



IBP MAKATI NEWSLETTER

Volume VI, Issue 1

July 2009

The President's Corner

BY: JOEL RAYMOND R. AYSON
PRESIDENT, IBP MAKATI CITY CHAPTER
2009-2011

I take pride in introducing the energetic and hard-working members of the IBP Makati City Chapter Board of Officers: Joel R. Ayson, *President*, Grace Q. Panagsagan, *Vice President*, Jose M. Jose, *Secretary*, Liza G. Cochico, *Treasurer*, Gbert L. Zerrudo, *Auditor*, Anton W. Dee, *PRO*, Bong I. Somera, Jr., Juor P. Buted, Greg F. Fernandez, Alex C. Dy and Bats G. Cuyugan, *Directors*, Pixie T. Serrano, *Assistant Secretary*, Eric R. Recalde, *Assistant Treasurer*, and Danny O. Cortina, *Ex-Officio Director*. Your Board commenced their two-year term of office on April 1, 2009 and took their oath before Supreme Court Justice Antonio T. Carpio at the Supreme Court on June 19.

Buckling down to work, our first regular Board meeting was held on April 15, followed by a planning session on May 22 to 23 to discuss and map out the Chapter's programs for the term. The Directors/Officers in charge and their respective committee heads submitted their plans of action, notable of which are the legal aid program, Chapter newsletter and website, MCLE compliance program, recruitment and directory update, continuing bench and bar dialogues, barangay seminars and community outreach activities. Your Chapter will also launch the first ever hall of fame for outstanding Makati City judges, prosecutors and court personnel. Of course, various fund raising events, sports and special projects were tackled to support the various activities planned by your Chapter.

Even before the planning session, your chapter was already in a flurry of activities. On April 25, the Chapter's delegates participated in the IBP Southern Luzon Region elections where Atty. Amador Z. Tolentino was elected Governor. On May 8, the Chapter's Board of Officers were invited by the Supreme Court for the launching of the International Humanitarian Law and Justice Information Caravan. Heeding the call of the Judicial and Bar Council, the Chapter also attended the May 21 JBC sponsored dialogue on the Survey System for applicants to vacant positions in the Court of Appeals.

In light of the JBC initiative, your Chapter needs your support and participation in the survey so we can recognize

deserving Makati judges, prosecutors and court personnel. Hopefully, we can also contribute to the JBC database for evaluating applicants to higher judicial positions.

On July 18, at 10:30 a.m., your chapter will sponsor a special block screening of "*Harry Potter and the Half Blood Prince*" at the Glorietta 4, Cinema 6, Ayala Malls. Having read the entire Harry Potter series, I am sure the movie version will deliver the same thrill and excitement. We look forward to see you at the moviehouse.

Your Chapter will hold its Induction Ball on August 20. We are inviting all IBP Makati City members to attend and have an opportunity to meet your officers and know the new members of the Chapter.

The Legal Education Committee has scheduled MCLE seminars for the third compliance period on November 16, 13, 20 and 27 and December 4, 2009. The seminar will be a complete 36 unit course every Friday at the A Venue, Makati Avenue, Makati City. As an incentive, early bird discounts will be given. We are inviting our *pañeros y pañeras* to attend the MCLE seminar considering that the present compliance period will end on April 14, 2010. Being a Friday also, what better way to end the week than with some cocktails - truly *TGIF!*

We promise an exciting term as more activities are lined up in the months ahead. For details of the chapter activities, you can visit the chapter website at www.ibpmakati.com or call the chapter offices at 8134744.



The Chapter's Planning Session for the new term took place at the Anvaya Cove, Subic, Zambales, from May 22-23, 2009.

NEW IBP MAKATI OFFICERS/DIRECTORS TAKE OATH OF OFFICE

BY: J. ALESSANDRA G. COCHICO

The Board of Executive Officers and Directors of the IBP Makati Chapter for the term 2009-2011, led by President Joel R. Ayson, as well as the Chapter's committee chairpersons and members, took their oath of office before Associate Justice Antonio T. Carpio at the Supreme Court's Dignitaries' Lounge on 19 June 2009.

