

DISPOSAL OF PIRATED AND COUNTERFEIT GOODS

THE PHILIPPINE EXPERIENCE

Regional Workshop on the Environmentally Safe Disposal of IP-Infringing Goods

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*22 November 2013
Bangkok, Thailand*



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ASEAN Economic Community 2015



AEC Vision by 2015:

*“ASEAN as a **single market and production base** that is highly competitive with **equitable economic development** and is **fully integrated** in the global community.”*



Philippines as Country Champion

Development of a Regional Action Plan on IPR Enforcement

National internal guidelines for enforcement, consistent with the civil, criminal, and administrative structures of ASEAN Member States (AMSs), are drawn up based on best practices identified through information sharing among national agencies in AMSs that are tasked with IP enforcement.



Recent Events: Typhoon Yolanda

As of 18 November
2013:

- 3,976 lives lost
- 18,175 injured
- 1,590 missing
- 239.5M USD
worth of damage



Donations: A Form of Disposal



Legal Framework:

INTERNATIONAL AGREEMENTS

TRIPS AGREEMENT

In order to create an effective deterrent to infringement, judicial authorities may order that goods found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed.

Legal Framework:

DOMESTIC LEGISLATION

I. CRIMINAL AND CIVIL ACTIONS

- Intellectual Property Code of the Philippines (Republic Act No. 8293)
- Supreme Court Rules of Court on Civil and Criminal Procedure (Special IP Rules)
[Effective 8 Nov 2012]

II. ADMINISTRATIVE REMEDIES

- Intellectual Property Code
- Tariff and Customs Code (R.A. No. 1937)
- Optical Media Act of 2003 (R.A. 9239)

Legal Framework:

DOMESTIC LEGISLATION

I. CRIMINAL AND CIVIL ACTIONS

- If the Court finds that there has been a violation of intellectual property rights, it may order that goods found to be infringing be, without compensation, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder.

RA No. 8293 § 7 (1) (b)

Legal Framework:

DOMESTIC LEGISLATION

I. CRIMINAL AND CIVIL ACTIONS

**SUPREME
COURT SPECIAL
RULES ON
INTELLECTUAL
PROPERTY [IP]
LITIGATION**



Legal Framework:

DOMESTIC LEGISLATION

SPECIAL RULES ON INTELLECTUAL PROPERTY [IP] LITIGATION

Order of Destruction

- ❖ At any time after the filing of the complaint or information, upon motion
- ❖ May order impoundment and the destruction of the infringing goods, objects and devices if the court is satisfied with the evidence presented
- ❖ Issue Order only upon summary hearing and prior notice to defendant/accused.

Legal Framework:

DOMESTIC LEGISLATION

SPECIAL RULES ON INTELLECTUAL PROPERTY [IP] LITIGATION

➤ CONDITIONS FOR ISSUANCE

- ✿ Inventories and photographs taken before destruction;
- ✿ Inventories and photographs must be properly identified and labeled as actual seized items;
- ✿ Taking of inventory and photographs shall be witnessed and attested; and
- ✿ Complainant files a bond in an amount fixed by the court.

Legal Framework:

DOMESTIC LEGISLATION

SPECIAL RULES ON INTELLECTUAL PROPERTY [IP] LITIGATION

- Representative samples of the goods, objects and devices, together with the inventory and photographs of the same, shall be admissible as evidence in lieu of the actual items.

Legal Framework:

DOMESTIC LEGISLATION

II. ADMINISTRATIVE REMEDIES

- Under the Intellectual Property Code
- Power of the BLA Director to order condemnation or seizure of products which are subject of the offense.
- The goods thus seized shall be disposed in such manner the Director may deem appropriate, such as by sale, donation to distressed local governments or charities, exportation, recycling or any combination thereof.

Legal Framework:

DOMESTIC LEGISLATION

II. ADMINISTRATIVE REMEDIES



Tariff and Customs Code, or Republic Act No. 1937, as amended, also permits the Bureau of Customs to dispose of forfeited property or those items within its custody

Legal Framework:

DOMESTIC LEGISLATION

II. ADMINISTRATIVE REMEDIES



Disposition of Property in Customs Custody under Tariff & Customs Code

Contraband of commercial value and capable of legitimate use may be sold under such restrictions as will insure its use for legitimate purposes only; but if the thing is unfit for use or the Collector is of the opinion that, if sold, it would be used for unlawful purposes it shall be destroyed in such manner as the Collector shall direct.

