. Using short excerpts for reporting current events;

xxx xxx xxx

212.4. *Fair use of the broadcast subject to the conditions under Section 185.* (Sec. 44, P.D. No. 49a) (Emphasis supplied)

The determination of what constitutes fair use depends on several factors. Section 185 of the Intellectual Property Code states:

SECTION 185. *Fair Use of a Copyrighted Work.*—

185.1. The fair use of a copyrighted work for criticism, comment, *news reporting*, teaching including multiple copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. ...In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:

- a. The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- b. The nature of the copyrighted work;
- c. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- d. The effect of the use upon the potential market for or value of the copyrighted work.

Respondents allege that the news footage was only five (5) seconds long, thus falling under fair use. ABS-CBN belies this contention and argues that the footage aired for two (2) minutes and 40 seconds. [113] According to the Court of Appeals, the parties admitted that only five (5) seconds of the news footage was broadcasted by GMA-7. [114]

This court defined fair use as "a privilege to use the copyrighted material in a reasonable manner without the consent of the copyright owner or as copying the theme or ideas rather than their expression." [115] Fair use is an exception to the copyright owner's monopoly of the use of the work to avoid stifling "the very creativity which that law is designed to foster." [116]

Determining fair use requires application of the four-factor test. Section 185 of the Intellectual Property Code lists four (4) factors to determine if there was fair use of a copyrighted work:

- a. The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- b. The nature of the copyrighted work;
- c. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- d. The effect of the use upon the potential market for or value of the copyrighted work.

First, the purpose and character of the use of the copyrighted material must fall under those listed in Section 185, thus: "criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes." [117] The purpose and character requirement is important in view of copyright's goal to promote creativity and encourage creation of works. Hence, commercial use of the copyrighted work can be weighed against fair use.

The "transformative test" is generally used in reviewing the purpose and character of the usage of the copyrighted work. [118] This court must look into whether the copy of the work adds "new expression, meaning or message" to transform it into something else. [119] "Meta-use" can also occur without necessarily transforming the copyrighted work used. [120]

Second, the nature of the copyrighted work is significant in deciding whether its use was fair. If the nature of the work is more factual than creative, then fair use will be weighed in favor of the user.

Third, the amount and substantiality of the portion used is important to determine whether usage falls under fair use. An exact reproduction of a copyrighted work, compared to a small portion of it, can result in the conclusion that its use is not fair. There may also be cases where, though the entirety of the copyrighted work is used without consent, its purpose determines that the usage is still fair. [121] For example, a parody using a substantial amount of copyrighted work may be permissible as fair use as opposed to a copy of a work produced purely for economic gain.

Lastly, the effect of the use on the copyrighted work's market is also weighed for or against the user. If this court finds that the use had or will have a negative impact on the copyrighted work's market, then the use is deemed unfair.

The structure and nature of broadcasting as a business requires assigned values for each second of broadcast or airtime. In most cases, broadcasting organizations generate revenue through sale of time or timeslots to advertisers, which, in turn, is based on market share: [122]

Once a news broadcast has been transmitted, the broadcast becomes relatively worthless to the station. In the case of the aerial broadcasters, advertising sales generate most of the profits derived from news reports. Advertising rates are, in turn, governed by market share. Market share is determined by the number of people watching a show at any particular time, relative to total viewers at that time. News is by nature time-limited, and so rebroadcasts are generally of little worth because they draw few viewers. Newscasts compete for market share by presenting their news in an appealing format that will capture a loyal audience. *Hence, the primary reason for copyrighting newscasts by broadcasters would seem to be to prevent competing stations from rebroadcasting current news from the station with the best coverage of a particular news item, thus misappropriating a portion of the market share.*

Of course, in the real world there are exceptions to this perfect economic view. However, there are also many caveats with these exceptions. A common exception is that some stations rebroadcast the news of others. *The caveat is that generally, the two stations are not competing for market share. CNN, for example, often makes news stories available to local broadcasters.* First, the local broadcaster is often not affiliated with a network (hence its need for more comprehensive programming), confining any possible competition to a small geographical area. Second, the local broadcaster is not in competition with CNN. Individuals who do not have cable TV (or a satellite dish with decoder) cannot receive CNN; therefore there is no competition. ...Third, CNN sells the right of rebroadcast to the local stations. Ted Turner, owner of CNN, does not have First Amendment freedom of access argument foremost on his mind. (Else he would give everyone free cable TV so everyone could get CNN.) He is in the business for a profit. Giving away resources does not a profit make. [123] (Emphasis supplied)

The high value afforded to limited time periods is also seen in other media. In social media site *Instagram*, users are allowed to post up to only 15 seconds of video. [124] In short-video sharing website *Vine*, [125] users are allowed a shorter period of six (6) seconds per post. The mobile application *1 Second Everyday* takes it further by capturing and stitching one (1) second of video footage taken daily over a span of a certain period. [126]

Whether the alleged five-second footage may be considered fair use is a matter of defense. We emphasize that the case involves determination of probable cause at the preliminary investigation stage. Raising the defense of fair use does not automatically mean that no infringement was committed. The investigating prosecutor has full discretion to evaluate the facts, allegations, and evidence during preliminary investigation. Defenses raised during preliminary investigation are subject to further proof and evaluation before the trial court. Given the insufficiency of available evidence, determination of whether the Angelo dela Cruz footage is subject to fair use is better left to the trial court where the proceedings are currently pending.

GMA-7's rebroadcast of ABS-CBN's news footage without the latter's consent is not an issue. The mere act of rebroadcasting without authority from the owner of the broadcast gives rise to the probability that a crime was committed under the Intellectual Property Code.

VII

Respondents cannot invoke the defense of good faith to argue that no probable cause exists.

Respondents argue that copyright infringement is *malum in se*, in that "[c]opying alone is not what is being prohibited, but its injurious effect which consists in the lifting from the copyright owners' film or materials, that were the result of the latter's creativity, work and productions and without authority, reproduced, sold and circulated for commercial use to the detriment of the latter." [127]

Infringement under the Intellectual Property Code is *malum prohibitum*. The Intellectual Property Code is a special law. Copyright is a statutory creation:

Copyright, in the strict sense of the term, is purely a statutory right. It is a new or independent right granted by the statute, and not simply a pre-existing right regulated by the statute. Being a statutory grant, the rights are only such as the statute confers, and may be obtained and enjoyed only with respect to the subjects and by the persons, and on terms and conditions specified in the statute. [128]

The general rule is that acts punished under a special law are *malum prohibitum*. [129] "An act which is declared *malum prohibitum*, malice or criminal intent is completely immaterial." [130]

In contrast, crimes *mala in se* concern inherently immoral acts:

Not every criminal act, however, involves moral turpitude. It is for this reason that "as to what crime involves moral turpitude, is for the Supreme Court to determine". In resolving the foregoing question, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, the rationale of which was set forth in "*Zari v. Flores*," to wit:

It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely mala prohibita, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited. (Emphasis supplied)

[These] guidelines nonetheless proved short of providing a clear-cut solution, for in *International Rice Research Institute v. NLRC*, the Court admitted that it cannot always be ascertained whether moral turpitude does or

does not exist by merely classifying a crime as *malum in se* or as *malum prohibitum*. There are crimes which are *mala in se* and yet but rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute. [131] (Emphasis in the original)

"Implicit in the concept of *mala in se* is that of *mens rea*." [132] *Mens rea* is defined as "the nonphysical element which, combined with the act of the accused, makes up the crime charged. Most frequently it is the criminal intent, or the guilty mind[.]" [133]

Crimes *mala in se* presuppose that the person who did the felonious act had criminal intent to do so, while crimes *mala prohibita* do not require knowledge or criminal intent:

In the case of *mala in se* it is necessary, to constitute a punishable offense, for the person doing the act to have knowledge of the nature of his act and to have a criminal intent; in the case of *mala prohibita*, unless such words as "knowingly" and "willfully" are contained in the statute, neither knowledge nor criminal intent is necessary. In other words, a person morally quite innocent and with every intention of being a law-abiding citizen becomes a criminal, and liable to criminal penalties, if he does an act prohibited by these statutes. [134] (Emphasis supplied)

Hence, "[i]ntent to commit the crime and intent to perpetrate the act must be distinguished. A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself[.]" [135] When an act is prohibited by a special law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself. [136]

Volition, or intent to commit the act, is different from criminal intent. Volition or voluntariness refers to knowledge of the act being done. On the other hand, criminal intent — which is different from motive, or the moving power for the commission of the crime [137] — refers to the state of mind beyond voluntariness. It is this intent that is being punished by crimes *mala in se*.

