EN BANC

G.R. No. 184661 — FILIPINO SOCIETY OF COMPOSERS AUTHORS AND PUBLISHERS (FILSCAP), Petitioner, **v. WOLFPAC COMMUNICATIONS, INC.,** Respondent. Promulgated: February 25, 2025

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SEPARATE CONCURRING AND DISSENTING OPINION

ZALAMEDA, *J.*:

Petitioner Filipino Society of Composers and Publishers' (FILSCAP) presents Us with another interesting intellectual property question, i.e., whether the act of allowing potential consumers to listen to sample ringtones constitutes public performance.

The present case involves the "pre-listening feature" provided in *http://ring.smart.com.ph,* the website operated by Wolfpac Communications, Inc. (Wolfpac). To promote the downloading of ringback tones for mobile phones operated under the network SMART, the website provides a "pre-listening feature" where a prospective consumer may listen to a 20-second portion of a song before downloading the ringback tone. FILSCAP demanded Wolfpac to secure the necessary performance licenses and pay the appropriate royalties since some of the ringback tones are part of its repertoire. Wolfpac argued that there is no public performance and considered the same as communication to the public as the prospective buyers of the ringback tones may listen to the samples from a place and time individually chosen by them.

The *ponencia* declared that the pre-listening function on the website operated by Wolfpac amounted to communication to the public, but it is a protected activity under the doctrine of "fair use."

I concur with the disposition of the case, specifically insofar as the *ponencia* preserves the hairline distinctions between two economic rights of the copyright owner laid down in the landmark case of *FILSCAP v. Anrey, Inc.* (*Anrey*)[1]: 1) the right to public performance defined under Section 171.6[2] of Republic Act No. 8293, otherwise known as the "Intellectual Property Code

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[1] 927 Phil. 577 (2022) [Per J. Zalameda, *En Banc*].

[2] Section 171.6. "Public performance," in the case of a work other than an audiovisual work, is the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process; in the case of an audiovisual work, the showing of its images in sequence and the making of the sounds accompanying it audible; and, in the case of a sound recording, making the recorded sounds audible at a place or at places where persons outside the normal circle of a family and that family's closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and/or at different times, and where the performance can be perceived without the need for communication within the meaning of Subsection 171.3[.]

of the Philippines" (IPC); and 2) the right to communicate to the public the copyrighted work under Section 171.3.[3] However, I have reservations on the implication of the *ponencia's* discussion relative to the right involved in radio-over-loudspeakers.

Wolfpac's pre-listening feature amounts to communication to the public that is protected under the fair use doctrine

Indeed, the pre-listening function is a form of communication to the public, and not public performance, as differentiated in the landmark case of *Anrey*.

In *Anrey*, the Court determined an overlap between the right to public performance and the right to communicate to the public. This observation is based on the Berne Convention and excerpts from the World Intellectual Property Organization (WIPO) Guidelines:

ARTICLE 11

Right of Public Performance
Article 11, paragraph (1)

Scope of the Right

(I) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:

(i) the public performance of their works, including such public performance by any means or process;

(ii) any communication to the public of the performance of their works.

ARTICLE 11*bis*

Right of Broadcasting

Article 11*bis*, paragraph (1)

Scope of the Right

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

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[3] Section 171.3. 'Communication to the public' or 'communicate to the public' means any communication to the public, including broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite, and includes the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them[.] As amended by Republic Act No. 10372, February 28, 2013.

> (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
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> (ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
>
> (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.
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> 11.3. The paragraph splits the right into two. The author has the exclusive right to authorise public performance of his work.
>
> . . . .
>
> 11.5. The second leg of this right is the communication to the public of a performance of the work. It covers all public communication except broadcasting which is dealt with in Article 11*bis*.

Noticeably, the Berne Convention does not recognize public communication as a right separate and independent from the author's right to public performance or from the right of broadcasting. In 2002, the Philippines became a member of WIPO. As a member, the State had to adhere to the WIPO Copyright Treaty (WCT). The WCT led to changes in our copyright law. In particular, Section 171.3 of Republic Act No. 8293 was lifted directly from Article 8 of the WCT.[4] Article 8 reads:

> Article 8
> Right of Communication to the Public
>
> Without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii) and 14bis(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the *making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them*. (Emphasis supplied)

Article 8 of the WCT was introduced to cover situations in the ever-growing and fast-paced digital environment. The explanatory note to the WCT strengthens this point:

> The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention that deals with the protection of works and the rights of their authors *in the digital environment*.

