

**REPUBLIC OF THE PHILIPPINES, THROUGH THE PHILIPPINE
NATIONAL POLICE (PNP), PETITIONER, VS. HEIRS OF JOSE C. TUPAZ,
IV, NAMELY: MA. CORAZON J. TUPAZ, MA. JEANETTE T. CALING, MA.
...**

G.R. No. 197335. September 07, 2020

Ponente: LEONEN, J.

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LEONEN, J.:

The copyright of a derivative work solely belongs to the person who fixes an idea into a tangible medium of expression. The law on copyright only protects the expression of an idea, not the idea itself. Thus, one who merely contributes concepts or ideas is not deemed an author.

For this Court's resolution is a Petition for Review on Certiorari[1] assailing the Court of Appeals' Decision[2] and Resolution.[3] The challenged judgments reversed the Regional Trial Court's Decision,[4] which ordered the cancellation of respondents' certificates of copyright registration over the designs of the Philippine National Police (PNP) cap device and badge.[5]

In 1996, the PNP Directorate for Logistics Support Service authorized the procurement of new uniforms and equipment for the PNP, including brand new cap devices and badges. The PNP Directorate on Research and Development, Clothing, and Criminalistics Equipment Division assumed the responsibility of updating the designs of the PNP cap device and badge.[6]

The present PNP cap device and badge have the following distinctive features: (1) a native shield, depicted as a vertically elongated hexagon; (2) a sword-and-shield wielding warrior purporting to be Lapu-Lapu; (3) eight (8) rays of the sun representing the first eight (8) provinces to revolt against Spain; (4) three (3) pentagram stars representing Luzon, Visayas, and Mindanao; (5) laurel leaves; and (6) the words "service, honor, and justice." [7]

The designs of the present PNP cap device and badge were previously used by the Philippine Constabulary in its coat of arms.[8]

The PNP Directorate on Research and Development, Clothing, and Criminalistics Equipment Division collaborated with Jose C. Tupaz, IV (Tupaz) to create the new designs of the PNP cap device and badge. Tupaz volunteered and rendered his services for free.[9] Under their agreement, Tupaz will sketch the new designs and produce samples or prototypes. The samples will then be presented before the PNP's Uniform and Equipment Standardization Board for approval.[10]

Tupaz drew the new designs based on the PNP's specifications and instructions. He then submitted the finished sketches to the PNP for evaluation. Thereafter, the designs were transmitted to and approved by the National Police Commission.[11]

Upon approval of the new designs, the PNP conducted a public bidding for the procurement of the new PNP cap

devices and badges. Among those who participated was El Oro Industries, Inc. (El Oro).[12] Tupaz was El Oro's then-president and chair of the board of directors.[13]

El Oro submitted the second highest bid price. After the tabulation of the bids, El Oro presented before the PNP's Bids and Awards Committee certificates of copyright registration over the PNP cap device and badge issued in favor of Tupaz. Hence, the contract was not awarded to the winning bidder, but to El Oro.[14]

No other manufacturer attempted to produce the PNP cap device and badge bearing the new designs for fear of copyright infringement.[15]

Police Director Jose S. Andaya, head of the PNP Directorate on Research and Development, Clothing, and Criminalistics Equipment Division, wrote the National Library requesting the cancellation of the certificates of copyright registration of the PNP cap device and badge. However, the National Library did not act on the request.[16]

Subsequently, the Republic of the Philippines, through the PNP, filed a Complaint before the Quezon City Regional Trial Court for the cancellation of Tupaz's certificates of copyright registration, with a prayer for the issuance of a writ of preliminary injunction.[17]

In their Answer, El Oro and Tupaz alleged that El Oro is the exclusive and official engraver of Philippine heraldry items since 1953. They claimed that Tupaz's ancestor, Jose T. Tupaz, Jr., developed the original designs on which the present designs of the PNP cap device and badge were based. Hence, El Oro owned the copyright over the new designs and was allegedly the only qualified bidder.[18]

In its Decision,[19] the Regional Trial Court ruled in favor of the Republic of the Philippines. The dispositive portion states:

WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants as follows:

(a)