The members of the IBP Makati Board of Executive Officers and Directors, who were elected by the Chapter's members on 28 February 2009 at the Crown Regency Hotel, are as follows:

President	:	Joel Raymond R. Ayson
Vice-President	:	Grace P. Quevedo-Panagsagan
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Treasurer	:	Josephine Alessandra G. Cochico
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Asst. Secretary	:	Carmine Eliza T. Serrano
Asst. Treasurer	:	Eric R. Recalde.



IBP Makati directors and officers at their oath taking before Supreme Court Associate Justice Antonio T. Carpio (far right). From left to right: Assistant Treasurer Eric Recalde, Treasurer Liza Cochico, Auditor Gbert Zerrudo, Secretary Jojo Jose, Director Bong Somera, President Joel Ayson, Vice President Grace Panagsagan, Director Bats Cuyugan, Director Gerry Fernandez, and Director Juor Buted.

IBP MAKATI SPONSORS BLOCK SCREENING OF HARRY POTTER AND THE HALF-BLOOD PRINCE

BY: DANILO O. CORTINA

The IBP Makati Chapter will hold a block screening of the much awaited movie, "*Harry Potter and the Half-Blood Prince*," on July 18, 2009 (Saturday), at 10:30 a.m. at Glorietta 4, Cinema 6, Ayala Malls, Makati City.

Spearheaded by the immediate past president and ex-officio director, Danilo O. Cortina, and the incumbent director and chairman of the Special Project's Committee, Juan Orendain Buted, the block screening aims to raise funds to support the various projects and activities of the IBP Makati Chapter.

Harry Potter and the Half-Blood Prince is the 6th installment of the fantasy-adventure film "*Harry Potter*" based on the novel of the same name by J.K. Rowling. It is set during Harry Potter's sixth year at Hogwarts. In this penultimate story in the saga of the Boy Who Lived, Harry finds a mysterious potions book bearing the inscription 'Property of the Half-Blood Prince'. As he begins to use its custom instructions and spells, he also embarks on a journey through the past, with Dumbledore at his side, to unravel the mystery of Dark Lord Voldemort (archenemy of protagonist Harry) and, eventually, his immortality. Together with Dumbledore, Harry works to find the key to unlock Voldemort's defenses mainly by destroying his horcruxes, his devices to split his soul to become immortal. Further complicating things are the emotional confusions and conflict resolutions of mid-adolescence. Despite these raging concerns, the main goal is for Harry to realize that love is his ultimate battle gear, something that Voldemort never has, and never will, experience.

This event is made possible through the participation of the following Makati-based law firms: Angara Abello Concepcion Regala & Cruz Law Offices, Cortina & Buted Law Offices, Villaraza Cruz Marcelo & Anganco, JG Law, Jose & Duremdes Law Offices, Platon Martinez Flores San Pedro & Leño, Quasha Ancheta Peña & Nolasco, Quisumbing Torres, Siguion Reyna Montecillo & Ongsiako Law Offices, SyCip Salazar Hernandez & Gatmaitan, Carag Jamora Somera & Villareal Law Offices, and Villanueva Gabionza & de Santos.

SUPREME COURT LAUNCHES INTERNATIONAL HUMANITARIAN LAW AND JUSTICE PHOTO EXHIBIT AND INFORMATION CARAVAN

BY: JOEL R. AYSON

Makati City was selected by the Supreme Court for the inauguration of the *Inter Arma Caritas* Photo Exhibition and Briefing on International Humanitarian Law (IHL) held at the Makati City Hall Lobby on May 8, 2009. IHL is defined as a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflicts. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare employed – *the law of armed conflict*.

The photo exhibit and information caravan is a partnership of the Supreme Court, the International Committee of the Red Cross (ICRC) and the Philippine National Red Cross (PNRC) to ensure respect for international humanitarian law. True to the phrase “a picture paints a thousand words”, the photographs capture the tragic consequences of armed conflicts around the world, including the Philippines. The haunting images are a call for the respect of human dignity in times of armed conflict and other situations of violence; a reminder to states and governments of their responsibilities and obligations under IHL.

Chief Justice Reynato S. Puno, who delivered the keynote address through ACA Jose Midas P. Marquez, said that the launching of the photo exhibit and information caravan is timely, as it comes at a time when the Philippine Judiciary is delving into the realm of judicial protection of human rights to address what has been derisively called a culture of impunity. It is the hope of the Supreme Court that as it performs its role as constitutional protector of the human rights of the Filipino people, more Filipinos will make it their mission as well, to defend and safeguard human rights.