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[4] Right of Communication to the Public, December 20, 1996, available at *https://wipolex.wipo.int/en/text/295166* (last accessed on July 10, 2024), art. 8. The Philippines ratified the WCT on July 4, 2002.

> As to the rights granted to authors, *apart from the rights recognized by the Berne Convention*, the Treaty also grants: (i) the right of distribution; (ii) the right of rental; and (iii) *a broader right of communication to the public.*
>
> The right of communication to the public is the right to authorize any communication to the public, by wire or wireless means, including "the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them." *The quoted expression covers, in particular, on-demand, interactive communication through the Internet.*[5] (Emphasis supplied)

As a result of the accumulation of treaties, international conventions, legislative history, and other secondary sources, We made the following distinction: if "public communication" was done using *traditional forms* such as radio-over-loudspeakers, then the right involved is the *public performance right* under Section 177.6 of the IPC. On the other hand, if the communication was done in the *digital landscape* such as the internet, then the right violated is the separate economic *right to publicly communicate the work* under Section 177.7 of the IPC.

To illustrate, a streaming service in the United Kingdom named TVCatchup offers live streams of free-to-air UK television broadcasts over the internet. The UK High Court referred to the Court of Justice of the European Union (CJEU) whether TVCatchup's streaming activities were a communication to the public. The CJEU held that the retransmission of protected works and broadcasts over the internet was a new communication to the public and therefore must be authorized by the authors concerned.[6]

Another illustrative case is *Nils Svensson v. Retriever Sverige AB.*[7] The applicants, all journalists, wrote press articles that were published in the *Göteborgs-Posten* newspaper and freely accessible on the *Göteborgs-Posten* website. Retriever Sverige operates a website that provides its clients, according to their needs, with lists of clickable internet links (hyperlinks) to articles published by other websites. The CJEU held that the activity of linking to third-party works on the internet is described as an act of public communication, irrespective of the type of link (the judgment makes no distinctions) users may have before them.

Unauthorized links to radio streams are also a violation of the right to communication to the public. In *TuneIn Inc. v. Warner Music UK Ltd. & Anor,*[8] the claimants either represent, own, or hold exclusive licenses to copyrights in sound recordings of music. On the other hand, defendant TuneIn is a company that operates TuneIn Radio, which enables users in UK to access radio stations from around the world by broadcasting the same on the internet. The appellate court of England and Wales clarified that every transmission or retransmission of the work by a specific technical means must be individually

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5 *Id.*
6 *ITV v. TVCatchup*, CJEU 7.3.2013, C-607/11.
7 CJEU 2.13.2014, C-466/12.
8 [2021] EWCA Civ 441.

authorized by the copyright holder. Further, for purposes of determining whether there is "communication," the appellate court explained that the work must be made available to the public in such a way that they may access it, whether or not they actually access the work. It confirmed that there is communication to the public in the "transmission of television and radio broadcasts, and sound recordings included therein, to the customers of hotels, public houses, spas, café-restaurants and rehabilitation centers by means of television and radio sets." As TuneIn is a different kind of communication targeted at a different public in a different territory, the court concluded that the rights of the copyright holders were violated.

Here, the alleged infringing act is the "pre-listening feature" on Wolfpac's website providing for a 20-second clip of a song. This is a clear demonstration of the right to communicate to the public (Section 171.3), or for other Member States, they regard this as the "making available to the public" right. The distinguishing feature of the "making available to the public" right is that the transmission of the protected work can be accessed by the public with discretion, not just to the place, but also discretion to the time, which is only possible on Internet-based or On-Demand platforms (such as Netflix, Spotify, or Youtube). The "pre-listening feature" falls under the same category since prospective customers may access the audio clips on the website operated by Wolfpac any place, anytime, at their own convenience. However, Wolfpac did not acquire such right as the copyright owners limited the assignments they made to the right of public performance.

The same is true with FILSCAP. It did not sufficiently establish a cause of action considering that it failed not only in alleging the compositions that were infringed, but also in proving that it acquired the right to communicate to the public the said compositions.

It must be pointed out that although FILSCAP is deputized through agreements it entered into with various composers, authors and publishers, record labels, and other foreign societies, it does not mean that FILSCAP is the sole assignee of each and every copyright owner. Thus, it would be prudent to at least enumerate some of the compositions allegedly infringed. It's no easy task but nonetheless necessary to prevent FILSCAP from making a shotgun approach where the court would simply rely on FILSCAP's claims without verifying or cross-referencing if indeed it was the assignee. Otherwise, FILSCAP's authority may be far too overreaching and anti-competitive.