Unlike other jurisdictions that require intent for a criminal prosecution of copyright infringement, the Philippines does not statutorily support good faith as a defense. Other jurisdictions provide in their intellectual property codes or relevant laws that *mens rea*, whether express or implied, is an element of criminal copyright infringement. [138]

In Canada, criminal offenses are categorized under three (3) kinds: "*the full mens rea offence*, meaning the accused's actual or subjective state of mind has to be proved; *strict liability offences* where no *mens rea* has to be proved but the accused can avoid liability if he can prove he took all reasonable steps to avoid the particular event; [and]

absolute liability offences where Parliament has made it clear that guilt follows proof of the prescribed act only." [139] Because of the use of the word "knowingly" in Canada's Copyright Act, it has been held that copyright infringement is a full *mens rea* offense. [140]

In the United States, willful intent is required for criminal copyright infringement. [141] Before the passage of the No Electronic Theft Act, "civil copyright infringements were violations of criminal copyright laws only if a defendant willfully infringed a copyright 'for purposes of commercial advantage or private financial gain.'" [142] However, the No Electronic Theft Act now allows criminal copyright infringement without the requirement of commercial gain. The infringing act may or may not be for profit. [143]

There is a difference, however, between the required liability in civil copyright infringement and that in criminal copyright infringement in the United States. Civil copyright infringement does not require culpability and employs a strict liability regime [144] where "lack of intention to infringe is not a defense to an action for infringement." [145]

In the Philippines, the Intellectual Property Code, as amended, provides for the prosecution of criminal actions for the following violations of intellectual property rights: Repetition of Infringement of Patent (Section 84); Utility Model (Section 108); Industrial Design (Section 119); Trademark Infringement (Section 155 in relation to Section 170); Unfair Competition (Section 168 in relation to Section 170); False Designations of Origin, False Description or Representation (Section 169.1 in relation to Section 170); infringement of copyright, moral rights, performers' rights, producers' rights, and broadcasting rights (Section 177, 193, 203, 208 and 211 in relation to Section 217); and other violations of intellectual property rights as may be defined by law.

The Intellectual Property Code requires strict liability for copyright infringement whether for a civil action or a criminal prosecution; it does not require *mens rea* or *culpa*: [146]

SECTION 216. Remedies for Infringement. —

216.1. Any person infringing a right protected under this law shall be liable:

- a. To an injunction restraining such infringement. The court may also order the defendant to desist from an infringement, among others, to prevent the entry into the channels of commerce of imported goods that involve an infringement, immediately after customs clearance of such goods.
- b. Pay to the copyright proprietor or his assigns or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the infringement as well as the profits the infringer may have made due to such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant

shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty.

- c. Deliver under oath, for impounding during the pendency of the action, upon such terms and conditions as the court may prescribe, sales invoices and other documents evidencing sales, all articles and their packaging alleged to infringe a copyright and implements for making them.
- d. Deliver under oath for destruction without any compensation all infringing copies or devices, as well as all plates, molds, or other means for making such infringing copies as the court may order.
- e. Such other terms and conditions, including the payment of moral and exemplary damages, which the court may deem proper, wise and equitable and the destruction of infringing copies of the work even in the event of acquittal in a criminal case.

216.2. In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings. (Sec. 28, P.D. No. 49a)

SECTION 217. Criminal Penalties.—

217.1. *Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:*

- a. Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (P50,000) to One hundred fifty thousand pesos (P150,000) for the first offense.
- b. Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (P150,000) to Five hundred thousand pesos (P500,000) for the second offense.
- c. Imprisonment of six (6) years and one (1) day to nine (9) years plus a fine ranging from Five hundred thousand pesos (P500,000) to One million five hundred thousand pesos (P1,500,000) for the third and subsequent offenses.
- d. In all cases, subsidiary imprisonment in cases of insolvency.

217.2. In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of the infringement.

217.3. Any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of:

- a. Selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article;
- b. Distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or
- c. Trade exhibit of the article in public, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned. (Sec. 29, P.D. No. 49a) (Emphasis supplied)

The law is clear. Inasmuch as there is wisdom in prioritizing the flow and exchange of ideas as opposed to rewarding the creator, it is the plain reading of the law in conjunction with the actions of the legislature to which we defer. We have continuously "recognized the power of the legislature ...to forbid certain acts in a limited class of cases and to make their commission criminal without regard to the intent of the doer. Such legislative enactments are based on the experience that repressive measures which depend for their efficiency upon proof of the dealer's knowledge or of his intent are of little use and rarely accomplish their purposes." [\[147\]](#)

Respondents argue that live broadcast of news requires a different treatment in terms of good faith, intent, and knowledge to commit infringement. To argue this point, they rely on the differences of the media used in Habana, et al. v. Robles, Columbia Pictures v. Court of Appeals, and this case:

Petitioner ABS-CBN argues that lack of notice that the Angelo dela Cruz was under embargo is not a defense in copyright infringement and cites the case of *Columbia Pictures vs. Court of Appeals and Habana, et al. vs. Robles* (310 SCRA 511). However, these cases refer to **film and literary work** where obviously there is "copying" from an existing material so that the copier knew that he is copying from an existing material not owned by him. But, how could respondents know that what they are "copying was not [theirs]" when **they were not copying** but merely receiving live video feed from Reuters and CNN which they aired? What they knew and what they aired was the **Reuters live video feed** and the **CNN feed** which GMA-7 is authorized to carry in its news broadcast, it being a subscriber of these companies[.]

It is apt to stress that the subject of the alleged copyright infringement is **not** a film or literary work but **live broadcast** of news footage. In a film or literary work, the infringer is confronted face to face with the material he is allegedly copying and therefore knows, or is presumed to know, that what he is copying is owned by another. Upon the other hand, in **live broadcast**, the alleged infringer is **not** confronted with the fact that the material he airs or re-broadcasts is owned by another, and therefore, he cannot be charged of knowledge of ownership of the material by another. This specially obtains in the Angelo dela Cruz news footage which GMA-7 received from Reuters and CNN. Reuters and CNN were beaming live videos from the coverage which GMA-7 received as a subscriber and, in the exercise of its rights as a subscriber, GMA-7 picked up the live video and simultaneously re-broadcast it. In

simultaneously broadcasting the live video footage of Reuters, GMA-7 did not copy the video footage of petitioner ABS-CBN[.] [148] (Emphasis in the original)

Respondents' arguments must fail.

