EN BANC

G.R. No. 184661 – FILIPINO SOCIETY OF COMPOSERS, AUTHORS, AND PUBLISHERS, INC., Petitioner, **v. WOLFPAC COMMUNICATIONS, INC.,** Respondent.

Promulgated:

February 25, 2025

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SEPARATE CONCURRING OPINION

LEONEN, *J.*:

As early as 1918, this Court has recognized that the author has proprietary rights over their literary, scientific, or artistic work's production, reproduction, annotation, improvement, or other forms of its exploitation:

> In addition to what has been said, according to article 428 of the Civil Code, the author of a literally, scientific, or artistic work, has the right to exploit it and dispose thereof at will. In relation to this right, there exists the exclusive right of the author, who is the absolute owner of [their] own work, to produce it, according to article 2 of the Law of January 10, 1879, and consequently, nobody may reproduce it, without [their] permission, not even to annotate or adduce it, without [their] permission, not even to annotate or add something to it, or to improve any edition thereof, according to article 7 of said law. Manresa, in his commentaries on article 429 of the Civil Code 9 (vol. 3, p. 633, 3d ed.) says that the concrete statement of the right to literary properties is found in the legal doctrine according to which nobody may reproduce another person's work, without the consent of its owner, or even to annotate or add something to it or to improve any edition thereof. And on page 616 of said volume, Manresa says the following:
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> > "He who writes a book, or carves a statue, or makes an invention, has the absolute right to reproduce or sell it, just as the owner of land has the absolute right to sell it or its fruits. But while the owner of land, be selling it and its fruits, perhaps fully realizes all its economic value, by receiving its benefits and utilities, which are represented, for example, by the price, on the other hand the author of a book, statue or invention, does not reap all the benefits and advantages of his own property by disposing of it, for the most important form of realizing the economic advantages of a book, statue[,] or invention, consists in the right to reproduce it in similar or like copies, everyone of which serves to give the person reproducing them all the conditions which the original requires in order to give the author the full enjoyment thereof. If the author of a book, after its publication, cannot prevent its reproduction by any person who may want to reproduce it, then the property right

> granted him is reduced to a very insignificant thing and the effort made in the production of the book is in no way rewarded."
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> Indeed the property right recognized and protected by the Law of January 10, 1879, on Intellectual Property, would be illusory if, by reason of the fact that said law is no longer in force as a consequence of the change of sovereignty in these Islands, the author of a work, who has the exclusive right to reproduce it, could not prevent another person from so doing without [their] consent, and could not enforce this right through the courts of justice in order to prosecute the violator of this legal provision and the defrauder or usurper of [their] right, for [they] could not obtain the full enjoyment of the book or other work, and [their] property right thereto, which is recognized by law, would be reduced, as Manresa says, to an insignificant thing, if [they] should have no more right than that of selling [their] work.[1]

However, the dominion of a creator over their intellectual creation is not absolute. Intellectual property, as with all property, has been recognized in our laws as having uses that bear a social function. Article XII, Section 6 of the Constitution states:

> **SECTION 6**. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

In recognition of this, the Intellectual Property Code declares that for national development and progress and the common good, the State shall promote the diffusion of knowledge and information:

> **SEC. 2**. *Declaration of State Policy*. – The State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such periods as provided in this Act.
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> The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.
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> It is also the policy of the State to streamline administrative procedures of registering patents, trademarks[,] and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines.

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[1] *Laktaw v. Paglinawan*, 44 Phil. 853, 864–865 (1918) [Per J. Araullo, *En Banc*].

Thus, it is the task of this Court to strike the appropriate balance between the common good and the rights of authors and artists to their intellectual creations.