Further, FILSCAP has consistently based its cause of action for infringement on its alleged right to public performance. This makes it suspect that FILSCAP does not possess the right to "communicate to the public" or "make available to the public" the copyrighted work.

Assuming FILSCAP acquired the right to "communicate to the public" or the "make available to the public" the disputed musical compositions, the use of the pre-listening function is a protected activity under the fair use

doctrine. Sections 184 and 185 of the IPC provide for instances that amount to fair use (statutory fair use) and, hence, do not constitute copyright infringement, thus:

> **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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> (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; ([Section] 10(1), [Presidential Decree] No. 49)
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> (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; ([Section 11(3)], Presidential Decree No. 49)
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> (c) The reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topic, 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; ([Section] 11, [Presidential Decree] No. 49)
>
> (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; ([Section] 12, [Presidential Decree] No. 49)
>
> (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;
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> (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;
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> (g) The making of ephemeral recordings by a broadcasting organization by means of its own facilities and for use in its own broadcast;
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> (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; (n)
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> (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
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> (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.
>
> 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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> **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. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs may also constitute fair use.

Obviously, the pre-listening feature does not fall under any of the specific instances of statutory fair use. Nonetheless, the said activity may still be categorized as fair use under general fair use principles, particularly, by applying the four fair use factors enumerated in the second portion of Section 185.1, thus: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit 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.[9]

As to the first factor, I agree with the *ponente* that the pre-listening function is not necessarily commercial. To second this notion, the pre-listening function is a necessary feature of a sanctioned commercial activity that Wolfpac is licensed to undertake. As correctly ruled by observed by the trial court, [h]uman nature is such that one has to "sample" a product first before setting one's eyes on it with finality.[10] Consumers would generally want to hear first the song before purchasing the same as their ringtone. Thus, the first factor should be weighed in favor of fair use.

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[9] Section 185, Republic Act No. 8293.
[10] *Rollo*, p. 38.

On the second fair use factor, the *Anrey* case, *citing Google v. Oracle*,[11] made a distinction between copyrights that have a functional purpose against the creative and artistic types. The Supreme Court of the United States (SCOTUS) ruled that computer programs differ to some extent from many other copyrightable works because computer programs always serve a functional purpose. Because of this difference, the SCOTUS accorded lesser protection to computer programs "by providing a context-based check that keeps the copyright monopoly afforded to computer programs within its lawful bounds." The fact that computer programs are primarily functional makes it difficult to apply traditional copyright concepts in that technological world. Copyright's protection may be stronger where the copyrighted material is fiction, not fact, where it consists of a motion picture, rather than a news broadcast, or where it serves an artistic rather than a utilitarian function.[12] Music falls under the more artistic and creative aspect that deserve more protection than other copyright works. Clearly, the copyrighted materials are artistic in nature, hence the second factor should be taken against fair use.

Third, the pre-listening feature on the website operated by Wolfpac only utilizes a short portion of the copyrighted material. It holds no other purpose other than to identify the musical work and entice the consumers to purchase the ringback tone. Thus, I agree that the length of the clip is not only short but is also inconsequential, which should be taken in favor of fair use.

As to the fourth fair use factor, Wolfpac's use of the sample songs in the pre-listening function would not cause substantial economic harm to the composers, but would actually do them good as the pre-listening function serves as an effective marketing tool for them to sell the ringback tones they commissioned Wolfpac for.

Musical compositions are protected from the moment of their creation

I agree with the *ponente*'s discussion that musical compositions are among the literary and artistic works that are subject of copyright under Section 172 of the IPC. However, I respectfully submit that musical compositions are protected from the moment of their creation and does not require that it must be embodied in a sound recording or other forms of fixation.[13] This is in accordance with Sections 172 and 178 of the IPC, which provide:

> **Section 172.** *Literary and Artistic Works.* — 172.1. Literary and artistic works, hereinafter referred to as "works", are original *intellectual*

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[11] 593 U. S. ____ (2021).

[12] *Id.* at 15. *see also Stewart v. Abend*, 495 U.S. 207, pp. 237–238 (1990). *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, p. 563 (1985).

[13] *Ponencia*, p. 9.