Respondents are involved and experienced in the broadcasting business. They knew that there would be consequences in carrying ABS-CBN's footage in their broadcast. That is why GMA-7 allegedly cut the feed from Reuters upon seeing ABS-CBN's logo and reporter. To admit a different treatment for broadcasts would mean abandonment of a broadcasting organization's minimum rights, including copyright on the broadcast material and the right against unauthorized rebroadcast of copyrighted material. The nature of broadcast technology is precisely why related or neighboring rights were created and developed. Carving out an exception for live broadcasts would go against our commitments under relevant international treaties and agreements, which provide for the same minimum rights. [149]

Contrary to respondents' assertion, this court in *Habana*, [150] reiterating the ruling in *Columbia Pictures*, [151] ruled that lack of knowledge of infringement is not a valid defense. *Habana* and *Columbia Pictures* may have different factual scenarios from this case, but their rulings on copyright infringement are analogous. In *Habana*, petitioners were the authors and copyright owners of English textbooks and workbooks. The case was anchored on the protection of literary and artistic creations such as books. In *Columbia Pictures*, video tapes of copyrighted films were the subject of the copyright infringement suit.

In *Habana*, knowledge of the infringement is presumed when the infringer commits the prohibited act:

The essence of intellectual piracy should be essayed in conceptual terms in order to underscore its gravity by an appropriate understanding thereof. Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright.

xxx xxx xxx

A copy of a piracy is an infringement of the original, and it is no defense that the pirate, in such cases, did not know whether or not he was infringing any copyright; he at least knew that what he was copying was not his, and he copied at his peril.

xxx xxx xxx

In cases of infringement, copying alone is not what is prohibited. The copying must produce an "injurious effect". Here, the injury consists in that respondent Robles lifted from petitioners' book materials that were the result of

the latter's research work and compilation and misrepresented them as her own. She circulated the book DEP for commercial use and did not acknowledge petitioners as her source. [152] (Emphasis supplied)

Habana and *Columbia Pictures* did not require knowledge of the infringement to constitute a violation of the copyright. One does not need to know that he or she is copying a work without consent to violate copyright law. Notice of fact of the embargo from Reuters or CNN is not material to find probable cause that respondents committed infringement. Knowledge of infringement is only material when the person is charged of aiding and abetting a copyright infringement under Section 217 of the Intellectual Property Code. [153]

We look at the purpose of copyright in relation to criminal prosecutions requiring willfulness:

Most importantly, in defining the contours of what it means to willfully infringe copyright for purposes of criminal liability, the courts should remember the ultimate aim of copyright. Copyright is not primarily about providing the strongest possible protection for copyright owners so that they have the highest possible incentive to create more works. The control given to copyright owners is only a means to an end: the promotion of knowledge and learning. Achieving that underlying goal of copyright law also requires access to copyrighted works and it requires permitting certain kinds of uses of copyrighted works without the permission of the copyright owner. While a particular defendant may appear to be deserving of criminal sanctions, the standard for determining willfulness should be set with reference to the larger goals of copyright embodied in the Constitution and the history of copyright in this country. [154]

In addition, "[t]he essence of intellectual piracy should be essayed in conceptual terms in order to underscore its gravity by an appropriate understanding thereof. Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright." [155]

Intellectual property rights, such as copyright and the neighboring right against rebroadcasting, establish an artificial and limited monopoly to reward creativity. Without these legally enforceable rights, creators will have extreme difficulty recovering their costs and capturing the surplus or profit of their works as reflected in their markets. This, in turn, is based on the theory that the possibility of gain due to creative work creates an incentive which may improve efficiency or simply enhance consumer welfare or utility. More creativity redounds to the public good.

These, however, depend on the certainty of enforcement. Creativity, by its very nature, is vulnerable to the free rider problem. It is easily replicated despite the costs to and efforts of the original creator. The more useful the creation is in the market, the

greater the propensity that it will be copied. The most creative and inventive individuals are usually those who are unable to recover on their creations.

Arguments against strict liability presuppose that the Philippines has a social, historical, and economic climate similar to those of Western jurisdictions. As it stands, there is a current need to strengthen intellectual property protection.

Thus, unless clearly provided in the law, offenses involving infringement of copyright protections should be considered *malum prohibitum*. It is the act of infringement, not the intent, which causes the damage. To require or assume the need to prove intent defeats the purpose of intellectual property protection.

Nevertheless, proof beyond reasonable doubt is still the standard for criminal prosecutions under the Intellectual Property Code.

VIII

Respondents argue that GMA-7's officers and employees cannot be held liable for infringement under the Intellectual Property Code since it does not expressly provide direct liability of the corporate officers. They explain that "(i) a **corporation** may be charged and prosecuted for a crime where the penalty is fine or both imprisonment and fine, and if found guilty, may be **finned**; or (ii) a corporation may commit a crime but if the statute prescribes the penalty therefore to be suffered by the corporate officers, directors or employees or other persons, the latter shall be responsible for the offense." [156]

Section 217 of the Intellectual Property Code states that "any person" may be found guilty of infringement. It also imposes the penalty of both imprisonment and fine:

Section 217. Criminal Penalties. — 217.1. *Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:*

- (a) Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (P50,000) to One hundred fifty thousand pesos (P150,000) for the first offense.
- (b) Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (P150,000) to Five hundred thousand pesos (P500,000) for the second offense.
- (c) Imprisonment of six (6) years and one (1) day to nine (9) years plus a fine ranging from five hundred thousand pesos (P500,000) to One million five hundred thousand pesos (P1,500,000) for the third and subsequent offenses.
- (d) In all cases, subsidiary imprisonment in cases of insolvency.
(Emphasis supplied)

Corporations have separate and distinct personalities from their officers or directors. [157] This court has ruled that corporate officers and/or agents may be held individually liable for a crime committed under the Intellectual Property Code: [158]

Petitioners, being corporate officers and/or directors, through whose act, default or omission the corporation commits a crime, may themselves be individually held answerable for the crime. ...The existence of the corporate entity does not shield from prosecution the corporate agent who knowingly and intentionally caused the corporation to commit a crime. Thus, petitioners cannot hide behind the cloak of the separate corporate personality of the corporation to escape criminal liability. A corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor. [159]

However, the criminal liability of a corporation's officers or employees stems from their active participation in the commission of the wrongful act:

The principle applies whether or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, *if by virtue of their relationship to the corporation, they had the power to prevent the act. Moreover, all parties active in promoting a crime, whether agents or not, are principals.* Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact. [160] (Emphasis supplied)

An accused's participation in criminal acts involving violations of intellectual property rights is the subject of allegation and proof. The showing that the accused did the acts or contributed in a meaningful way in the commission of the infringements is certainly different from the argument of lack of intent or good faith. Active participation requires a showing of overt physical acts or intention to commit such acts. Intent or good faith, on the other hand, are inferences from acts proven to have been or not been committed.

We find that the Department of Justice committed grave abuse of discretion when it resolved to file the Information against respondents despite lack of proof of their actual participation in the alleged crime.