[O]rdering the defendant National Library to cancel Certificate of Copyright Registration No. 96-589 over the PNP Cap Device and Certificate of Copyright Registration No. 96-721 over the PNP badge issued in favor of defendant/s Jose C. Tupaz IV and/or El Oro Industries Inc., and to issue two new certificates of copyright registration in the name of the Philippine National Police in lieu of these two aforecited certificates of copyright registration; and

(b)

[O]rdering the issuance of a writ of prohibitory injunction, permanently prohibiting defendant/s Jose C. Tupaz IV and/or El Oro Industries Inc., and other persons/parties deriving interest from said defendant/s from manufacturing, using[,] and selling the PNP cap devices and badges bearing the designs created and developed by the Philippine National Police which are the subject matters of Certificates of Copyright Registration Nos. 96-589 and 96-721, which had now been ordered cancelled as provided herein.

All other claim/s including the counterclaim are dismissed for lack of legal and/or factual basis.

SO ORDERED.[20]

The Regional Trial Court declared that the new designs of the PNP cap device and badge were created by the PNP Directorate for Research and Development, Clothing, and Criminalistics Equipment Division. Under Section 176.1 of Republic Act No. 8293,[21] the new designs are works of the Philippine government, the copyright of which may not be registered in favor of private entities.[22]

El Oro and Tupaz moved for reconsideration, but their motion was denied.[23]

Pending appeal before the Court of Appeals, Tupaz passed away.[24] He was substituted in the case by his heirs.[25]

In its Decision,[26] the Court of Appeals reversed the Regional Trial Court's ruling and lifted the writ of prohibitory injunction issued against El Oro, Tupaz, and their successors-in-interest.

The Court of Appeals classified the new designs of the PNP cap device and badge as derivative works under Section 2(P) of Presidential Decree No. 49.[27] According to the Court of Appeals, a derivative work is entitled to copyright protection, if produced with the consent of the original work's author, and if it has a "distinguishable non-trivial variation" from the original.[28] The Court of Appeals ruled that both requirements were present.[29]

Although both parties claim authorship over the pre-existing designs, the Court of Appeals nevertheless held that the consent requirement was met because both parties agreed to use the pre-existing designs as basis for the new designs. Moreover, the new designs are substantially distinct from the pre-existing designs.[30] In its Decision, the Court of Appeals stated:

Comparing Exhibits A-1 (the cap device designed earlier used by the PNP) and A-2 (the design for which Tupaz obtained a copyright registration certificate), substantial changes in the appearance are present. Some of these distinctions are: the native shield in Exhibit A-1 is checkered cream and red in color while the one in Exhibit A-2 is silver; eight short sun rays appear on top of Exhibit A-2 while there is none in the other earlier design; and the flowers in Exhibit A-2 are mere buds while the ones in Exhibit A-1 have open petals. Notable changes are also present if Exhibits B-1 (the badge design earlier used by the PNP) and B-2 (another design for which Tupaz obtained a certificate [of copyright registration]) are compared. For instance, among other differences, colors (black, red, white and blue) and eight short sun rays on top of the design are incorporated in Exhibit B-2 while Exhibit B-1 does not contain these details.[31]

The Court of Appeals declared Tupaz as the author of the new designs. The PNP only contributed ideas, but it was Tupaz who actually made the new designs. The Court of Appeals emphasized that the law on copyright protects the expression of an idea, but not the idea itself.[32]

The Republic of the Philippines then filed a Petition for Review on Certiorari[33] before this Court. In a September 14, 2011 Resolution,[34] this Court required respondents to comment on the petition. However, they failed to file their comment on the petition. Subsequently, this Court issued a show cause order requiring respondent Tupaz to explain why he should not be held in contempt, and to submit the required comment on the petition.[35]

The Resolution, and other subsequent Resolutions of this Court, were returned unserved to respondents.[36] In another Resolution,[37] this Court required the Office of the Solicitor General to submit the current addresses of respondents so that they may be served with court processes.