Before this Court is a Petition for Review on *Certiorari* that assails the Regional Trial Court's Judgment[2] and Order[3] dismissing petitioner Filipino Society of Composers, Authors, and Publishers, Inc.'s (FILSCAP) copyright infringement complaint against respondent Wolfpac Communications, Inc. (Wolfpac). In the course of offering "ringback tones" for mobile phones for sale on a website, Wolfpac allegedly infringed on copyrights by allowing prospective purchasers to listen to 20-second portions of each ringback tone as a "pre-listening function" prior to a sale.[4]

I concur in the differentiation between public performance and communication to the public rights, in accordance with the modifications introduced by *Phil. Home Cable Holdings, Inc. v. Filipino Society of Composers, Authors, and Publishers, Inc.*[5] to *Filipino Society of Composers, Authors, and Publishers, Inc. v. Anrey, Inc.*[6] I further agree that Wolfpac's acts, as described, were exercises of the communication to the public right over the musical works, and not the public performance right:

> The agreement between Wolfpac and the composers allows Wolfpac to convert the content or musical works into ringtones, which can be downloaded through the Caller Ring Tune Service. Before potential consumers download the ringback tone, Wolfpac encourages them to listen to the sample first. The first aspect of communication to the public is apparent. Wolfpac's act of placing the pre-listening function makes the musical work available to the public through the use of the internet. The musical works are not yet audible; thus, the first aspect of public performance is still absent. The musical work becomes audible only when the potential consumer clicks the play button to hear the sample song. This is where the second aspect of communication to the public becomes apparent. Considering that the samples are available on Wolfpac's website, any member of the public can access the samples from a place and time individually chosen by them. Thus, there is communication to the public by wireless means because the members of the public can access the samples from Wolfpac's website at a place and time individually chosen by them.
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> Performance can also be present once the potential consumer plays the sample. In this scenario, the person who makes the sample audible is the potential consumer—not Wolfpac. Put simply, the performance was not

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2 *Rollo*, pp. 35–39. The June 16, 2008 Judgment in Civil Case No. Q-05-54775 was penned by Presiding Judge Ramon Paul L. Hernando (now a Member of this Court) of Branch 93, Regional Trial Court, Quezon City.

3 *Id.* at 32–34. The September 16, 2008 Order in Civil Case No. Q-05-54775 was penned by Presiding Judge Ramon Paul L. Hernando (now a Member of this Court) of Branch 93, Regional Trial Court, Quezon City.

4 *Ponencia*, p. 2.

5 G.R. No. 188933, February 21, 2023 [Per J. Leonen, *En Banc*].

6 927 Phil. 577 (2022) [Per J. Zalameda, *En Banc*].

> made by Wolfpac. The members of the public individually perform the works by clicking the play button and making the samples audible. Such performance is not actionable because the potential consumers performed the musical work in private before deciding whether they would purchase the ringback tone. There is no public perception in such a way that persons outside the potential consumer's normal circle of family and their family's closest social acquaintances are or can be present. It must be stressed that what is prohibited is a public performance, not performance per se.[7]

Next, the *ponencia* finds that the pre-listening function was outside the scope of the memoranda of agreement between Wolfpac and FILSCAP members-composers, which only authorized Wolfpac "to convert [the musical works] into a form which can be downloaded" and "to offer and sell the same to the general public."[8] According to the *ponencia*, this provision, in relation to another provision that expressly withholds the exercise of the composers' rights outside the terms of the agreements,[9] leads to a conclusion that Wolfpac is only authorized to make ringback tones and offer them for sale, but not to advertise the sale of the ringback tones by letting potential buyers preview a portion of it free of charge.[10] In this regard, the *ponencia* asserts that while advertisements are a way to offer the ringback tones to the public, "the agreement does not expressly allow the use of the songs in marketing the ringtones."[11]

Musical works are "intangible work[s] of art composed of a combination of sounds perceptible to the senses."[12] They are not readily identifiable unless otherwise made tangible in the form of sheet music or something similar, or as sounds that may be heard. The title of a musical work, if any, does not always suffice to differentiate the work from another, because it is the original combination of sounds that makes a musical work a work of art protected by copyright. Inevitably, multiple musical works may share the same title, and composers may even reuse titles for different musical works, resulting in the works only being distinguishable from each other when they are made perceptible to the senses.