Ordering the inclusion of respondents Gozon, GMA-7 President; Duavit, Jr., Executive Vice-President; Flores, Vice-President for News and Public Affairs; and Soho, Director for News, as respondents, Secretary Agra overturned the City Prosecutor's finding that only respondents Dela Peña-Reyes and Manalastas are responsible for the crime charged due to their duties. [161] The Agra Resolution reads:

Thus, from the very nature of the offense and the penalty involved, it is necessary that GMA-7's directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for violation of the Sections 177 and 211 of Republic Act No. 8293. In their complaint for libel, respondents Felipe L. Gozon, Gilberto R. Duavit, Jr., Marissa L. Flores, Jessica

A. Soho, Grace Dela Peña-Reyes, John Oliver T. Manalastas felt they were aggrieved because they were "in charge of the management, operations and production of news and public affairs programs of the network" (GMA-7). This is clearly an admission on respondents' part. Of course, respondents may argue they have no intention to infringe the copyright of ABS-CBN; that they acted in good faith; and that they did not directly cause the airing of the subject footage, but again this is preliminary investigation and what is required is simply probable cause. Besides, these contentions can best be addressed in the course of trial. [\[162\]](#) (Citation omitted)

In contrast, the Office of the City Prosecutor, in the Resolution dated December 3, 2004, found that respondents Gozon, Duavit, Jr., Flores, and Soho did not have active participation in the commission of the crime charged:

This Office, however, does not subscribe to the view that respondents Atty. Felipe Gozon, Gilberto Duavit, Marissa Flores and Jessica Soho should be held liable for the said offense. *Complainant failed to present clear and convincing evidence that the said respondents conspired with Reyes and Manalastas. No evidence was adduced to prove that these respondents had an active participation in the actual commission of the copyright infringement or they exercised their moral ascendancy over Reyes and Manalastas in airing the said footage.* It must be stressed that, conspiracy must be established by positive and conclusive evidence. It must be shown to exist as clearly and convincingly as the commission of the offense itself. [\[163\]](#) (Emphasis supplied, citations omitted)

The City Prosecutor found respondents Dela Peña-Reyes and Manalastas liable due to the nature of their work and responsibilities. He found that:

[t]his Office however finds respondents Grace Dela Peña-Reyes and John Oliver T. Manalastas liable for copyright infringement penalized under Republic Act No. 8293. It is undisputed that complainant ABS-CBN holds the exclusive ownership and copyright over the "Angelo [d]ela Cruz news footage". Hence, any airing and re-broadcast of the said footage without any consent and authority from ABS-CBN will be held as an infringement and violation of the intellectual property rights of the latter. *Respondents Grace Dela Peña-Reyes as the Head of the News Operation and John Oliver T. Manalastas as the Program Manager cannot escape liability since the news control room was under their direct control and supervision. Clearly, they must have been aware that the said footage coming from Reuters or CNN has a "No Access Philippines" advisory or embargo thus cannot be re-broadcast. We find no merit to the defense of ignorance interposed by the respondents. It is simply contrary to human experience and logic that experienced employees of an established broadcasting network would be remiss in their duty in ascertaining if the said footage has an embargo.*[\[164\]](#) (Emphasis supplied)

We agree with the findings as to respondents Dela Peña-Reyes and Manalastas. Both respondents committed acts that promoted infringement of ABS-CBN's footage. We note that embargoes are common occurrences in and between news agencies and/or

broadcast organizations. [165] Under its Operations Guide, Reuters has two (2) types of embargoes: transmission embargo and publication embargo. [166] Under ABS-CBN's service contract with Reuters, Reuters will embargo any content contributed by ABS-CBN from other broadcast subscribers within the same geographical location:

4a. Contributed Content

You agree to supply us at our request with news and sports news stories broadcast on the *Client Service* of up to three (3) minutes each for use in our Services on a non-exclusive basis and at a cost of US\$300.00 (Three Hundred United States Dollars) per story. *In respect of such items we agree to embargo them against use by other broadcast subscribers in the Territory and confirm we will observe all other conditions of usage regarding Contributed Content, as specified in Section 2.5 of the Reuters Business Principles for Television Services.* For the purposes of clarification, any geographical restriction imposed by you on your use of Contributed Content will not prevent us or our clients from including such Contributed Content in online transmission services including the Internet. We acknowledge Contributed Content is your copyright and we will not acquire any intellectual property rights in the Contributed Content. [167] (Emphasis supplied)

Respondents Dela Peña-Reyes and Manalastas merely denied receiving the advisory sent by Reuters to its clients, including GMA-7. As in the records, the advisory reads:

ADVISORY - - +++ LIVE COVER PLANS +++

PHILIPPINES: HOSTAGE RETURN

** ATTENTION ALL CLIENTS **

PLEASE BE ADVISED OF THE FOLLOWING LIVE COVER PLANNED FOR THURSDAY, JULY 22:

xxx xxx xxx

SOURCE: ABS-CBN

TV AND WEB RESTRICTIONS: NO ACCESS PHILIPPINES. [168]

There is probable cause that respondents Dela Peña-Reyes and Manalastas directly committed copyright infringement of ABS-CBN's news footage to warrant piercing of the corporate veil. They are responsible in airing the embargoed Angelo dela Cruz footage. They could have prevented the act of infringement had they been diligent in their functions as Head of News Operations and Program Manager.

Secretary Agra, however, committed grave abuse of discretion when he ordered the filing of the Information against all respondents despite the erroneous piercing of the corporate veil. Respondents Gozon, Duavit, Jr., Flores, and Soho cannot be held liable for the criminal liability of the corporation.

Mere membership in the Board or being President *per se* does not mean knowledge, approval, and participation in the act alleged as criminal. There must be a showing of active participation, not simply a constructive one.

Under principles of criminal law, the principals of a crime are those "who take a direct part in the execution of the act; [t]hose who directly force or induce others to commit it; [or] [t]hose who cooperate in the commission of the offense by another act without which it would not have been accomplished." [169] There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it":[170]

Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.

It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators[.] [171] (Emphasis supplied, citations omitted)

In sum, the trial court erred in failing to resume the proceedings after the designated period. The Court of Appeals erred when it held that Secretary Agra committed errors of jurisdiction despite its own pronouncement that ABS-CBN is the owner of the copyright on the news footage. News should be differentiated from expression of the news, particularly when the issue involves rebroadcast of news footage. The Court of Appeals also erroneously held that good faith, as well as lack of knowledge of infringement, is a defense against criminal prosecution for copyright and neighboring rights infringement. In its current form, the Intellectual Property Code is *malum prohibitum* and prescribes a strict liability for copyright infringement. Good faith, lack of knowledge of the copyright, or lack of intent to infringe is not a defense against copyright infringement. Copyright, however, is subject to the rules of fair use and will be judged on a case-to-case basis. Finding probable cause includes a determination of the defendant's active participation, particularly when the corporate veil is pierced in cases involving a corporation's criminal liability.

WHEREFORE,the Petition is partially **GRANTED**.The Department of Justice Resolution dated June 29, 2010 ordering the filing of the Information is hereby **REINSTATED** as to respondents Grace Dela Peña-Reyes and John Oliver T. Manalastas. Branch 93 of the Regional Trial Court of Quezon City is directed to continue with the proceedings in Criminal Case No. Q-04-131533.

SO ORDERED.

Carpio, Brion, Del Castillo and Mendoza, JJ., concur.

Footnotes

1. *Rollo*, pp. 14-50.
2. *Id.* at 60-73. The Decision, docketed as CA-G.R. SP No. 15751, was penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Mariflor Punzalan and Franchito N. Diamante of the Fourth Division, Court of Appeals Manila.
3. *Id.* at 76-77.
4. SECTION 177. *Copyright or Economic Rights.*— Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:
 - 177.1. Reproduction of the work or substantial portion of the work;
 - 177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;
 - 177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
 - 177.4. 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; (n)
 - 177.5. Public display of the original or a copy of the work;
 - 177.6. Public performance of the work; and
 - 177.7. Other communication to the public of the work. (Sec. 5, P.D. No. 49a)
5. SECTION 211. *Scope of Right.*— Subject to the provisions of Section 212, broadcasting organizations shall enjoy the exclusive right to carry out, authorize or prevent any of the following acts:
 - 211.1. The rebroadcasting of their broadcasts;
 - 211.2. The recording in any manner, including the making of films or the use of video tape, of their broadcasts for the purpose of communication to the public of television broadcasts of the same; and

211.3. The use of such records for fresh transmissions or for fresh recording. (Sec. 52, P.D. No. 49)

6. Rep. Act No. 8293 (1997).

7. *Rollo*, p. 61.