The Office of the Solicitor General manifested that respondent Tupaz received a copy of the petition based on the postmaster's certification. Meanwhile, respondent Ma. Corazon Tupaz passed away on August 30, 2010. On the other hand, the whereabouts of respondents Ma. Jeanette T. Caling, Ma. Junella T. Avjean, Marie Jocelyn T. Dexheimer, and Jon Ferdinand T. Tupaz could not be ascertained.[38]

Extraordinary efforts to serve copies of the resolutions ordering respondents to file their comment failed. This Court later resolved to dispense with the filing of respondents' comment on the petition.[39]

Petitioner concedes that only questions of law may be raised in a Petition for Review on Certiorari brought under Rule 45 of the Rules of Court. However, it claims that the present case is exempted from the application of the

general rule for two (2) reasons. First, the factual findings of the Court of Appeals are contrary to the findings of the trial court. Second, the conclusion of the Court of Appeals[40] is "grounded entirely on speculation, surmise[s,] and conjectures[.]"[41]

Petitioner argues that derivative works are entitled to protection under Section 8 of Presidential Decree No. 49 only if they were "produced with the consent of the creator or proprietor of the original works[.]"[42] However, the Court of Appeals failed to establish the true author of the pre-existing designs. This is relevant to determine who can give consent.[43]

Moreover, petitioner maintains that there is no substantial distinction between the new designs and the pre-existing designs. The distinctive features of the pre-existing designs were exactly adopted in the new designs. The differences pointed out by the Court of Appeals are only trivial distinctions. Due to the absence of distinguishable non-trivial variations, the new designs cannot be copyrighted as derivative or new works under Section 8 of Presidential Decree No. 49.[44]

This case presents the following issues for this Court's resolution:

First, whether or not this Court may undertake a factual review.

Second, whether or not the new designs of the PNP cap device and badge are entitled to protection as derivative works under Section 8 of Presidential Decree No. 49.

Lastly, whether or not the PNP, as contributor of ideas, should be deemed as the author of the new designs.

The petition is unmeritorious.

I

The scope of this Court's jurisdiction over petitions brought under Rule 45 of the Revised Rules of Court is limited to reviewing questions of law.[45] This Court will not entertain questions of fact because it is not duty-bound to weigh and analyze evidence anew.[46] The factual findings of the appellate courts are generally final and conclusive on this Court when supported by substantial evidence.[47]

The question pertaining to the authorship of a copyrightable work is a factual matter that generally goes beyond the scope of review in a Rule 45 Petition. However, this Court may undertake a factual review when the findings of the Court of Appeals are "contrary to those of the trial court[.]"[48]

In this case, the Regional Trial Court and Court of Appeals differed as to who created the new designs of the PNP cap device and badge. Also, both tribunals applied different laws. The Regional Trial Court rendered its Decision based on the present intellectual property code or Republic Act No. 8293.[49] The Court of Appeals, on the other hand, relied on the provisions of Presidential Decree No. 49.[50]

This case shall be resolved using the provisions of Presidential Decree No. 49, not Republic Act No. 8293. Presidential Decree No. 49 was the law in force at the time the new designs of the PNP cap device and badge were made. It was also the law in force when the certificates of copyright registration were issued to respondents in 1996.[51] Republic Act No. 8293, which amended Presidential Decree No. 49, only took effect on January 1, 1998.[52]

II(A)

Copyright is "the right granted by statute to the proprietor of an intellectual production to its exclusive use and enjoyment[.]"[53] It "may be obtained and enjoyed only with respect to the subjects and by the persons, and on terms and conditions specified in the statute."[54] Copyright is a purely statutory right. Only classes of works falling under the statutory enumeration are entitled to protection.[55]

Copyright has two rationales: the economic benefit and social benefit. The economic benefit is reaped by the author from his work while the social benefit manifests when it creates impetus for individuals to be creative.[56] Copyright, like other intellectual property rights, grants legal protection by prohibiting the unauthorized reproduction of the author's work.[57] It "create[s] a temporary monopoly on varying types of knowledge, allowing their owners to restrict and even prevent, other from using that knowledge."[58] By eliminating fear of other's appropriation and exploitation of an author's work, intellectual creation is incentivized.[59]

When the concept of copyright emerged, it was primarily concerned with the advancement of a common social good and not so much about the author's rights. Copyright statutes were initially crafted for the reading public and to encourage education through the production of books.[60]

Copyright traces its beginnings in 1476 when printing was first introduced in England. The English Crown then had two (2) main reasons in regulating printing through licensing: (1) to suppress dissent, which was rapidly growing due to easier reproduction of materials; and (2) to profit from those who are willing to pay for the exclusive right to print particular books. Subsequently, the control of publishing was ceded to a group of printers, bookbinders, and booksellers called Stationer's Company through a printing patent which grants monopoly over the English publishing trade. Through the Stationer's Company, the English Crown maintained its political and economic interest in the publishing trade.[61]