Here, the ringback tone offered for sale by Wolfpac is not equivalent to a musical work by a FILSCAP member. Ringback tones are a transformation of compositions fixed in a particular format by some technical processes.[13] Because of the nature of the format and the processes involved in transforming

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7 *Ponencia*, p. 16.
8 *Id.* at 18–19, *citing rollo*, p. 21.
9 *Id.*
10 *Id.*
11 *Id.* at 20.
12 *Cosac, Inc. v. Filipino Society of Composers, Authors, and Publishers, Inc.*, G.R. No. 222537, February 28, 2023 [Per J. Hernando, *En Banc*] at 15. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.
13 *See Phil. Home Cable Holdings, Inc. v. Filipino Society of Composers, Authors, and Publishers, Inc.*, G.R. No. 188933, February 21, 2023 [Per J. Leonen, *En Banc*].

the musical work, a ringback tone will not necessarily approximate the sound of other fixations—sound recordings—of the musical work.

Hence, it appears that in order to provide comprehensive information on the ringback tones for sale, Wolfpac allowed potential buyers to listen to 20-second portions of the ringback tones. The pre-listening function may confirm to potential buyers that the title of the work, its artist or composer, and other song metadata correspond to a specific musical work. Potential buyers may use the pre-listening function to determine whether the ringback tone is an acceptable transformation, approximation, or version of a musical work they may be familiar with, and if they are willing to pay to obtain it.

It may be reasonably construed that the provision of such information serves as an enticement or encouragement to consumers to purchase the ringback tones. Succinctly put, the pre-listening function is advertising[14] for the ringback tones, the intended result of which is to increase the sales of the ringback tones, with a corresponding portion of the profits to be apportioned to the composers according to their agreements with Wolfpac.

The provision of a portion of the musical work offered for sale is all the more necessary when the commerce takes place on a digital marketplace. An analog mode of advertising intangible goods, such as in a print publication, offers an incomplete accounting of the goods' features to consumers, because the actual essence of the intangible good cannot be perceived in that medium. To reiterate, what is being sold is a musical work; it is practical that the musical work itself be presented to the buying public for their consideration. Further, the mechanics of the pre-listening function, including the method of accessing the sample of the ringback tone and the duration available, serves as an assurance that a potential buyer is not satiated by a freely-available portion of the ringback tone. A 20-second portion of a ringback tone on a website is an imperfect substitute for a ringback tone, which must still be purchased and downloaded to a mobile phone to be of actual use.[15]

Thus, finding that "to offer and sell" does not necessarily include reasonable means of advertising the goods for sale according to the design of the platform through which they are being sold fails to consider the scope of what the offer and sale of goods—especially of intangible goods through a digital marketplace—may entail. A too-narrow definition of what a third-party seller is permitted to do to sell goods based on works under license from another may, in fact, be to the detriment of the licensor's expected share of

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[14] Republic Act No. 7394, art. 4(b), The Consumer Act of the Philippines. Article 4(b) defines advertising as "the business of conceptualizing, presenting or making available to the public, through any form of mass media, fact, data or information about the attributes, features, quality or availability of consumer products, services or credit."

[15] *Ponencia*, p. 2.

the profits, and contrary to the reason for why the works were licensed in the first place.

Nonetheless, I agree with the *ponencia* that the pre-listening function constitutes fair use, and thus, no infringement took place.[16]

Before resolving whether the pre-listening function is fair use, this Court must first reckon with whether it was proper for Wolfpac to invoke fair use at all. To emphasize, this case involves a licensee granted some but not all rights to certain works, who is claimed by the licensor to have exercised a right that they did not pay the privilege to exercise for. The licensee now invokes as a defense against the infringement claim that their use was, in fact, fair use, notwithstanding the terms of the agreement between the parties.

The exclusive bundle of rights granted to authors and creators in our copyright laws is not absolute. The Intellectual Property Code admits of several exceptions where certain uses of a work do not infringe on the copyright holder's rights, even if the use is unauthorized or unlicensed. These limitations on the exclusive rights of authors and creators are in line with the State policy that the private economic rights embodied in intellectual property laws may give way to the public good.[17] As explained by the Intellectual Property Office of the Philippines in its Guidelines on Statutory Fair Use in the Intellectual Property Code:

> Copyright is not an absolute right. The exclusive rights afforded by law to authors and creators over their works were never meant to be all-encompassing, for to make such rights unlimited in scope and application would be an affront to the State's policy of "promot[ing] the diffusion of knowledge and information for the promotion of national development and progress and the common good." Thus, the framers of the present Intellectual Property Code of the Philippines (IP Code) deemed it necessary to include in the law certain acts which, when committed by a user of a copyrighted work, would not constitute copyright infringement even if these were done without first securing a license from the copyright owner. Statutorily, these acts are described as limitations on copyright. We know them by the more common term "fair use."[18] (Citation omitted)

Section 184 of the Intellectual Property Code enumerates several limitations to copyright which pertain to minimal, private, noncommercial, or publicly beneficial uses of copyrighted work:

> **SEC. 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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16 *Id.* at 21-26.