> *creations in the literary and artistic domain protected from the moment of their creation* and shall include in particular:
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> . . . .
>
> (f) Musical compositions, with or without words;
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> . . . .
>
> **Section 178**. *Rules of Copyright Ownership*. — Copyright ownership shall be governed by the following rules:
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> 178.1 Subject to the provisions of this section, in the case of original literary and artistic works, copyright shall belong to the author of the work[.][14] (Emphasis supplied)

The Court in *Cosac, Inc. v. Filipino Society of Composers, Authors and Publishers, Inc.*[15] explained that:

> A musical composition is an intangible work of art composed of combination of sounds perceptible to the senses. It is separate and distinct from the tangible object that embodies it, such a sheet music as described by Section 181 of the IPC:
>
> . . . .
>
> Chapters XII and XIII of the IPC govern the fixations of sounds in the form of sound recordings. These chapters provide for the moral rights of the performers, the rights of producers of sound recordings, and limitations on the said rights.
>
> A distinction exists between a musical composition which is protected by copyright and the performance or fixation of a musical composition. Such distinction is relevant since not only the composers, authors, and publishers, but also the performers and sound recording producers should be renumerated when the fixation or performance of their sound recording is being performed in public[.]

Clearly, musical compositions are protected from the moment of their creation. Sound recording or other forms of fixation is necessary in neighboring rights as provided for by the IPC.

Radio-over-loudspeakers remains to be a form of public performance

I observed, however, that the *ponencia* in a way abandoned the Court's ruling in *Anrey* in that the act of radio-over-loudspeakers can no longer be considered "public performance" in view of the clarification made in

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[14] Sections 172 & 178 of the Intellectual Property Code.
[15] G.R. No. 222537, February 28, 2023 [Per J. Hernando, *En Banc*].

Philippine Home Cable Holdings, Inc. v. FILSCAP.[16] The *ponencia* states that "if the possibility of perceiving the performance requires the means of communicating the works to the public, such as broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite, and making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them, then it is considered as an exercise of the right of "communication to the public."[17]

I maintain that radio-over-loudspeakers does not amount to broadcasting, rebroadcasting, retransmission by satellite. Neither does it amount to retransmission by cable. Thus, it cannot be considered as "communication to the public."

For ease of reference, I will reproduce the relevant points previously stated in my Concurring Opinion for *Philippine Home Cable Inc. v. Filscap*, *viz*:

> What is complained as infringing in this case is the cablecasting of videoke laser disc recordings done by Philippine Home Cable Holdings, Inc. (Home Cable), pursuant to an agreement with Precision Audio Videoke Service. These videoke recordings were played by Home Cable in three of its cable channels (the *Home Cable Case*).
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> The IPC does not specifically define cablecasting but secondary sources define the act as:
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> "[C]ablecasting" means the transmission by wire for public reception of sounds, images or sounds and images or of the representations thereof. Transmission by wire of encrypted signals is "cablecasting" where the means for decrypting are provided to the public by the cablecasting organization or with its consent. "Cablecasting" shall not be understood as including transmissions over computer networks or any transmission where the time and place of reception may be individually chosen by members of the public[.]
>
> In *Anrey,* what was involved is a secondary transmission of a radio broadcast and We perceived such secondary transmission as a public performance. On the other hand, the present Home Cable case involves an original transmission made by *Home Cable*. For the *ponente*, cablecasting falls under the right to public communication for this amounts to making that work accessible to members of the public from a place or time individually chosen by them, which is the very essence of the "communication to the public" right in the IPC.
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> Perhaps this statement is taken from the 1997 version of [Section] 171.3 of the IPC which states:
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> "Communication to the public" or "communicate to the public" means the making of a work available to the public by wire or wireless means in

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[16] G.R. No. 188933, February 21, 2023 [Per SAJ Leonen, *En Banc*].
[17] *Ponencia*, pp. 13–14.

such a way that members of the public may access these works from a place and time individually chosen by them.