The Stationer's Company eventually lost its power when the Licensing Act expired in 1694. Failing to convince the Parliament to extend its powers, the Stationer's Company lobbied for the interests of authors over publishers. In 1710, the Statute of Anne, the first copyright act, was enacted. The Statute of Anne granted the Stationer's Company the remedies they needed to maintain their existing publication rights. However, it removed the Stationer's Company's monopoly by allowing anyone, whether an author or a publisher, to obtain copyright by mere registration. The law further provided a limited term of copyright instead of the former perpetual monopoly. It granted 14 years for the work's publication which is renewable for another 14 years, if the author was still alive.[62]

While the Statute of Anne was seen as an anti-monopoly trade regulation, it mainly focused on the author's social contribution and the advancement of education through the production of books.[63] It is not mainly after the "recognition of any pre-existing authorial right, nor...the regulation of the booksellers' market[.]" but the promotion of "the free market of ideas[.]"[64]

The Statute of Anne only covered books, but succeeding laws added other subjects as new technology emerged, such as engravings, sculptures, paintings, drawings, photographs, sound recordings, and motion pictures.[65] The first copyright law of the United States, the Act of 1790, was modeled after the Statute of Anne. It initially covered books, maps, and charts and similarly required a formal registration and granted a 14-year copyright renewable for another 14-year term.[66] In its subsequent amendments, the period was extended to 28 years[67] and it expanded copyright to other works such as historical and other prints, dramatic works and its public performance, photographs, visual art, and musical compositions.[68] It later included the right to create derivative works and the prohibition on copyright protection in government publications.[69]

Intellectual property law in our jurisdiction dates back during the Spanish occupation.[70] When the United States took over the Philippines through the Treaty of Paris in 1898, "patents, trademarks, and copyrights that were granted by the Spanish government continued to have legal effect in the [Philippines.]"[71]

While under the United States occupation, Act No. 3134, otherwise known as the Copyright Law of the Philippine Island, was passed.[72] Act No. 3134 was based on the United States Copyright Law of 1909.[73] After the Philippines gained its independence in 1946, Act No. 3134 provided the legal framework for intellectual property law in our jurisdiction.[74] Years later, laws on patent[75] and trademark[76] were enacted, creating a patent office for the registration of trademarks, trade names, and service marks.[77]

In 1972, Presidential Decree No. 49, otherwise known as the Decree on the Protection of Intellectual Property, was passed, superseding Act No. 3134. Nevertheless, Presidential Decree No. 49 was heavily modeled after Act No. 3134.[78]

Section 2 of Presidential Decree No. 49 enumerates different classes of copyrightable works, which are protected from the moment of creation:

SECTION 2. The rights granted by this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works:

(A)

Books, including composite and cyclopedic works, manuscripts, directories, and gazetteers;

(B)

Periodicals, including pamphlets and newspapers;

(C)

Lectures, sermons, addresses, dissertations prepared for oral delivery;

(D)

Letters;

(E)

Dramatic or dramatico-musical compositions; choreographic works and entertainments in dumb shows, the acting form of which is fixed in writing or otherwise;

(F)

Musical compositions, with or without words;

(G)

Works of drawing, painting, architecture, sculpture, engraving, lithography, and other works of art; models or designs for works of art;

(H)

Reproductions of a work of art;

(I)

Original ornamental designs or models for articles of manufacture, whether or not patentable, and other works

of applied art;

(J)

Maps, plans, sketches, and charts;

(K)

Drawings or plastic works of a scientific or technical character;

(L)

Photographic works and works produced by a process analogous to photography; lantern slides;

(M)

Cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;

(N)

Computer programs;

(O)

Prints, pictorial illustrations, advertising copies, labels, tags, and box wraps;

(P)

Dramatizations, translations, adaptations, abridgements, arrangements and other alterations of literary, musical or artistic works or of works of the Philippine Government as herein defined, which shall be protected as provided in Section 8 of this Decree;

(Q)

Collections of literary, scholarly, or artistic works or of works referred to in Section 9 of this Decree which by reason of the selection and arrangement of their contents constitute intellectual creations, the same to be protected as such in accordance with Section 8 of this Decree;

(R)

Other literary, scholarly, scientific[,] and artistic works.