17 *See ABS-CBN Corporation v. Gozon*, 755 Phil. 709, 757 (2015) [Per J. Leonen, Second Division].

18 Intellectual Property Office of the Philippines, Guidelines on Statutory Fair Use in the Intellectual Property Code (2024), p. 1.

(a) The recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society;

(b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: *Provided,* That the source and the name of the author, if appearing on the work, are mentioned;

(c) The reproduction or communication to the public by mass media of articles on current political, social, economic, scientific[,] or religious topic[s], lectures, addresses[,] and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved: *Provided,* That the source is clearly indicated;

(d) The reproduction and communication to the public of literary, scientific[,] or artistic works as part of reports of current events by means of photography, cinematography[,] or broadcasting to the extent necessary for the purpose;

(e) The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording[,] or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: *Provided,* That the source and of the name of the author, if appearing in the work, are mentioned;

(f) The recording made in schools, universities, or educational institutions of a work included in a broadcast for the use of such schools, universities[,] or educational institutions: *Provided,* That such recording must be deleted within a reasonable period after they were first broadcast: *Provided, further*, That such recording may not be made from audiovisual works which are part of the general cinema repertoire of feature films except for brief excerpts of the work;

(g) The making of ephemeral recordings by a broadcasting organization by means of its own facilities and for use in its own broadcast;

(h) The use made of a work by or under the direction or control of the Government, by the National Library[,] or by educational, scientific[,] or professional institutions where such use is in the public interest and is compatible with fair use;

(i) The public performance or the communication to the public of a work, in a place where no admission fee is charged in respect of such public performance or communication, by a club or institution for charitable or educational purpose only, whose aim is not profit making, subject to such other limitations as may be provided in the Regulations;

(j) Public display of the original or a copy of the work not made by means of a film, slide, television image[,] or otherwise on screen or by means of any other device or process: *Provided,* That either the work has been published, or, that the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title; and

> (k) Any use made of a work for the purpose of any judicial proceedings or for the giving of professional advice by a legal practitioner[;]
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> (l) The reproduction or distribution of published articles or materials in a specialized format exclusively for the use of the blind, visually- and reading-impaired persons: *Provided,* That such copies and distribution shall be made on a nonprofit basis and shall indicate the copyright owner and the date of the original publication.
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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.

Private reproductions of published works,[19] reprographic reproduction by libraries,[20] and reproduction of computer programs[21] under certain conditions may also be done even without the copyright holder's consent.

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19 INTELL. PROP. CODE, sec. 187 states:
SEC. 187. Reproduction of Published Work. – 187.1. Notwithstanding the provision of Section 177, and subject to the provisions of Subsection 187.2, the private reproduction of a published work in a single copy, where the reproduction is made by a natural person exclusively for research and private study, shall be permitted, without the authorization of the owner of copyright in the work.
187.2. The permission granted under Subsection 187.1 shall not extend to the reproduction of:
(a) A work of architecture in the form of building or other construction;
(b) An entire book, or a substantial part thereof, or of a musical work in graphic form by reprographic means;
(c) A compilation of data and other materials;
(d) A computer program except as provided in Section 189; and
(e) Any work in cases where reproduction would unreasonably conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author.

20 INTELL. PROP. CODE, sec. 188 states:
SEC. 188. Reprographic Reproduction by Libraries. – 188.1. Notwithstanding the provisions of Subsection 177.1, any library or archive whose activities are not for profit may, without the authorization of the author or copyright owner, make a limited number of copies of the work, as may be necessary for such institutions to fulfill their mandate, by reprographic reproduction:
(a) Where the work by reason of its fragile character or rarity cannot be lent to user in its original form;
(b) Where the works are isolated articles contained in composite works or brief portions of other published works and the reproduction is necessary to supply them; when this is considered expedient, to persons requesting their loan for purposes of research or study instead of lending the volumes or booklets which contain them; and
(c) Where the making of such limited copies is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable and copies are not available with the publisher.
188.2. Notwithstanding the above provisions, it shall not be permissible to produce a volume of a work published in several volumes or to produce missing tomes or pages of magazines or similar works, unless the volume, tome or part is out of stock; Provided, That every library which, by law, is entitled to receive copies of a printed work, shall be entitled, when special reasons so require, to reproduce a copy of a published work which is considered necessary for the collection of the library but which is out of stock.