Regional Trial Court Makati Executive Judge Ma. Cristina J. Cornejo gave the opening remarks. Messages were delivered by Deputy Court Administrator Nimfa Cuesta-Vilches and ICRC Deputy Head of Delegation Christoph Sutter. Others in attendance were RTC and MTC Judges of Makati, RTC Clerk of Court Jun Escasinas, IBP Makati President Joel Ayson and representatives of the ICRC and PNRC. After Makati City, the photo exhibit will proceed to RTC Quezon City and other judicial regions to promote respect for IHL.

JUDICIAL AND BAR COUNCIL HOSTS DIALOGUE WITH IBP ON THE SURVEY SYSTEM

BY: JOEL R. AYSON

The Judicial and Bar Council (JBC) conducted a dialogue with members of the IBP in the National Capital Judicial Region (NCJR) at the Old Session Hall of the Supreme Court on May 21, 2009 from 10:00 a.m. to 2:00 p.m. The well-attended dialogue aimed to generate feedback from the Integrated Bar of the Philippines (IBP) on the JBC’s pilot survey system for background information on applicants to the Court of Appeals. The IBP Makati City Chapter was ably represented by its President Joel R. Ayson, Vice-President Grace Q. Panagsagan, Director Bong I. Somera and Immediate Past President Danny O. Cortina.

Dean Amado L. Dimayuga of the JBC explained that the survey is already a science, using accepted and well-tested rules. Dean Dimayuga outlined the method and mechanics of the survey patterned after the California system where one is evaluated not only by his peers, but also by relevant stakeholders. The pilot survey initially formulated twelve (12) criteria (including honesty and integrity) on which an applicant for vacant positions in the Court of Appeals will be evaluated on a scale of 1 (poor) to 5 (excellent). The relevant stakeholders identified as survey respondents are the private practitioners, clerks of courts, solicitors, prosecutors and Public Attorney’s Office lawyers. The NCJR was chosen as a pilot area because the JBC observed that among the applicants to the appellate court, ten (10) are Regional Trial Court judges in Metro Manila.

Atty. J. Conrado P. Castro, the IBP’s representative to the JBC, added that the members of the IBP are best suited to evaluate applicants to the judiciary because they are on the field. While the services of the National Bureau of Investigation (NBI) are used to conduct background evaluation, the JBC noted that the results are mostly forma.

Addressing concerns of “retribution”, the IBP was assured that the survey results are strictly confidential, and the respondents’ survey booklets are just number-coded. The IBP was enjoined to actively participate in the survey system so that the JBC can improve the system and at the same time develop a database for future applications to the judiciary.

**RA 9513:
FRAMEWORK FOR GREEN ENERGY**

BY: JUAN PAOLO F. AMISTOSO

On December 16, 2008, Republic Act No. 9513, otherwise known as the “Renewable Energy Act” (R.A. 9513), was passed into law in an effort to accelerate the exploration and development of the Philippines’ renewable energy (RE) resources to achieve energy self-reliance through the utilization and development of RE resources, as well as to prevent or reduce the impact of harmful emissions on the environment.

The Department of Energy (DOE) is the lead agency for the implementation of R.A. 9513. The law likewise provides for the creation of a National Renewable Energy Board to operationalize and monitor the implementation of the country’s renewable energy program.

Among the features of R.A. 9513 is the use of a Feed-In Tariff System which aims to prioritize connections to a power grid for electricity generated from renewable energy resources, *i.e.*, wind, solar, ocean, run-of-river hydropower, and biomass power plants, as well as the priority purchase and payment for such electricity by the power grid system operators.

For end-users, R.A. 9513 introduces environmental-friendly power consumption choices through a Green Energy Option which gives end-users the option to choose from either RE or traditional energy resources. Under the Green Energy Option, end-users may likewise directly contract with RE facilities to provide their energy requirements. Moreover, distribution utilities are required to enter into net-metering agreements with qualified end-users installing the RE system.

