

# Intellectual Property Protection in the ccTLDs: The Philippines

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dotPhone

**WIPO Conference on Intellectual Property  
Questions Relating to the ccTLDs**

Geneva, Switzerland  
February 20, 2001

# Overview

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- v Philippine Intellectual Property Laws
- v The Electronic Commerce Act
- v dotPhone UDRP

# Philippine IPR Laws

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- v Intellectual Property Code  
(Republic Act No. 8293)
  - Copyright
  - Trademarks and Service Marks
  - Patents
  
- v Sufficient statutory protection
  
- v Rampant IPR Violations: Video & Music  
CDs (MP3 disks), Playstation Games, garments, software,  
pharmaceutical products, watches, musical instruments, LPG
  
- v Law Enforcement: Largely funded and driven  
by private sector efforts: Business Software Alliance  
(Microsoft) and Large Firms (Sony, Levi's, Shell, Disney,  
Nike)

# Philippine IPR Laws

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- v IPR Treaties and Conventions
  - **Berne Convention** for the Protection of Literary and Artistic Works
  - **Paris Convention** for the Protection of Industrial Property
  - International Convention for the Protection of **Performers, Producers of Phonographs and Broadcasting Organizations**
  - Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**)
  - WIPO Performances and Phonograms Treaty
  - WIPO Copyright Treaty
  - Convention Establishing the **World Intellectual Property Organization**

# Domain Name Dispute

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Stock Quote:	Open	Close	High	Low	Vol
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Last Update: 31 May 2000



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PLDT and Y2K.  
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**Stock Quote:**

Open	Close	High	Low	Vol
690.00	700.00	705.00	690.00	367,500

Last Update: 17 Aug 2000



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# PLDT.COM

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# PLDT v. PLDTI

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## *Causes of Action*

- ✓ Improper use of Trade Name (IP Code)
- ✓ Unfair Competition
- ✓ Abuse of Right/Bad Faith

## *Defenses*

- ✓ No inherent right to pldt.com, generic
- ✓ No legal capacity to sue
- ✓ PLDT is negligent
- ✓ Jurisdiction over Host and NSI
- ✓ Freedom of Expression

# E-Commerce Act

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- ✓ Signed into Law June 14, 2000
- ✓ Based on UNCITRAL Model Law on Electronic Commerce
- ✓ Legal recognition of electronic documents
- ✓ Declares electronic documents admissible in evidence
- ✓ Hacking is now a crime

# E-Commerce Act

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## Service Provider Liability

(i) The service provider: (1) **does not have actual knowledge**, or (2) **is not aware of the facts or circumstances** from which it is apparent, that the making, publication, dissemination or distribution of such material is unlawful or infringes any rights subsisting in or in relation to such material, or (3) **having become aware, advises the affected parties within a reasonable time, to refer the matter to the appropriate authority or, at the option of the parties, to avail of alternative modes of dispute resolution;**

(ii) The service provider **does not knowingly receive a financial benefit** directly attributable to the unlawful or infringing activity; and,

(iii) The service provider **does not directly commit any infringement** or other unlawful act and **does not induce or cause another person or party to commit** any infringement or other unlawful act and/or **does not benefit financially** from the infringing activity or unlawful act of another person or party (Implementing Rules and Regulations of the ECA).

# E-Commerce Act

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## Service Provider Liability

- ✓ Basically codified jurisprudence on intermediary liability
- ✓ Service Provider broadly defined to include ccTLDs, Telcos, Cellcos, ISPs, ASPs
- ✓ Elements to avoid liability for IPR infringement:
  - No knowledge or awareness of infringement
  - No financial benefit
  - No direct or indirect commission of infringement

# E-Commerce Act

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## On-Line Piracy

SEC. 33. Penalties. - The following Acts shall be penalized by fine and/or imprisonment, as follows:    x x x        x x x        x x x

b) Piracy or the **unauthorized copying**, reproduction, dissemination, distribution, importation, **use**, removal, alteration, substitution, modification, storage, **uploading**, **downloading**, communication, making available to the public, or **broadcasting** of **protected material**, electronic signature or **copyrighted works** including legally protected sound recordings or phonograms or information material on protected works, **through the use of telecommunication networks**, such as, but not limited to, the **internet**, in a manner that infringes **intellectual property rights** shall be punished by a minimum fine of one hundred thousand pesos (P100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years;

# E-Commerce Act

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## On-Line Piracy

- v Lobbied by Business Software Alliance
- v Same criminal liability as the crime of hacking (note the unlimited civil liability)
- v Examples of on-line piracy:
  - Downloading or forwarding of MP3s, images, video
  - Unauthorized use of marks which constitute trademark infringement
  - Unauthorized framing



# dotPhone UDRP

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- v Based mainly upon UDRP and UDRP Rules
- v Deemed necessary because of anticipated sale of domain names internationally
- v Minor changes introduced to “improve” UDRP
- v Accredited dispute resolution provider: WIPO

# dotPhone UDRP: Changes

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## ICANN

- v Registrant warrants that the registration does not violate the rights of third parties

## dotPhone

- v Same warranty but limited only to the laws effective in the jurisdiction where the registrant resides or conducts business.

REASON: It would be unfair to hold the registrant responsible for violating the rights of third parties established by laws which the registrant could not reasonably have known.

# dotPhone UDRP: Changes

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## ICANN

- v Defense of good faith is rejected if the name is used to tarnish the trademark or service mark at issue
- v Losing registrant has **10 days** to file a suit to stay the implementation of decision

## dotPhone

- v Clause is deleted. Use of name to express negative opinions on the trademark should be allowed under Freedom of Expression
- v Period is extended to **30 days** to give the litigant sufficient time to engage counsel and prepare the complaint

Thank You