21 INTELL. PROP. CODE, sec. 189 states:
SEC. 189. Reproduction of Computer Program. – 189.1. Notwithstanding the provisions of Section 177, the reproduction in one (1) back-up copy or adaptation of a computer program shall be permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful owner of that computer program: Provided, That the copy or adaptation is necessary for:
(a) The use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has been obtained; and
(b) Archival purposes, and, for the replacement of the lawfully owned copy of the computer program in the event that the lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

Another limitation to copyright is the fair use of a copyrighted work, provided in Section 185.1 of the Intellectual Property Code, as amended by Republic Act No. 10372:

> **SEC. 185**. *Fair Use of a Copyrighted Work.* – 185.1. The fair use of a copyrighted work for criticism, comment, news reporting, teaching including limited number of copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright.
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> Decompilation, which is understood here to be the reproduction of the code and translation of the forms of a computer program to achieve the interoperability of an independently created computer program with other programs may also constitute fair use under the criteria established by this section, to the extent that such decompilation is done for the purpose of obtaining the information necessary to achieve such interoperability. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:
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> (a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
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> (b) The nature of the copyrighted work;
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> (c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
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> (d) The effect of the use upon the potential market for or value of the copyrighted work.

Should fair use be invoked as a defense to an allegation of copyright infringement, all four factors must be considered based on the facts of the case.[22] Some limitations to copyright in Section 184 refer to fair use, such that they "require the application of the General Fair Use Principle in Section 185 of the [Intellectual Property] Code in addition to the conditions that govern the specific act."[23]

In this case, the Regional Trial Court in its June 16, 2008 Judgment found that the pre-listening function was fair use, and thus, did not infringe the copyright of FILSCAP's members.[24] The *ponencia* now upholds the trial court's analysis.

189.2. No copy or adaptation mentioned in this Section shall be used for any purpose other than the ones determined in this Section, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.
189.3. This provision shall be without prejudice to the application of Section 185 whenever appropriate.

22 *ABS-CBN Corporation v. Gozon*, 755 Phil. 709, 758 (2015) [Per J. Leonen, Second Division].

23 Intellectual Property Office of the Philippines, Guidelines on Statutory Fair Use in the Intellectual Property Code (2024), p. 2. *See also Habana v. Robles*, 369 Phil. 764 (1999) [Per J. Pardo, First Division].

24 *Ponencia*, p. 2.

While a contract is the law between the parties,[25] this Court has nevertheless ruled that pursuant to Article 1306 of the Civil Code,[26] provisions of law which may regulate certain contracts are deemed written therein and shall govern the contracting parties' relations.[27] Regarding the transfer, assignment, or licensing of works under copyright, Section 180 of the Intellectual Property Code provides:

> **SEC. 180.** *Rights of Assignee or Licensee.* – 180.1. The copyright may be assigned or licensed in whole or in part. Within the scope of the assignment or license, the assignee or licensee is entitled to all the rights and remedies which the assignor or licensor had with respect to the copyright.
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> 180.2. The copyright is not deemed assigned or licensed *inter vivos*, in whole or in part, unless there is a written indication of such intention.
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> 180.3. The submission of a literary, photographic[,] or artistic work to a newspaper, magazine[,] or periodical for publication shall constitute only a license to make a single publication unless a greater right is expressly granted. If two (2) or more persons jointly own a copyright or any part thereof, neither of the owners shall be entitled to grant licenses without the prior written consent of the other owner or owners.
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> 180.4. Any exclusivity in the economic rights in a work may be exclusively licensed. Within the scope of the exclusive license, the licensee is entitled to all the rights and remedies which the licensor had with respect to the copyright.
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> 180.5. The copyright owner has the right to regular statements of accounts from the assignee or the licensee with regard to assigned or licensed work.