8. *Id.*

9. *Id.*

10. *Id.* at 1392.

11. *Id.* at 61.

12. *Id.*

13. *Id.* at 61-62.

14. *Id.* at 62.

15. *Id.* at 1349.

16. SECTION 177. *Copyright or Economic Rights*.— Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4. 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; (n)

177.5. Public display of the original or a copy of the work;

177.6. Public performance of the work; and

177.7. Other communication to the public of the work. (Sec. 5, P.D. No. 49a)

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211.2. The recording in any manner, including the making of films or the use of video tape, of their broadcasts for the purpose of communication to the public of television broadcasts of the same; and

211.3. The use of such records for fresh transmissions or for fresh recording. (Sec. 52, P.D. No. 49)

18. *Rollo*, p. 62. The Complaint was consolidated with GMA-7's Complaint for libel against several of ABS-CBN's employees docketed as I.S. No. 04-9681 in *rollo*, p. 226.

19. *Id.* at 226-231.

20. *Id.* at 231. The Complaint for libel (I.S. No. 04-9681) filed by respondents was consolidated with ABS-CBN's Complaint for copyright infringement (I.S. No. 04-10458). The Resolution dated December 3, 2004 dismissed respondents' Complaint for libel against Erwin Tulfo, et al.

21. *Id.* at 233-234.

22. *Id.* at 233.

23. *Id.* at 62.

24. *Id.* at 63 and 492-495.

25. *Id.* at 495.

26. *Id.* at 64.

27. *Id.* at 63. The Motion prayed that Dela Peña and Manalastas' Motion to Quash filed January 10, 2005 be withdrawn and that the arraignment scheduled on February 1, 2005 be deferred.

28. *Id.* at 328.

29. *Id.* at 569-576.

30. *Id.*

31. *Id.* at 571.

32. *Id.* at 575.
33. *Id.* at 1171-1172 and 1353.
34. *Id.* at 60-73.
35. *Id.* at 68-69.
36. *Id.* at 72.
37. *Id.* at 76-77.
38. *Id.* at 14.
39. 478 Phil. 784 (2004) [Per J. Ynares-Santiago, First Division].
40. *Id.* at 793. *See also* Trinidad v. Ang, 656 Phil. 216 (2011) [Per J. Brion, Third Division].
41. 235 Phil. 465 (1987) [Per J. Gancayco, En Banc]. *See also* J. Leonen's Separate Concurring Opinion in Estrada v. Office of the Ombudsman, et al., G.R. Nos. 212140-41, January 21, 2015 [Per J. Carpio, En Banc].
42. 235 Phil. 465, 474 (1987) [Per J. Gancayco, En Banc].
43. *Id.* at 474-476.
44. 488 Phil. 203 (2004) [Per J. Chico-Nazario, Second Division].
45. *Id.* at 216.
46. Crespo v. Judge Mogul, 235 Phil. 465, 470 (1987) [Per J. Gancayco, En Banc].
47. *Rollo*, p. 67.
48. G.R. No. 155996, June 27, 2012, 675 SCRA 20 [Per J. Brion, Second Division].
49. *Id.* at 48, *citing* Alcaraz v. Gonzalez, 533 Phil. 797 (2006) [Per J. Callejo, Sr., First Division]. This court, however, differentiated cases involving an offense punishable by *reclusion perpetua* to death from those that do not. Cases that involve an offense not punishable by *reclusion perpetua* to death cannot be appealed to the Office of the President and, thus, "leaves a *certiorari* petition as the only remedial avenue left."
50. *Id.*
51. 569 Phil. 630 (2008) [Per J. Corona, First Division].

52. *Id.* at 640. See Glaxosmithkline Philippines, Inc. v. Khalid Mehmood Malik, 530 Phil. 662 (2006) [Per J. Garcia, Second Division], citing Punzalan v. De La Peña, 478 Phil. 771 (2004) [Per J. Ynares-Santiago, First Division]; Cabahug v. People, 426 Phil. 490 (2002) [Per J. Ynares-Santiago, First Division]; and Baylon v. Office of the Ombudsman and the Sandiganbayan, 423 Phil. 705 (2001) [Per J. Pardo, First Division].
53. Asetre v. Asetre, 602 Phil. 840, 853 (2009) [Per J. Quisumbing, Second Division], citing D.M. Consunji, Inc. v. Esguerra, 328 Phil. 1168 (1996) [Per J. Panganiban, Third Division].
54. RULES OF COURT, Rule 65, Sec. 1. *Petition for certiorari.*— When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require[.]
55. HPS Software and Communication v. Philippine Long Distance Telephone Company (PLDT), G.R. No. 170217, December 10, 2012, 687 SCRA 426, 452 [Per J. Leonardo-De Castro, First Division]. See Medado v. Heirs of the Late Antonio Consing, G.R. No. 186720, February 8, 2012, 665 SCRA 534 [Per J. Reyes, Second Division]; Estrada v. Office of the Ombudsman, et al., G.R. Nos. 212140-41, January 21, 2015, 25-26 [Per J. Carpio, En Banc], citing Delos Reyes v. Flores, 628 Phil. 170 (2010) [Per J. Carpio, Second Division]; Cervantes v. Court of Appeals, 512 Phil. 210 (2005) [Per J. Ynares-Santiago, First Division]; Flores v. Sangguniang Panlalawigan of Pampanga, 492 Phil. 377 (2005) [Per J. Sandoval-Gutierrez, Third Division]. See also Bokingo v. Court of Appeals, 523 Phil. 186 (2006) [Per J. Callejo, Sr., First Division] and Yao v. Perello, 460 Phil. 658 (2003) [Per J. Corona, Third Division].
56. Tan v. CA, 341 Phil. 570, 576-578 (1997) [Per J. Francisco, Third Division] as cited in Estrada v. Office of the Ombudsman, et al., G.R. Nos. 212140-41, January 21, 2015, 25 [Per J. Carpio, En Banc]. See Republic Gas Corporation v. Petron Corporation, G.R. No. 194062, June 17, 2013, 698 SCRA 666, 676-677 [Per J. Peralta, Second Division]. See also Republic v. Pantranco North Express, Inc. (PNEI), G.R. No. 178593, February 15, 2012, 666 SCRA 199, 205-206 [Per J. Villarama, Jr., First Division], citing Sim v. National Labor Relations Commission, 560 Phil. 762 (2007) [Per J. Austria-Martinez, Third Division]; HPS Software and Communication v. Philippine Long Distance Telephone Company (PLDT), G.R. No. 170217, December 10, 2012, 687 SCRA 426, 452 [Per J. Leonardo-De Castro, First Division].
57. *Rollo*, p. 1383.
58. *Id.* at 1384.

59. *Id.* at 71-72.

60. *Fernando v. Vasquez*, No. L-26417, January 30, 1970, 31 SCRA 288, 292 [Per J. Sanchez, En Banc]. See *Philippine National Construction Corporation v. Court of Appeals*, 541 Phil. 658, 672 (2007): "An error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal. On the other hand, an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction.

This error is correctable only by the extraordinary writ of *certiorari*."

61. 645 Phil. 379 (2010) [Per J. Peralta, Second Division].

62. *Id.* at 384-385, citing *First Corporation v. Former Sixth Division of the Court of Appeals*, 553 Phil. 527, 541 (2007) [Per J. Chico-Nazario, Third Division].

63. *Punzalan v. Plata*, G.R. No. 160316, September 2, 2013, 704 SCRA 426, 439-442 [Per J. Mendoza, Third Division], citing *Paredes v. Calilung*, 546 Phil. 198, 224 (2007) [Per J. Chico-Nazario, Third Division].