Legal Framework:

DOMESTIC LEGISLATION

II. ADMINISTRATIVE REMEDIES



The Optical Media Act or Republic Act No. 9239 created and empowered the Optical Media Board (OMB) to conduct inspections and exercise visitorial powers over establishments or entities engaged in the mastering, manufacture and replication of optical media

Legal Framework:

DOMESTIC LEGISLATION

II. ADMINISTRATIVE REMEDIES



In the exercise of its regulatory powers, the OMB may cause the destruction of confiscated optical media even pending consideration of the case, but upon final determination by the OMB or a court that the same are in violation of the optical media law.

Disposal of Infringing Goods

Republic Act 8293 (IP Code) provides for the same under Section 10.2 (iii):

(iii) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director of Legal Affairs, such as by sale, donation to distressed local governments or to charitable or relief institutions, exportation, recycling into other goods, or any combination thereof, under such guidelines as he may provide;



ISSUES:

ENVIRONMENTAL CONSERVATION

PHILIPPINE CLEAN AIR ACT OF 1999



Ban on Incineration, which is defined as the burning of municipal, biomedical and hazardous wastes, which process emits poisonous and toxic fumes.

(R.A. No. 8749, §20)

ISSUES:

ENVIRONMENTAL CONSERVATION

CLEAN AIR ACT - IMPLEMENTING RULES

- Prohibition on Open Burning
- No person shall be allowed to burn any materials in any quantities which shall cause the emission of toxic and poisonous fumes. Such materials include but not limited to plastic, polyvinyl chloride, polypropylene, paints, ink, wastes containing heavy metals, organic chemicals, petroleum related compound, industrial wastes, ozone depleting substances and other similar toxic and hazardous substances

SOLUTIONS: INNOVATIVE APPROACH TO DISPOSAL

INSTEAD OF RENTING ROAD ROLLERS, MILITARY/POLICE TANKS AND ARMORED PERSONNEL CARRIERS WERE USED TO CRUSH PIRATED OPTICAL MEDIA PRODUCTS.



SOLUTIONS: INNOVATIVE APPROACH TO DISPOSAL

**SEIZED GOODS MAY BE DONATED FOR CHARITABLE PURPOSES, ESPECIALLY IN THE
FACE OF NATURAL CALAMITIES.**



SOLUTIONS: INNOVATIVE APPROACH TO DISPOSAL

SEIZED GOODS MAY BE DONATED FOR CHARITABLE PURPOSES, ESPECIALLY IN THE FACE OF NATURAL CALAMITIES.



SOLUTIONS: ECO-FRIENDLY DISPOSAL METHODS

INSTEAD OF RENTING FROM PRIVATE COMPANIES, GOVERNMENT-OWNED SMALL-SCALE SHREDDING MACHINES ORDINARILY USED FOR TREATING GARBAGE AND WASTE MAY BE USED.



