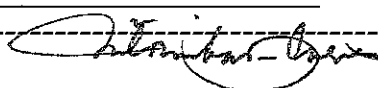


**G.R. No. 188933– PHILIPPINE HOME CABLE HOLDINGS, INC.,  
Petitioner, v. FILIPINO SOCIETY OF COMPOSERS, AUTHORS AND  
PUBLISHERS, INC., Respondent.**

Promulgated:  
February 21, 2023

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**CONCURRING OPINION**

**SINGH, J.:**

I concur with the *ponencia's* findings that Philippine Home Cable Holdings, Inc. (**Home Cable**) is guilty of copyright infringement. In arriving at this conclusion, the Senior Associate Justice, Hon. Marvic Mario Victor F. Leonen, aptly distinguished the provisions of Republic Act No. 8293 or the Intellectual Property Code (**IP Code**) on “public performance” and “communication to the public” to determine the existence of infringement. Nonetheless, I wish to add to the discussions of these issues, in defining the economic right transgressed by Home Cable.

Copyright infringement is committed by any person who shall use original literary or artistic works, or derivative works, without the copyright owner’s consent in such a manner as to violate the latter’s copyright or economic rights.<sup>1</sup> Sec. 177 of the IP Code enumerates these as follows:

SECTION 177. Copyright or Economic Rights. - Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

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<sup>1</sup> *Olaño v. Lim Eng Co*, G.R. No. 195835, 14 March 2016.



177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n)

177.5. Public display of the original or a copy of the work;

177.6. Public performance of the work; and

177.7. Other communication to the public of the work. (Sec. 5, P.D. No. 49a)

I submit that it is important to identify the specific economic right violated in this case, to properly narrow down the legal and jurisprudential bases for our findings.

*Distinction between public performance and communication to the public*

In my separate and concurring opinion in *Filipino Society of Composers, Authors and Publishers, Inc. v. Anrey, Inc.*,<sup>2</sup> I explained that the key distinction between “public performance” and “communication to the public” lies in the method that the copyrighted work is made available to the public.

Section 171.6 of the IP Code defines “public performance,” “in the case of a sound recording,” as “**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.**”

Under Section 171.3 of the IP Code, “communication to the public” or “communicate to the public” refers to “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.” Section 202.9 of the IP Code further defines “communication to the public of a performance or a sound recording” as “the transmission to the public, by

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<sup>2</sup> G.R. No. 233918, August 9, 2022.



**any medium, otherwise than by broadcasting**, of sounds of a performance or the representations of sounds fixed in a sound recording.”

The *ponencia* explained that pursuant to Section 177 of the IP Code, Home Cable is liable for copyright infringement under Section 171.3 having cablecasted the copyrighted materials of Filipino Society of Composers, Authors And Publishers, Inc (**Filscap**) via “communication to the public.” Home Cable’s act of “allegedly cablecasting the karaoke channels cannot be considered an exercise of the public performance right over the subject musical compositions. Concededly, the works were performed by means of certain processes, and because the musical compositions were fixed in sound recordings in a videoke format, they were made 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.”<sup>3</sup> The *ponencia* reasons that these “performances” fall within the scope of Subsection 171.3, and not under Subsection 171.6.

I agree.

Here, Home Cable broadcasted the copyrighted musical compositions to its customers through its two cable channels, or through wire or wireless means. Clearly, this act falls squarely within the definition of Section 171.3 of the IP Code on “communication to the public.” This method of making music available to the public cannot constitute “public performance” since Section 171.6 specifies that the public performance of a sound recording must be perceived “without the need for communication within the meaning of Subsection 171.3.” This is because the definition of public performance under Section 171.6 excludes communication to the public under Section 171.3. Cablecasting through its karaoke channels, considered as premium channels and not mere free-to-air TV signals, is not the “public performance” contemplated by the IP Code.

This is in accord with the Berne Convention for the Protection of Literary and Artistic Works, to which the Philippines is a party,<sup>4</sup> and its accompanying Guide which separates the concept of public performance and broadcasting, that is, communication to the public.

Let me underscore that while the Court may take guidance from foreign courts in developing local jurisprudence, it is always vigilant in applying any such learnings to properly fit our domestic laws. In this case, by the fact that our IP Code specifically distinguishes the economic right of “public

<sup>3</sup> *Decision*, p. 23.

<sup>4</sup> *See* Treaties, <https://www.ipophil.gov.ph/reference/philippine-acceded-intellectual-property-treaties/>.



performance” and “other communication to the public,” we must be careful to maintain these distinctions.

Thus, I concur with the *ponencia*'s finding that Philippine Home Cable Holdings, Inc. is liable for copyright infringement against the Filipino Society of Composers, Authors and Publishers, Inc., and I vote to **DENY** the Petition.



**MARIA FILOMENA D. SINGH**  
Associate Justice