64. *Id.* at 439-440, citing *Buan v. Matugas*, 556 Phil. 110, 119 (2007) [Per J. Garcia, First Division].

65. *Asetre v. Asetre*, 602 Phil. 840, 852-854 (2009) [Per J. Quisumbing, Second Division].

66. *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 518 (2008) [Per J. Chico-Nazario, Third Division].

67. 1985 REV. RULES OF CRIM. PROC., Rule 112, sec. 1, par. 1.

68. 317 Phil. 758 (1995) [Per J. Puno, Second Division].

69. *Id.* at 780-789.

70. *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505 (2008) [Per J. Chico-Nazario, Third Division].

71. *Id.* at 519. See also *Webb v. De Leon*, 317 Phil. 758 (1995) [Per J. Puno, Second Division].

72. See *Manila Electric Company v. Atilano*, G.R. No. 166758, June 27, 2012, 675 SCRA 112, 125 [Per J. Brion, Second Division].

73. G.R. Nos. 212140-41, January 21, 2015, [Per J. Carpio, En Banc].

74. *Id.* at 20-22, citing *Brinegar v. United States*, 338 U.S. 160, 175-176 (1949).

75. See J. Leonen's Separate Concurring Opinion in *Estrada v. Office of the Ombudsman, et al.*, G.R. Nos. 212140-41, January 21, 2015, [Per J. Carpio, En Banc].

76. *Rollo*, p. 1432.

77. *Id.*

78. *Id.* at 1375.

79. Rep. Act No. 8293 (1997), sec. 172.2.

80. Rep. Act No. 8293 (1997), sec. 172.1 (1).

81. Pres. Decree No. 49 (1972), Decree on the Protection of Intellectual Property.

Article V, Section 26. After the first public dissemination or performance by authority of the copyright owner of a work falling under subsections (A), (B), (C) and (D) of Section 2 of this Decree, *there shall, within three weeks, be registered and deposited with the National Library, by personal delivery or by registered mail, two complete copies or reproductions of the work in such form as the Director of said library may prescribe.* A certificate of registration and deposit for which the prescribed fee shall be collected. If, within three weeks after receipt by the copyright owner of a written demand from the director for such deposit, the required copies or reproductions are not delivered and the fee is not paid, the copyright owner shall be liable to pay to the National Library the amount of the retail price of the best edition of the work.

With or without a demand from the director, a copyright owner who has not made such deposit shall not be entitled to recover damages in an infringement suit and shall be limited to the other remedies specified in Section 23 of this Decree. (Emphasis supplied)

82. See Pres. Dec. No. 49 (1972), sec. 2 and Rep. Act No. 8293 (1997), sec. 172.1. However, this court has already clarified that registration is not required for copyright to subsist. See *Columbia Pictures, Inc. vs. Court of Appeals*, 329 Phil. 875 (1996) [Per J. Regalado, En Banc]. It was held that noncompliance with the registration requirement "merely limits the remedies available to him and subjects him to the corresponding sanction."

83. Rep. Act No. 8293 (1997), sec. 175. *Unprotected Subject Matter*.— Notwithstanding the provisions of Sections 172 and 173, no protection shall extend, under this law, to any idea, procedure, system, method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof. (n)

84. Robert Yale Libott, *Round the Prickly Pear: The Idea-Expression Fallacy in a Mass Communications World*, 16 COPYRIGHT L. SYMP. 30, 32 (1966).

85. *Id.* at 32-39. *See also* Leslie A. Kurtz, *Speaking to the Ghost: Idea and Expression in Copyright*, 47 U. MIAMI L. REV. 1221, 1222 (1992-1993).
86. Leslie A. Kurtz, *Speaking to the Ghost: Idea and Expression in Copyright*, 47 U. MIAMI L. REV. 1221, 1241-1243 (1992-1993).
87. *See Rep. Act No. 8293* (1997), Sec. 175.
88. G.R. No. 108946, January 28, 1999, 302 SCRA 225 [Per J. Mendoza, Second Division].
89. Section 2. The rights granted by this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works:

xxx xxx xxx

(M) Cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings[.]

90. *Joaquin, Jr. v. Drilon*, G.R. No. 108946, January 28, 1999, 302 SCRA 225, 239-240 [Per J. Mendoza, Second Division].
91. Leslie A. Kurtz, *Speaking to the Ghost: Idea and Expression in Copyright*, 47 U. MIAMI L. REV. 1221, 1243 (1992-1993).
92. *Id.* at 1244, *citing Nichols v. Universal Pictures Corp.*, 45 F.2d 119, 122 (2d Cir. 1930); *Eichel v. Marcin*, 241 F. 404, 409 (D.C.N.Y. 1913); and *National Comics Publications, Inc. v. Fawcett Publications, Inc.*, 191 F.2d 594, 600 (1951). However, the author of the article maintains that there is no clear dividing line between idea and expression, p. 1245.
93. 456 Phil. 474 (2003) [Per J. Corona, Third Division], *citing Baker v. Selden*, 101 U.S. 99 (1879). The main issue of the case revolved around patent infringement. However, the court distinguished the three kinds of intellectual property rights from each other.
94. *Id.* at 493-495.
95. *Joaquin, Jr. v. Drilon*, G.R. No. 108946, January 28, 1999, 302 SCRA 225, 240 [Per J. Mendoza, Second Division].
96. *See* Gale R. Adkins and Peter Haggart, *Visual Materials on Local Television News Programs*, 7 J. BROAD. 227 (1962-1963); C. A. Tuggle and Suzanne Huffman, *Live Reporting in Television News: Breaking News or Black Holes?*, 45 J. BROAD. & ELEC. MEDIA 335 (2001).
97. *See* Michael W. Baird, *Copyrighting Newscasts: An argument for an Open Market*, 3 FORDHAM ENT. MEDIA & INTELL. PROP. L.F. 481, 487-503 (1993), *citing*

Pacific & Southern Co. v. Duncan, 572 F. Supp. 1186 (N.D. Ga. 1983), affirmed in part, reversed in part, 744 F.2d 1490 (11th Cir. 1984), *Feist Publications, Inc. v. Rural Telephone Services Co.*, 111 S. Ct. 1282 (1991), *CNN v. Video Monitoring Servs. of Am., Inc.*, 940 F.2d 1471 (11th Cir. 1991); 949 F.2d 378 (11th Cir. 1991), *Los Angeles News Service v. Tullo*, 973 F.2d 791 (9th Cir. 1992).

98. 572 F. Supp. 1186 (N.D. Ga. 1983) referred to as "Duncan I". On appeal to the United States Court of Appeals for the Eleventh Circuit, the decision was partially reversed and remanded.
99. *Id.* at 1191-1192.
100. Robert Yale Libott, *Round the Prickly Pear: The Idea-Expression Fallacy in a Mass Communications World*, 16 COPYRIGHT L. SYMP. 30 1966, pp. 48-49.
101. See Leslie A. Kurtz, *Speaking to the Ghost: Idea and Expression in Copyright*, 47 U. MIAMI L. REV. 1221, 1236 (1992-1993), citing *Peter Pan Fabrics, Inc. v. Martin Weiner Corp.*, 274 F.2d 487, 489 (2d Cir. 1960). Kurtz said that "[t]he need to distinguish idea from expression arises in instances of non-literal copying. The defendant has added something to the plaintiff's material to reshape or recast it. In such a case, it is necessary to determine how far 'an imitator must depart from an undeviating reproduction to escape infringement.'"
102. World Intellectual Property Organization (WIPO), *Neighboring Rights: Guide to the Rome Convention and to the Phonograms Convention*, WIPO, 1989, reprinted 1994 and 1999, 11, (last visited on 29 January 2015).
103. See Herman Cohen Jehoram, *The Nature of Neighboring Rights of Performing Artists, Phonogram Producers and Broadcasting Organizations*, 15 COLUM.-VLA J.L. & ARTS 75, 75-76 (1990-1991).
104. See Herman Cohen Jehoram, *The Nature of Neighboring Rights of Performing Artists, Phonogram Producers and Broadcasting Organizations*, 15 COLUM.-VLA J.L. & ARTS 75, 84 (1990-1991).
105. See BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS (1886), THE BRUSSELS CONVENTION RELATING TO THE DISTRIBUTION OF PROGRAMME-CARRYING SIGNALS TRANSMITTED BY SATELLITE (1974), CONVENTION FOR THE PROTECTION OF PRODUCERS OF PHONOGRAMS AGAINST UNAUTHORIZED DUPLICATION OF THEIR PHONOGRAMS (1971), WORLD INTELLECTUAL PROPERTY OFFICE COPYRIGHT TREATY (WCT) (1996), and the WIPO PERFORMANCES AND PHONOGRAMS TREATY (WPPT) (1996). SEE ALSO AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS Agreement) (1994).