The enumeration under Section 2 of Presidential Decree No. 49 is substantially similar to that which can be found in Section 172.1 of the subsequent law, Republic Act No. 8293.[79]

Under both laws, the copyright vests upon the sole fact of creation.[80] Presidential Decree No. 49 requires the registration and deposit of some works with the National Library.[81] Noncompliance with this rule "does not deprive the copyright owner of the right to sue for infringement." [82] However, it limits the remedies of copyright owners, denies them of the right to recover damages, and subjects them to certain sanctions. [83] Republic Act No. 8293 retains the registration and deposit requirement but only for the purpose of "completing the records of the National Library and the Supreme Court Library[.]"[84] The present law "does not require registration of the work to fully recover in an infringement suit." [85]

II(B)

Broadly defined, a derivative work refers to a work that is "based on...one or more already existing works." [86] The author of a derivative work borrows expressive content from an existing work and transforms it into another work. [87] Through this process, the author of a derivative work does not simply copy the existing work but creates an original work entitled to a separate copyright. [88] Although the expression in the derivative work is "intermingled with the expression from the underlying work," the derivative author contributes original expression to the new work making it distinct from the underlying work. [89]

Derivative works right is inseparable from the adaptation right of the original work's author. [90] Adaptation right is included in the bundle of rights granted to a recognized author or owner of an intellectual property. Under Section 5(B) of Presidential Decree No. 49:

SECTION 5. Copyright shall consist in the exclusive right;

....

(B) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute it if it be a model or design[.]

Under earlier laws, authors are not granted adaptation rights. The original author's right was narrow as it only covered the literal copying of the material. For instance, an author cannot claim an injunction against the unauthorized translation of his or her work to another language, because the rights granted under the copyright only extends to "printing, reprinting, publishing or vending." [91]

Adaptation right was later introduced as copyright expanded beyond literal copying. Similar to existing laws in United Kingdom, [92] Canada, [93] and Australia, [94] the United States' 1909 Copyright Act then allowed "abridgements, adaptations, arrangements, dramatizations, translations, or other version of works...of copyrighted works" only when produced with the author's consent. [95] This statutory text was adopted in Act No. 3134, and later in Presidential Decree No. 49. [96]

Borne out of copyright's expansion, the notion of derivative works was introduced in the legal scheme. When the adaptation of an original work was authorized by the owner, and when distinct from the underlying work, the resulting derivative work is copyrightable.

No exact definition of derivative works is found in Presidential Decree No. 49 and Republic Act No. 8293. However, both laws provide examples consistent with the Berne Convention.

Under Article 2(3) of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) to which the Philippines is a contracting party, [97] derivative works pertain to "[t]ranslations, adaptations, arrangements of music and other alterations of a literary or artistic work[.]"

Section 2(P) of Presidential Decree No. 49 grants copyright protection to "[d]ramatizations, translations, adaptations, abridgements, arrangements and other alterations of literary, musical or artistic works or of works of the Philippine Government[.]" Republic Act No. 8293 devotes a separate chapter to derivative works. The enumeration is substantially similar to that found in Presidential Decree No. 49. However, it excludes from copyright protection derivative works based on existing works of the government. [98]

Presidential Decree No. 49 gives special attention to derivative works and how it may be granted copyright as a new work. Under Section 8 of the law:

SECTION 8. The works referred to in subsections (P) and (O) of Section 2 of this Decree shall, when produced with the consent of the creator or proprietor of the original works on which they are based, be protected as new works; however, such new works shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works. (Emphasis supplied)[99]

Presidential Decree No. 49 is consistent with prevailing conventions when it was enacted. Under the Berne Convention and the Universal Copyright Convention, authors of original works retain the exclusive right of control over their works. Pertinent articles of the conventions provide:

Berne Convention

Article 8.

Right of Translation.

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

....

Article 12.

Right of Adaptation, Arrangement and Other Alteration.

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.[100]

Universal Copyright Convention

Article V

1. Copyright shall include the exclusive right of the author to make, publish, and authorize the making and publication of translations of works protected under this Convention.