Section 180 does not explicitly place any restrictions on what may be agreed upon by the parties in a copyright transfer, assignment, or licensing agreement. In contrast, Section 195 renders invalid by operation of law any waiver of moral rights that has certain injurious effects to the author:

> **SEC. 195.** *Waiver of Moral Rights.* – An author may waive [their] rights mentioned in Section 193 by a written instrument, but no such waiver shall be valid where its effects is to permit another:
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> > 195.1. To use the name of the author, or the title of [their] work, or otherwise to make use of [their] reputation with respect to any version or adaptation of [their] work which,

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25 CIVIL CODE, art. 1159 states:
Article 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

26 CIVIL CODE, art. 1306 states:
Article 1306. The contracting parties may establish such stipulations, clauses, terms[,] and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

27 *Heirs of San Miguel v. Court of Appeals*, 416 Phil. 943, 954 (2001) [Per J. Pardo, First Division].

> because of alterations therein, would substantially tend to injure the literary or artistic reputation of another author; or
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> 195.2. To use the name of the author with respect to a work [they] did not create.

It is undisputed that the memoranda of agreement between Wolfpac and FILSCAP contains an exclusivity clause. This clause expressly reserves all other rights of FILSCAP's members, and states that those rights and authorities not expressly authorized in the memoranda are excluded.[28] The rights licensed to Wolfpac are thus delimited by the terms of its contract with FILSCAP. The controversy in this case arose when FILSCAP contested Wolfpac's pre-listening function as an act within the scope of the right it granted to Wolfpac to "offer and sell the [ringback tones] to the general public."[29]

Fair use is a matter of defense in copyright infringement.[30] Here, the root of the alleged infringement is conflicting interpretations of the reasonable extent of a right already licensed by the copyright holder. I agree that Section 185 of the Intellectual Property Code, as amended, may at times supersede the grants and reservations of copyright mutually agreed upon by the contracting parties in a copyright licensing contract. Under circumstances such as the one prevailing in this case, which concerns a breach of contract where the breach is tantamount to copyright infringement, the alleged infringer may invoke fair use regardless of their previous consent to be bound to exercise only those rights included in the contract.

Considering the factors enumerated in Section 185.1, Wolfpac's use of the copyrighted works by means of the pre-listening function is fair use. The pre-listening function is a truncated distribution of an authorized transformation of musical compositions which ultimately redound to the benefit of the copyright holders. While the use is of a commercial nature—a way by which Wolfpac's products may be selected for purchase—it does not appear that Wolfpac generates additional profit other than that of a successful sale by providing this pre-listening function to potential buyers. As discussed, the very nature of musical works as being uniquely identifiable to the average consumer only when in a form audible to them makes audible versions of said works a logical mode of presenting them. Moreover, as pointed out by in the *ponencia*, the pre-listening excerpt is of a "reasonable and necessary" portion of the work, enough to fulfill its advertising purpose but not be a substitute for the ringback tone due to the technical requirements to utilize ringback tones as intended.[31] In sum, even without a finding that Wolfpac's pre-listening function is a reasonable interpretation of the right granted to it to

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28 *Ponencia*, p. 18.
29 *Id.* at 19.
30 *ABS-CBN Corporation v. Gozon*, 755 Phil. 709, 761–762 (2015) [Per J. Leonen, Second Division].
31 *Ponencia*, p. 25.

offer and sell ringback tones, the pre-listening function still constitutes fair use by an entity already authorized to use the copyrighted works.

As a result of the evolution of intellectual property laws into their modern-day conception, copyright is practically indispensable to our present culture and discourse:

> Copyright is profoundly intertwined with culture. Many, if not all, copyrighted works can and do shape identities of persons, groups, communities, and nations. Copyright is not merely economic; it also embodies "discursive power—the right to create, and control, cultural meanings." The State recognizes this not just with copyright law, but also with laws that promote and protect art, literature, culture workers, and the preservation and development of national cultural heritage.[32] (Citations omitted)

A robust and effective copyright system is vital. Yet, by virtue of copyright as "legal superstructure,"[33] those who benefit from the unchecked accumulation of wealth through their monopoly over intellectual creations may not be the individual human authors of intellectual creations, but monolithic corporations:

> Technologies do not create great fortunes by themselves, as any inventor knows. But the laws that determine who owns technology have created monumentally wealthy corporations and individuals into whose hands the revenue flows. It is not just that the richest corporations in the world are owners of copyrights and patents and little else, nor that sixteen of the fifty richest people in the world have fortunes derived in whole or part from copyright industries. These mountainous moneybags are fed every hour of every day by the purchase of products and services around the globe that could be provided for far less – and in some cases for free – if the laws of copyright were written way. Intellectual property is now precisely what its nineteenth-century opponents complained about, on a scale they could not have imagined. In place of the "tax on reading" that they feared, we have taxes on viewing, listening, playing games and cuddly toys.
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> The cost of copyright to ordinary people is not to be measured only by the addition it makes to the price of schoolbooks, music downloads and movie tickets. Its taxing effect also increases the cost of access to television and radio, since the broadcasters have to pay license fees. In fact, because so many things are now protected by copyright – even the design of your flat-pack sofa and the cartoon on your breakfast cereal packet – there is probably no way of computing what share of your expenditure trickles upwards through retailers and distributors and manufacturers to the ultimate owner of the almost everlasting rent-generating monopolies created by patent and copyright laws. By any manner of reckoning, it is quite a chunk. One of the few economists to have tried to do the sums put the figure for 2018 at [USD] 6,000 per person per year.

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32 J. Leonen, Dissenting Opinion in *Filipino Society of Composers, Authors, and Publishers, Inc. v. Anrey, Inc.*, 927 Phil. 577, 742–743 (2022) [Per J. Zalameda, *En Banc*].

33 DAVID BELLOS & ALEXANDRE MONTAGU, WHO OWNS THIS SENTENCE?: A HISTORY OF COPYRIGHTS AND WRONGS 25 (2024).

> Copyright is the elephant in the room when it comes to understanding the origins of the wealth gap in modern societies. It is a major engine of inequality in the twenty-first century.[34] (Citations omitted)

The globalized regime of intellectual property laws also carries with it the danger of disproportionately favoring the interests and desired outcomes of so-called highly-industrialized nations, to the detriment of the Global South:

> An essential instrument in the process of neo-colonialization by economic means is the establishment of a legal framework of international trade, which confers legally enforceable rights that support and safeguard economic penetration and control. This includes, as a prerequisite for the making of an "informal empire" like in colonial times, the creation of property rights and the guarantee of protection of foreign property rights in dependent regions. However, unlike in the colonial era, the most important property rights, which fulfil this role in the twenty-first century, are intellectual property rights. This is because intellectual property rights do not attach to objects of physical substance, like land, raw material or plant and machinery, but are abstract legal concepts of unlimited flexibility as regards extent and time.[35]

This Court must be mindful that "[c]opyright regulation should not be reduced to economic exercises by individuals."[36] In a zealous defense of copyright, courts must take care to curtail the rent-seeking[37] behavior of copyright holders that benefits neither the mind that created the work nor the audiences that benefit from access to it. Laudable efforts to protect proprietary entitlements due to this nation's creative citizens must not undermine, but instead strengthen and reinforce, fundamental policies in favor of the common good.

ACCORDINGLY, I vote to **DENY** the Petition for Review on *Certiorari* and **AFFIRM** the June 16, 2008 Judgment and September 16, 2008 Order of Branch 93, Regional Trial Court, Quezon City in Civil Case No. Q-05-54475.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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34 *Id.* at 325–326.

35 Andreas Rahmatian, *Neo-Colonial Aspects of Global Intellectual Property Protection*, 12(1) J. WORLD INTELLECTUAL PROPERTY 40, 41–42 (2009).

36 J. Leonen, Dissenting Opinion in *Filipino Society of Composers, Authors, and Publishers, Inc. v. Anrey, Inc.*, 927 Phil. 577, 740 (2022) [Per J. Zalameda, *En Banc*].

37 Richard Posner, *The law & economics of intellectual property*, 131(2) DÆDALUS: J. OF THE AMERICAN ACADEMY OF ARTS & SCIENCES 5, 8–9 (2002).