106. See World Intellectual Property Organization (WIPO), *Understanding Copyright and Related Rights*,¹⁷ (last visited on 11 February 2015). The Rome Convention was the "first organized international response to the need for legal protection of the three categories of related rights beneficiaries." The Convention was finalized on October 26, 1961. It came into force on May 18, 1964. The Philippines acceded to the Convention on June 25, 1984. It came into force in the Philippines on September 25, 1984.
107. *ABS-CBN Broadcasting Corporation v. Philippine Multi-Media System, Inc., et al.*, 596 Phil. 283, 297, 300 (2009) [Per J. Ynares-Santiago, Third Division].
108. *Rollo*, p. 68.
109. *Id.* at 1429-1431.
110. *Id.* at 1371.
111. *Id.* at 1368.
112. See *ABS-CBN Broadcasting Corporation vs. Philippine Multi-Media System, Inc.*, 596 Phil. 283 (2009) [Per J. Ynares-Santiago, Third Division].
113. *Rollo*, pp. 1422 and 1432.
114. *Id.* at 68.
115. *Habana v. Robles*, 369 Phil. 764 (1999) [Per J. Pardo, First Division], *citing* 18 AM JUR 2D §109, *in turn citing* *Toksvig v. Bruce Pub. Co.*, (CA7 Wis) 181 F2d 664 [1950]; *Bradbury v. Columbia Broadcasting System, Inc.*, (CA9 Cal) 287 F2d 478, cert den 368 US 801, 7 L ed 2d 15, 82 S Ct 19 [1961]; *Shipman v. R.K.O. Radio Pictures, Inc.*, (CA2 NY) 100 F2d 533 [1938].
116. See Matthew D. Bunker, TRANSFORMING THE NEWS: COPYRIGHT AND FAIR USE IN NEWS-RELATED CONTEXTS, 52 J. COPYRIGHT SOC'Y U.S.A. 309, 311 (2004-2005), *citing* *Iowa St. Univ. Research Found., Inc. v. Am. Broad. Cos.*, 621 F.2d 57, 60 (2d Cir. 1980). The four factors are similarly codified under the United States Copyright Act of 1976, sec. 107:

§ 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

117. Rep. Act No. 8293 (1997), sec. 185.

118. See Matthew D. Bunker, *Transforming The News: Copyright and Fair Use in News-Related Contexts*, 52 J. COPYRIGHT SOC'Y U.S.A. 309, 311 (2004-2005).

119. *Id.*, citing *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994).

120. *Id.* at 317, citing *Nunez v. Caribbean International News Corp.*, 235 F.3d 18 (1st Cir. 2000) and *Psihoyos v. National Examiner*, 49 U.S.P.Q.2d 1766 (S.D. N.Y. 1998). Bunker proposes the term "meta-use" for the kind of use that does not necessarily transform the original work by adding expression, meaning, or message, but only changes the purpose of the work. "[*Psihoyos*] distinguished between using the photograph to 'show what it depict[ed]' versus commenting upon the photograph in some way. Certainly the Nunez use was for purposes of commentary on the photos — the photos had engendered significant controversy, and the news article reported on that controversy. Thus, the Nunez use was what we might refer to as a 'meta-use' of the photos that went beyond simply using a photograph to illustrate a news story — as in *Psihoyos* — and instead consisted of a news story about the photographs themselves, or at least public reaction to them."

121. See Matthew D. Bunker, *Transforming The News: Copyright and Fair Use in News-Related Contexts*, 52 J. COPYRIGHT SOC'Y U.S.A. 309, 314 (2004-2005), citing *Nunez v. Caribbean International News Corp.*, 235 F.3d 18 (1st Cir. 2000).

122. See John J. McGowan, *Competition, Regulation, and Performance in Television Broadcasting*, 1967 WASH. U. L. Q. 499 (1967), and William T. Kelley, *How Television Stations Price Their Service*, 11 J. BROAD. 313 (1966-1967).

123. See Michael W. Baird, *Copyrighting Newscasts: An argument for an Open Market*, 3 Fordham Ent. Media & Intell. Prop. L.F. 481, pp. 518-519. The author of the article argues that "news broadcasts [should be taken] out of the realm of *copyright* entirely, creating instead a separate '*rebroadcast right*' for factual works of a time-limited nature. ..[in that] [s]uch a right would allow the taping of newscasts, but protect the source of

broadcasters' incomes, *i.e.*, the advertising revenues from the original broadcast." In essence, the author recognizes broadcasting organizations' right to rebroadcast, which we defined earlier as a related or neighboring right of copyright.

124. See Instagram, available at (last visited on 8 February 2015).
125. See Vine, available at (last accessed on 8 February 2015).
126. See 1 Second Everyday, available at (last accessed on 8 February 2015).
127. *Rollo*, p. 1363.
128. *Joaquin, Jr. v. Drilon*, G.R. No. 108946, January 28, 1999, 302 SCRA 225, 238, citing 18 C.J.S. 161 [Per J. Mendoza, Second Division]. See also *Pearl & Dean (Phil.), Incorporated v. Shoemart, Incorporated*, 456 Phil. 474 (2003) [Per J. Corona, Third Division]; *Ching v. Salinas, Sr.*, 500 Phil. 628 (2005) [Per J. Callejo, Sr., Second Division].
129. See *Ho Wai Pang v. People*, G.R. No. 176229, October 19, 2011, 659 SCRA 624, 640 [Per J. Del Castillo, First Division]; *People v. Chua*, G.R. No. 187052, September 13, 2012, 680 SCRA 575, 592-591 [Per J. Villarama, First Division].
130. See *Go v. The Fifth Division of Sandiganbayan*, 558 Phil. 736, 744 (2007) [Per J. Ynares-Santiago, Third Division].
131. *Dela Torre v. Commission on Elections*, 327 Phil. 1144, 1150-1151 (1996) [Per J. Francisco, En Banc].
132. Nancy Travis Wolfe, *MALA IN SE: A Disappearing Doctrine*, 19 *Criminology* 131 1981-1982, p. 133.
133. 1 William L. Clark, et al., *A Treatise on the Law of Crimes, The Criminal Intent and Capacity to Commit Crime*, 5th ed., 59, 60 (1952).
134. Arthur D. Greenfield, *MALUM PROHIBITUM: Moral, Legal and Practical Distinctions between Mala Prohibita and Mala in Se and Danger to Civic Conscience When Former are too Numerous*, 7 *A.B.A. J.* 493 (1921).
135. *People v. Lacerna*, 344 Phil. 100, 122-123 (1997) [Per J. Panganiban, Third Division], citing *U.S. v. Go Chico*, 14 Phil. 128 (1909) [Per J. Moreland, En Banc].
136. *Id.*
137. In *People v. Ballesteros*, 349 Phil. 366, 374-375 (1998) [Per J. Romero, Third Division], this court distinguished motive from intent: "Motive is the moving power which impels one to action for a definite result. Intent, on the other hand, is the purpose to use a

particular means to effect such result. Motive alone is not proof of a crime. In order to tip the scales in its favor, intent and not motive must be established by the prosecution. Motive is hardly ever an essential element of a crime. A man driven by extreme moral perversion may be led to commit a crime, without a real motive but a just for the sake of committing it. Along the same line, a man who commits a crime with an apparent motive may produce different results, for which he is punished. As held in a line of cases, the rule is well-settled that the prosecution need not prove motive on the part of the accused when the latter has been positively identified as the author of the crime. Lack or absence of motive for committing the crime does not preclude conviction thereof where there were reliable witnesses who fully and satisfactorily identified the accused as the perpetrator of the felony."