The Court of Appeals correctly classified the new designs of the PNP cap device and badge as derivative works. Respondents, in collaboration with the PNP and upon its instruction, borrowed expressive content from the pre-existing designs of the PNP cap device and badge to create the new. The new designs are considered alterations of artistic works under Section 2(P) of Presidential Decree No. 49. However, they can only be copyrighted if they were produced with the consent of the creator of the pre-existing designs and if there is distinction between the new designs and the pre-existing designs.

Both requisites are present in this case.

The Regional Trial Court and the Court of Appeals failed to determine who authored the pre-existing designs. Respondents assert that they owned both designs because their ancestor, Jose T. Tupaz, Jr., is the author of the original designs of the PNP cap device and badge. On the other hand, petitioner claims that it owned the designs. However, this would be of little or of no consequence considering that the parties asserting ownership over the pre-existing designs are the very same ones who collaborated to create the new designs. It would have been a different matter if a third party also claimed ownership over the pre-existing designs. What is clear is that both parties agreed to create the new designs from the pre-existing designs.

Since the creator of the new designs must borrow expressive content from the pre-existing designs, the new designs would obviously incorporate elements of the original material. In this case, the borrowed elements of the original material are the native shield, the eight (8) rays of the sun, three (3) stars' laurel leaves' and the words

"service," "honor," and "Justice." [101]

The test of whether the new designs are copyrightable independently from the pre-existing works is the presence of originality in the derivative work. The new work, although similar to the pre-existing work in some of its expressive elements, must be substantially distinct from the pre-existing work. [102]

A careful comparison of the pre-existing designs and the new designs shows that there are substantial distinctions between the two: [103]

(see image, p. 17)

Figure 1.1 Pre-existing PNP Cap Device & Figure 1.2 Redesigned PNP Cap Device

The most prominent feature of the pre-existing PNP cap device is the native shield. In the new design of the PNP cap device, the native shield has been reduced in size and the laurel leaves are made more noticeable. The Court of Appeals observed that the native shield in the pre-existing design is "checkered cream and red in color." On the other hand, the native shield in the new design is silver. [104]

The pre-existing PNP cap device contains the words "PHILIPPINE NATIONAL POLICE" located inside the native shield, which was eliminated in the new design. Instead, the words "PHILIPPINES" and "POLICE" were placed at the top and bottom of the cap device, respectively. Furthermore, the word "POLICE" is more prominent in the new design. There are also 8 short sun rays on top of the cap device:

(see image, p. 17)

Figure 2.1 Pre-existing: PNP Badge & Figure 2.2 Redesigned PNP Badge

With regard to the PNP badge, the most prominent feature of the pre-existing design is the native shield, which has been reduced in size in the new design. Another prominent feature of the pre-existing design is the badge number. The badge number in the new design was reduced and placed at the bottom portion.

The words "PHILIPPINE NATIONAL POLICE" were transposed from the native shield in the pre-existing design and were placed on top in the new design. The shapes of the two designs are also different. The new design takes the general shape of an oval compared to the pre-existing design. Aside from these, the Court of Appeals observed that the new design contains the colors black, red, white, and blue. [105]

III

Under Section 2 of Presidential Decree No. 49, the copyright belongs to the creator of the work or the creator's heirs or assigns. If the work is created by two (2) or more persons, they shall own the copyright jointly. [106] The same principles are embodied in Sections 178.1 and 178.2 of Republic Act No. 8293. [107]

Unlike Republic Act No. 8293, which defines an author as the "natural person who has created the work[,] [108] Presidential Decree No. 49 does not provide a definition of an author or a creator. Despite the law's silence, an author, for purposes of copyright ownership, should be deemed as one who fixes an abstract idea into something tangible.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which took effect in the Philippines on January 1, 1995, [109] states that "copyright protection shall extend to expressions and not to ideas, procedures, methods of operation[,] or mathematical concepts as such." [110]

More commonly referred to as the "idea/expression dichotomy," the principle in copyright protection is that "ideas are not protectable" and only expressions of those ideas may be subject to copyright protection. [111]

In *ABS-CBN Corp. v. Gozon*,^[112] this Court distinguished ideas and expression of ideas in relation to what may be the subject of copyright:

An idea or event must be distinguished from the expression of that idea or event. An idea has been likened to a ghost in that it "must be spoken to a little before it will explain itself."

...