To encourage investment in the RE industry, R.A. 9513 provides incentives to developers of RE facilities such as: (1) income tax holiday from taxes imposed by the National Government for the first 7 years of commercial operations; (2) duty-free importation of RE machinery, equipment, and materials within the first 10 years upon the issuance of a certification of an RE developer; (3) special realty tax rate on equipment and machineries; (4) a corporate income tax of only 10% of net taxable income; (5) exemption from payment of any and all taxes on the sale of carbon emission

*Continued on page 6***BATTLE AGAINST CABLE PIRACY
IN THE PHILIPPINES**

(Reprinted from the Business Mirror)

BY: BIENVENIDO I. SOMERA, JR.

Intellectual Property protection and enforcement are major points of discussion in trade negotiations. This is particularly true when negotiating parties are between governments of a developing and a developed country. It is common that the government of a developed country would seek assurances from the developing country that intellectual property rights of the goods and services that will be imported into the developing country will be protected.

In recent years, television programming has become one of the services imported by developing countries from developed ones. In the Philippines, foreign channels like HBO, Star, AXN, National Geographic, ESPN, CNN, BBC and Bloomberg, among others, can now be viewed through the medium of cable and satellite broadcasts. Local cable operators and direct-to-home satellite providers (CATV operators) license the foreign programs and offer them to their subscriber-customers. With the use of satellite head-ends, a CATV operator is able to receive the foreign-channel program and offer it to households for a fee. However, the reception and distribution of a foreign-channel program is not always authorized by the foreign provider.

Enterprising CATV operators, after securing a license to operate from the National Telecommunications Commission, are able to purchase the necessary decoder boxes from the open market that would allow them to receive the usually encrypted foreign channels and include them on the list of channels that they offer to their subscribers. The more foreign channels they receive, the more attractive their service is to the public, which translates to greater revenue. And when they receive the channels without having to contract with the foreign provider for royalty payments, the income is a windfall. This business model, which is aptly described as cable piracy, has become prevalent in the Philippines that foreign-channel providers have began lobbying their governments to raise this as an issue in their trade negotiations with our country.

The cost of piracy

The Cable and Satellite Broadcasting Association of Asia, which is comprised, among others, of the different foreign-

channel providers in the Asia-Pacific region, provides regular submissions to other international intellectual property lobby groups on the situation of the pay TV industry in Asia with regard to intellectual property protection. In 2005, statistics show that the Philippines had the second-highest number of illegal cable and satellite TV subscribers among Asian countries, with revenue losses of the local cable industry amounting to more than P5 billion. In 2007, it was estimated that revenue losses to the legitimate pay-TV industry from all forms of piracy amounted to \$85 million, a 5.4-percent increase from the previous year. Illegal cable subscribers ran to 2.5 million, outnumbering the 1.6 million legal subscribers. Because of this, the government is losing P1 billion annually in tax revenues.

Current measures to fight cable piracy

It is noteworthy that despite billions of pesos lost in the form of business and government revenue due to cable piracy, Philippine laws have yet to define and penalize the act of cable piracy; hence the difficulty of prosecuting offenders of cable piracy.

A criminal complaint for theft under the Revised Penal Code is not a remedy. The Supreme Court has been clear that only movable properties which have physical or material existence and susceptible of occupation by another are proper objects of theft. In the context of the Penal Code, only those movable properties which can be taken and carried from the place they are found are proper subjects of theft (*Laurel v. Abrogar* [483 SCRA 243]). Thus, television signals, being intangible and without physical property capable of being taken away from their location, cannot be the subject of the crime of theft.

Notwithstanding, channel providers who are victims of cable piracy are not without recourse. The Intellectual Property Code (IP Code) gives them protection as copyright owners and as broadcasting organizations. TV programs produced by a channel provider may be classified as a literary and artistic work under the IP Code under the classification of audio-visual and cinematographic works. Further, the entire selection of programs in a channel, whether individually produced by the channel provider, may be considered a derivative work, the same being original by reason of their selection and arrangement. Thus, as copyright owners, channel providers may file civil, criminal or administrative cases against the pirates on the ground of infringement of copyright. Moreover, a channel provider may also file a

case of violation of its rights as a broadcasting organization as defined in the IP Code. Channel providers, as broadcasting organizations (defined in the IP Code as any natural or juridical person duly authorized to engage in broadcasting), have the exclusive right to carry out, authorize or prevent the rebroadcasting of their broadcast, the recording in any manner of their broadcasts for the purpose of communication to the public of television broadcasts of the same, and the use of such records for fresh transmissions or for fresh recording. Any violation of these rights may be a ground for the filing of similar cases of infringement under the IP Code.