Due to its very restricted application, Member States has regarded this as the restricted right of "making available to the public" the copyrighted material. In the U.S., this right is reserved to control interactive, on-demand dissemination of copyrighted works over the Internet, including provision of access to streams or downloads. Also, the European Union, under Recitals 24-27 of Article 3, Directive 2001/29/EC provide a background on this right:

> (24) The right to make available to the public subject-matter referred to in Article 3(2) should be understood as covering all acts of making available such subject-matter to members of the public not present at the place where the act of making available originates, and as not covering any other acts.
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> (25) The legal uncertainty regarding the nature and the level of protection of acts of on-demand transmission of copyright works and subject-matter protected by related rights over networks should be overcome by providing for harmonised protection at Community level. It should be made clear that all rightholders recognised by this Directive should have an exclusive right to make available to the public copyright works or any other subject-matter by way of interactive on-demand transmissions. Such interactive ondemand transmissions are characterised by the fact that members of the public may access them from a place and at a time individually chosen by them.
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> (26) With regard to the making available in on-demand services by broadcasters of their radio or television productions incorporating music from commercial phonograms as an integral part thereof, collective licensing arrangements are to be encouraged in order to facilitate the clearance of the rights concerned.
>
> (27) The mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Directive.

However, We noticed that the *ponencia* used the disjunctive word "OR" when the law used the conjunctive word "AND" in the phrase "from a place and time individually chosen by them." This has the tendency to significantly change the meaning of the provision.

The provision uses the word "AND" which implies that the transmission of the protected work should be accessible by the public with discretion not just to the place, but also discretion to the time. This for me is the exact essence of the "communication to the public" right under [Republic Act No.] 8293, which should be limited to On-Demand platforms (such as Netflix, Spotify, or Youtube) since these platforms offer discretion to access communication of the work at a place AND time of their own choosing. It is only the Internet that makes such discretion possible.

Even the Intellectual Property Office of the Philippines (IPOPHIL) recognizes such distinction. In an official publication issued by the IPOPHIL for the WIPO, the IPOPHIL enumerates public performance and public

communication right, on the one hand; and the making of the works available on the Internet for on-demand access by the public, on the other; as among the economic rights of the copyright owner.

Finally, the *ponencia* made reference to the definition under RA 10372 of "communication to the public" which includes "broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite."

Following the above disquisitions, I agree with the ponente that the right infringed is the "communication to the public" right. If we are to harmonize the definition of "communication to the public" under [Republic Act No.] 8293 with the present definition of the term under [Republic Act No.] 10372, then it may very well be argued that the modern day formulation of the term should prevail.

The definition of the term "communication to the public" under RA 10372 is the result of the State's joint accession to the WCT17 and the WIPO Performances and Phonograms Treaty (WPPT) in [July 4,] 2002. Although [Republic Act No.] 10372 took effect as an amendment to the IPC only in 22 March 2013, both the WCT and the WPPT were concluded in 1996. As the *ponencia* states, in a sense both treaties were integrated in our domestic legislation even before the amendment to the IPC was made by [Republic Act No.] 10372.

In fine, the acts constituting "communication to the public" under [Republic Act No.] 10372 reflects the true scope of the "communication to the public" right. Having said this, I would like to tread on this very carefully so as not to undesirably overexpand the coverage of this right.

There are only five variations in which the expanded "communication to the public" covers: 1) broadcasting; 2) rebroadcasting; 3) retransmitting by cable; 4) broadcasting and retransmitting by satellite; and 5) making the work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them. The fifth is known as the limited right of "making the work available" to the public the coverage of which have been sufficiently discussed above.

Broadcasting has been defined by [Republic Act No.] 10372 (which was lifted from the WPPT) 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. The last phrase should be interpreted as retransmitting by satellite under the fourth enumeration.

Our law does not define rebroadcasting but Article 3(g) of the Rome Convention defines "rebroadcasting" as the "simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization." We acceded to the Rome Convention on [June 25,] 1984. Likewise the Rome Convention is integrated in the WPPT. Rebroadcasting under the Rome Convention is limited to over-the-air transmissions.

> Retransmitting by cable or cable retransmission is the communication to the public by wire of a broadcast by an organization other than the original one. Cable-originated transmissions or cablecasting is not specifically enumerated but some states accord them protection the same way as broadcasting.
>
> Following a rundown of these definitions, how this impacts the Court's ruling in the *Anrey case* is completely negligible. Radio-over-loudspeakers, for obvious reasons, does not amount to broadcasting, rebroadcasting, retransmission by satellite. Neither does it amount to retransmission by cable. Although it uses cable wires, it does not amount to cable retransmission. Besides, the Berne Convention sees this as a separate and distinct act, apart from broadcasting, and rebroadcasting.[18]

From the foregoing disquisitions, I concur with the *ponencia*, save for the reservations expressed above, and vote to **DENY** the Petition.

RODIL V. ZALAMEDA
Associate Justice

[18] Concurring opinion.