Ideas can be either abstract or concrete. It is the concrete ideas that are generally referred to as expression:

The words "abstract" and "concrete" arise in many cases dealing with the idea/expression distinction. The Nichols court, for example, found that the defendant's film did not infringe the plaintiffs' play because it was "too generalized an abstraction from what plaintiff wrote ... only a part of her ideas." In *Eichel v. Marcin*, the court said that authors may exploit facts, experiences, field of thought, and general ideas found in another's work, "provided they do not substantially copy a concrete form, in which the circumstances and ideas have been developed, arranged, and put into shape." Judge Hand, in *National Comics Publications, Inc. v. Fawcett Publications, Inc.* said that "no one infringes, unless he descends so far into what is concrete as to invade... 'expression.'"

These cases seem to be distinguishing "abstract" ideas from "concrete" tangible embodiments of these abstractions that may be termed expression. However, if the concrete form of a work means more than the literal expression contained within it, it is difficult to determine what is meant by "concrete." Webster's New Twentieth Century Dictionary of the English Language provides several meanings for the word concrete. These include: "having a material, perceptible existence; of, belonging to, or characterized by things or events that can be perceived by the senses; real; actual;" and "referring to a particular; specific, not general or abstract."^[113] (Citations omitted)

Joaquin v. Drilon ^[114] also illustrates the distinction between ideas and expression of ideas regarding copyrightable subject matter. The petitioner in *Joaquin* claimed that the format of its dating game show called 'Rhoda and Me' is entitled to copyright protection.^[115] In ruling against the petitioner, this Court underscored the principle that the law on copyright is purely statutory.^[116] Only classes of work enumerated in Pres. Decree No. 49 are subject to copyright.^[117] Thus, the format of a television show, not falling within the enumeration, is not copyrightable.^[118] Furthermore, this Court stated:

P.D. No. 49, §2, in enumerating what are subject to copyright, refers to finished works and not to concepts. The copyright does not extend to an idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.^[119] (Citation omitted, emphasis supplied)

Although a creator or author is not expressly defined under Pres. Decree No. 49, it may be logically inferred—based on the scope of copyrightable works—that a creator or an author pertains to someone who transforms an abstract idea into a tangible form of expression through the application of skill or labor.

To create a thing that may be entitled to a copyright requires something more than the giving of ideas and concepts. Ideas should translate to or transition into something that is tangible or physical. In other words, something capable of being perceived must be produced. To illustrate, an image that remains in a person's mind would not be entitled to copyright protection unless he or she draws it on a piece of paper or paints the image on canvass.

In this case, it is undisputed that petitioner and respondent Tupaz collaborated to develop the new designs of the PNP cap device and badge. However, the extent of petitioner's participation in developing the new designs of the PNP cap device and badge was limited to instructing respondent Tupaz on how the designs should appear in general and what specific elements should be incorporated.^[120] Petitioner merely supplied ideas and

concepts.[121] It was respondent Tupaz who used his skill and labor to concretize what petitioner had envisioned. Therefore, petitioner cannot be considered as an author of the new designs either in whole or in part.

Petitioner is also not entitled to own the copyright under any of the exceptions in Section 6 of Presidential Decree No. 49.[122] The first exception refers to works created in the course of the employment of the creator. Section 6 of Presidential Decree No. 49 states:

If the work in which copyright subsists was made during and in the course of the employment of the creator, the copyright shall belong to:

(a)

The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.

(b)

The employer, if the work is the result of the performance of his regularly assigned duties, unless there is an agreement, express or implied to the contrary. [123]

Section 178.3 of Republic Act No. 8293, retains the rule regarding works created in the course of the employment.[124]

The second exception refers to commissioned works. The creator of the work should be paid valuable consideration for the work made. Section 6 of Presidential Decree No. 49 states that the copyright of a commissioned work belongs in joint ownership to the creator and the person who commissioned the work. The parties, however, can agree that the ownership of the copyright shall pertain to either of them.[125]

The rule regarding commissioned works is modified under Republic Act No. 8293. Parties no longer have joint ownership over the copyright. Under Section 178.4 of Republic Act No. 8293, the copyright of a commissioned work generally belongs to the creator. However, the parties may agree in writing to transfer the copyright to the person who commissioned the work.[126]

In the present case, petitioner is not entitled to own the copyright because the designs were neither commissioned works nor works created in the course of respondent Tupaz's employment. First, although the parties verbally agreed to work together, petitioner did not hire respondent Tupaz's services for a fee or a commission. Respondent Tupaz rendered his services voluntarily.[127] In other words, the new designs do not qualify as commissioned works. Second, there was no employer-employee relationship between the parties at the time the designs were made.