In a recent case against an unauthorized CATV distributor for criminal infringement under the IP Code, the defense of the absence of any crime punishing cable piracy was raised at the preliminary investigation stage of the complaint. The defendants, in fact, pointed out that the pendency of legislative bills in Congress seeking to define and punish the crime of cable piracy is evidence of the absence of a crime. The Department of Justice resolved the issue by holding that channel providers, even as broadcasting organizations, have copyright ownership over the programs they carry and, as such, may exercise their right to the exclusive right to carry out, authorize or prevent others from reproducing their works or communicating to the public a work by wire or wireless means. Any violation of this right is an infringement of copyright under the IP Code. This conclusion was, likewise, made by the Court of Appeals in a related case involving the same parties and the same act of cable piracy. Thus, channel providers have the option of suing either as a copyright owner or as a broadcasting organization.

Pending bills in Congress against cable piracy

Although the IP Code provides for remedies against cable piracy, the Supreme Court has not had the occasion to stamp its imprimatur on the conclusion reached by the Department of Justice and the Court of Appeals. As a legal principle, said conclusion would be limited in application to the parties involved and under the same circumstances that gave rise to the complaint. Without a Supreme Court decision on the issue, each case of cable piracy will be decided independently, with little persuasion from decisions of the Department of Justice and the Court of Appeals. Recognizing this deficiency, our Congress has several pending bills that seek to address the situation and provide a clear basis to fight cable piracy.

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...Cable Piracy...

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Three of these bills are identical in title and content. These bills are House Bill 1409, Senate Bill 2180 and Senate Bill 2588. All bills, if passed into law, shall be entitled The Anti-Cable Television and Cable Internet Pilferage Act of 2008. Among the acts punishable under the bills are i) the interception or reception, or the assistance thereof, of any signal or service offered over a cable television through tapping, making or causing to be made any unauthorized connection to existing wired or wireless facilities or through the use of electronic equipment; and ii) the unauthorized importation, sale, lease, distribution or possession of electronic equipment, such as digital or analog receiver-decoder boxes, set-top and converter boxes, modern or any equivalent circumvention devices that allow the unauthorized access or decoding of unencrypted or encrypted satellite-program signals or other electromagnetic signals. With the wide coverage of the bills on acts punishable for cable piracy, their passage as law may well be a deterrent to cable piracy. Unauthorized CATV distributors can no longer raise the defense of the absence of a crime punishing cable piracy. Moreover, even the unauthorized sale or possession of electronic equipment that is indispensable in the perpetration of cable piracy is, likewise, punishable.

The unauthorized tapping into the systems of cable operators poses grave and severe threats to the existence and survival of the cable-television industry. Cable piracy not only causes huge operational losses on the part of legitimate CATV operators, it also greatly affects the signal and standard of service, prejudicing legitimate subscribers. A clearer and determined effort, therefore, of our government through Congress and the Supreme Court may finally put an end to the stigma of the Philippines as the country in Asia with the second-highest number of illegal cable and satellite-TV subscribers.

RA 9153...

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credits; and (6) a cash generation-based incentive equivalent to 50% of the universal charge for power needed to service missionary areas.

Today, households consume 20% of their monthly earnings on electricity, whereas industries consume 8% to 15% of their total manufacturing on electricity. With the passage of R.A. 9513, it is hoped that consumers will enjoy reduced electricity rates as well as positive environmental benefits through the utilization of RE resources.

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ATTENTION IBP MAKATI MEMBERS!

To enable you to receive the latest news and information on IBP activities, please update us on your home or office addresses and telephone numbers, and any requests for transfers to or from the IBP Makati Chapter. Please send the information to the Chapter Office, UG 39 Cityland Dela Rosa Condominium, Dela Rosa Street, Makati City, Attention: Membership Committee, telefax no. 813-4744 or email: ibpmakati@gmail.com.

You can also visit our website at www.ibpmakati.com.



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