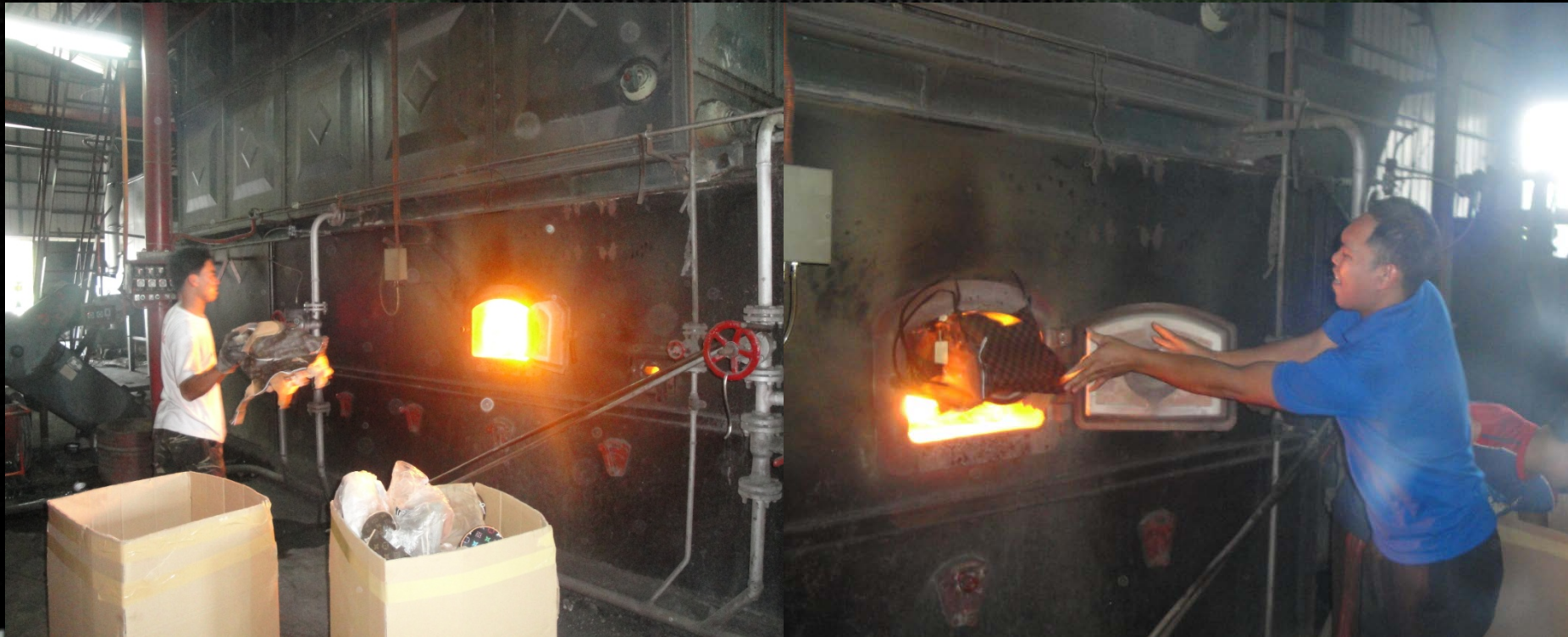
SOLUTIONS: ECO-FRIENDLY DISPOSAL METHODS

RECYCLING FACILITIES ALSO HAVE USE FOR SEIZED OPTICAL MEDIA PRODUCTS, WHICH SERVE AS RAW MATERIALS FOR ROOFING AND ROAD CONSTRUCTION PROJECTS.



SOLUTIONS: ECO-FRIENDLY DISPOSAL METHODS

LEATHER GOODS FOR DISPOSAL MAY BE SOLD TO POWER PLANTS WHICH COMBINE SHREDDED LEATHER WITH COAL TO SERVE AS FUEL FOR THE MANUFACTURE OF RUBBER PRODUCTS.



SOLUTIONS:

ECO-FRIENDLY DISPOSAL METHODS

- Each year, over 30 Billion CDs and DVDs are manufactured worldwide, and a significant number of optical media end up in landfills and incinerators
- **Industrial Technology Development Institute of the Department of Science and Technology (ITDI-DOST)** developed a technology on how to recycle junk compact discs.



SOLUTIONS: ECO-FRIENDLY DISPOSAL METHODS

ITDI showed that post-consumer CDs can be recycled into high value added products, such as polymer nanocomposites for various applications like:

- (1) injection molded products such as transformer caps;
- (2) compression molded products such as wall tiles and floor tiles; and
- (3) substrates for printed circuit boards.



SOLUTIONS: ECO-FRIENDLY DISPOSAL METHODS

COMMISSIONING THE SERVICES OF A LOCAL CREMATORIUM FOR THE DESTRUCTION OF SEIZED GOODS



SOLUTIONS: INNOVATIVE APPROACH TO DISPOSAL

There are available government resources that may be utilized for the enforcement of IPR, may it be in seizure, storage, or disposal operations.

One only has to be creative and look at the right places.

INNOVATIVE, ECO-FRIENDLY, AND SOCIALLY EQUITABLE METHODS OF DISPOSAL

- Optical media products may be recycled to make roofing and road construction materials;
- Local crematorium may be commissioned for the destruction of leather goods;
- Partnerships with non-government organizations (NGOs) for livelihood projects; and
- Donations for charitable purposes.
- FDA-accredited and medically certified incinerators to be used for disposing of counterfeit medicines
- Private Sector power plant operators may be allowed to use shredded leather goods



**Thank you for your
attention.**



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