

Copyright in Adverts

The Advertising Suppliers Association of the Philippines (ASAP) just held a conference that gathered top advertisers, brand managers, artists, photographers, jingle writers and other creative and managerial talents that make up the advertising industry.

Among the topics tackled in the conference was intellectual property rights (IPR) in the advertising industry. Since the participants were from the different sub-sectors of the industry, issues on IPR were broad and varied, and even conflicting.

Owners of the advertising firms complain of their work being stolen not only by competitors, but by potential clients after a failed “sales pitch.” It’s a serious problem considering that dragging a past or future client to court is not an attractive option.

On the other hand, composers of jingles, photographers and cinematographers, writers and other artists – those who supply the content to advertising companies – are wondering if their IPR are adequately protected and compensated by the advertising firms. Apparently, some advertising firms are as guilty as the clients they complain about when it comes to infringing the IPR of their own content suppliers.

Copyright is the form of IP that dominates the advertising industry. Generally and literally, Copyright means the “right to copy,” and it covers original literary and artistic works. Protection, under the law, is provided to the author of an original work, granting her exclusive “right to copy.” Only with the author’s consent can copies or performances of her work be made unless it is allowed by law under the concept of “fair use,” which essentially means for non-commercial use and in limited form.

Considering the creative inputs needed from conceptualization to production to produce a commercial or an advertisement, confusion can indeed arise over who owns what, when, and more important, how much is the intangible asset of each person worth.

Under the Intellectual Property Code are provisions that state who owns a copyright, including the rights of corporations or entities employing creators of copyright, the economic and moral rights of copyright owners, under what circumstances are these rights violated and the remedies and penalties against infringers.



What’s in a Name?

Atty. Adrian S. Cristobal Jr.

What the Code does not prescribe, however, is how much a copyrighted work is worth in pesos and centavos, nor how actors in the creative process should distribute the benefits or royalties. In these matters, how the industry behaves is, to a large extent, determined by the market and the “meeting of the minds” between and among parties involved. Each sector or industry has certain customs and practices shaped by the market that somehow affect how IPRs are valued and treated. Changing that culture to one that respects and values IP is a challenge.

But, there is no harm in setting broad policy guidelines for the advertising industry (or any industry) through their associations that would promote respect for IP and lay down certain principles on how compensation or benefits can or may be determined. Corporations that have IP policies, like some in the semi-conductor industry, can serve as models on how innovations of its employees are given recognition, including incentives and royalties.

From these policies on self-regulation and conscious adoption of workable models, the spirit of the law can take concrete form in the different IP based industries.

Indeed, IP laws do exist, but as observed by the philosopher Montesquie a long time ago there are laws that try to change customs, and there are customs that change laws. The IP Code is, in our setting, of the former kind.

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