138. *See Regina v. Laurier Office Mart, Inc.*, 1994 Carswellont 4309, 58 C.P.R. (3d) 403, Canada; United States Code, Title 17, chapter 5, sec. 506, Copyright, Patents, and Design Act of 1988, United Kingdom; *EMI Records (Ireland) Ltd. and others v. The Data Protection Commissioner (notice party, Eircom Plc)*. [2013] 1 C.M.L.R. 7.
139. *Regina v. Laurier Office Mart, Inc.*, 1994 Carswellont 4309, 58 C.P.R. (3d) 403, Canada, p. 7.
140. *Id.* at 8.
141. *See* United States Code, Title 17, chapter 5, sec. 506.
142. Ting Ting Wu, *The New Criminal Copyright Sanctions: A Toothless Tiger?*, *IDEA: The Journal of Law and Technology*, 39 J.L. & TECH. 527 (1999).
143. *See* Lydia Pallas Loren, *Digitization, Commodification, Criminalization: The Evolution of Criminal Copyright Infringement and the Importance of the Willfulness Requirement*, 77 WASH. U. L. Q. 835 (1999). "While The NET Act retained the element of willfulness, it created a new type of criminal infringement that does not require a profit motive. Now, to be criminal, infringement must be willful and be either (1) for purposes of commercial advantage or private financial gain, or (2) infringement through the reproduction or distribution, including by electronic means, during any 180-day period, of one or more copies or phonorecords of one or more copyrighted works, which have a total retail value of more than \$1,000. This latter category of infringement can be referred to as non-commercially motivated infringement."
144. *See* Dane S. Ciolino and Erin A. Donelon, *Questioning Strict Liability in Copyright*, 54 Rutgers L. Rev. 351 2001-2002, p. 409. The authors argue against the application of strict liability to copyright law. "[S]trict liability is neither justified nor necessary in copyright law, but rather is rooted in deeply flawed historical, conceptual, and economic misconceptions about intellectual property in general and copyright in particular. Worse, strict liability is affirmatively harmful to copyright's utilitarian goals of providing incentives to authors to create, and providing greater public access to works of authorship.", p. 351.

145. Kent Sinclair, Jr., 58 Cal. L. Rev. 940 1970, p. 944, *citing* M. NIMMER, NIMMER ON COPYRIGHT § 3 (1970). U.S. Copyright law seems to interchange "absolute liability" with "strict liability."
146. The earliest copyright law in the Philippines was the Spanish Law on Intellectual Property of January 10, 1879 as extended by the Royal Decree of May 5, 1897. After the Philippines was ceded to the United States, the United States Copyright Law replaced the Spanish law. On March 6, 1924, Act No. 3134 or "An Act to Protect Intellectual Property" was enacted by the Philippine legislature. On November 14, 1972, Presidential Decree No. 49 was enacted and superseded Act No. 3134. Subsequently, Republic Act No. 8293 or the Intellectual Property Code took effect on January 1, 1998. *See* Vicente B. Amador, *Intellectual Property Fundamentals*, C&E Publishing, 2007, p. 225. The Copyright clause in the United States Constitution, as well as subsequent federal laws were based on England's Statute of Anne. U.S. Copyright laws and courts, however, have generally upheld a strict liability regime. *See* Dane S. Ciolino and Erin A. Donelon, *Questioning Strict Liability in Copyright*, 54 Rutgers L. Rev. 351 2001-2002, pp. 355-356.
147. People v. Lacerna, 344 Phil. 100, 122 (1997) [Per J. Panganiban, Third Division].
148. Rollo, p. 1369.
149. Under CONST.(1987), art. VII, sec. 21, a treaty or international agreement is transformed into domestic law when "concurring in by at least two-thirds of all the Members of the Senate."
150. 369 Phil. 764 (1999) [Per J. Pardo, First Division].
151. 329 Phil. 875 (1996) [Per J. Regalado, En Banc].
152. 369 Phil. 764 (1999) [Per J. Pardo, First Division].
153. 217.3. Any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of:
- (a) Selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article;
 - (b) Distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or
 - (c) Trade exhibit of the article in public, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned. (Sec. 29, P.D. No. 49a)

154. Lydia Pallas Loren, *Digitization, Commodification, Criminalization: The Evolution of Criminal Copyright Infringement and the Importance of the Willfulness Requirement*, 77 WASH. U. L. Q. 835, 872-873 (1999).
155. *Columbia Pictures v. Court of Appeals*, 329 Phil. 875, 926 (1996) [En Banc, per J. Regalado]. See also *Habana v. Robles*, 369 Phil. 764 (1999) [Per J. Regalado, En Banc].
156. *Rollo*, p. 1378.
157. See *Pacific Rehouse Corporation v. Court of Appeals*, G.R. No. 199687, March 24, 2014 [Per J. Reyes, First Division].
158. *Republic Gas Corporation v. Petron Corporation*, G.R. No. 194062, June 17, 2013, 698 SCRA 666 [Per J. Peralta, Second Division].
159. *Id.* at 681-682.
160. *Ching v. Secretary of Justice*, G.R. No. 164317, February 6, 2006, 481 SCRA 609, 636-637 [Per J. Callejo, Sr., First Division].
161. *Rollo*, pp. 573-575.
162. *Id.* at 574-575.
163. *Id.* at 231.
164. *Id.*
165. A news embargo is defined as "an agreement between the source and the media organization: The latter is provided with news that ought not to be published until a certain date." See Sonja Gruber, "News Embargoes",— Under threat, but not extinct", Reuters Institute for the Study of Journalism, University of Oxford, pp. 6 and 46-47 (2014), available at (last accessed on 20 February 2015).
166. See Reuters, Handbook of Journalism, A Guide to Reuters Operations, available at: (last accessed on 20 February 2015).

According to Reuters: "A TRANSMISSION EMBARGO restricts publication to all clients until a time specified. A PUBLICATION EMBARGO transmits the story immediately to MEDIA CLIENTS ONLY with restrictions to prevent them publishing or broadcasting the story until a time specified. The story is then issued to desktop clients (Eikon, etc.) at the embargo time using the Lynx Editor embargo function. However, in the age of real time news websites and social media, Reuters no longer uses PUBLICATION embargoes. ALL embargoes are now TRANSMISSION embargoes."

167. *Rollo*, p. 117.

168. *Id.* at 134.

169. REV. PEN. CODE, art. 17.

170. *People v. Ballesta*, 588 Phil. 87 (2008). *See* REV. PEN. CODE, art. 8.

171. *Bahilidad v. People*, 629 Phil. 567, 575 (2010) [Per J. Nachura, Third Division].