Petitioner could have avoided this dispute had it entered into a contract that clearly and expressly spelled out the extent of each party's rights over the new designs, as Presidential Decree No. 49 allows the transfer or assignment of the work and its copyright to other persons by gift, inheritance, or otherwise.[128]

WHEREFORE, the Petition for Review is DENIED. The Court of Appeals Decision dated August 12, 2010 and Resolution dated June 27, 2011 in CA-G.R. CV No. 82018 are AFFIRMED.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and Gaerlan, JJ., concur.

[1] Rollo, pp. 26-49.

[2] Id. at 8-20. The August 12, 2010 Decision docketed as CA-G.R. CV No. 82018 was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez Jr., and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals, Manila.

[3] Id. at 22-23. The November 5, 2003 Resolution docketed as CA-G.R. CV No. 82018 was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez Jr., and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals, Manila.

[4] Id. at 83-85. The Decision dated November 5, 2003 was penned by Presiding Judge Reynaldo B. Daway of Branch 90, Regional Trial Court, Quezon City.

[5] Id. at 85.

[6] Id. at 30.

[7] Id. at 66-67, Petitioner's Complaint.

[8] Id. at 30.

[9] Id. at 9.

[10] Id. at 15-17.

[11] Id. at 30-31.

[12] Id. at 31.

[13] Id. at 10.

[14] Id. at 31.

[15] Id. at 31-32.

[16] Id. at 10.

[17] Id. at 84.

[18] Id. at 10.

[19] Id. 83-85.

[20] Id. at 85.

[21] Republic Act No. 8293 (1997), sec. 176.1 provides:

SECTION 176. Works of the Government. - 176.1. No copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties. No prior approval or conditions shall be required for the use for any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character.

[22] Rollo, p. 85.

[23] Id. at 86.

[24] Id. at 29.

[25] *Id.* at 8. The heirs of Tupaz who substituted him in the case were: (1) Ma. Corazon J. Tupaz; (2) Ma. Jeanette T. Caling; (3) Ma. Junella T. Avjean; (4) Marie Joselyn T. Dexheimer; (5) Jose Niño T. Tupaz, V; and (6) Jon Ferdinand T. Tupaz.

[26] *Id.* at 8-20.

[27] Pres. Decree No. 49 (1972). sec. 2(P) provides:

SECTION 2. The rights granted by this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works:

....

(P) Dramatizations, translations, adaptations, abridgements, arrangements and other alterations of literary, musical or artistic works or of works of the Philippine Government as herein defined, which shall be protected as provided in Section 8 of this Decree[.]

[28] Rollo, pp. 12-13.

[29] *Id.* at 13-14.

[30] *Id.*

[31] *Id.* at 14.

[32] *Id.* at 14-17.

[33] *Id.* at 26-49.

[34] *Id.* at 99.

[35] *Id.* at 115.

[36] *Id.* at 136.

[37] *Id.* at 136-136-A.

[38] *Id.* at 137-142.

[39] *Id.* at 169.

[40] *Id.* at 35-37.

[41] *Id.* at 36.

[42] *Id.* at 38-39.

[43] *Id.* at 37-40.

[44] *Id.* at 42-45.

[45] RULES OF COURT, Rule 45, sec. 1.

[46] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1997) [Per J. Panganiban, Third Division]; *Bautista v. Puyat*, 416 Phil. 305,308 (2001) [Per J. Pardo, First Division].

[47] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].

[48] *Id.* citing *Medina v. Mayor Asistio, Jr* 269 Phil. 225 (1990) [Per J. Bidin, Third Division]; See *Gabriel v. Spouses Mabanta*, 447 Phil. 717, 725 (2003) [Per Sandoval-Gutierrez, Third Division].

- [49] Rollo, p. 85.
- [50] Id. at 12-14, 17-18.
- [51] Id. at 68.
- [52] Republic Act No. 8293 (1997), sec. 241.
- [53] *Olaño v. Lim Eng Co*, 783 Phil. 238, 249 [Per J. Reyes, Third Division].
- [54] *Pearl & Dean (Phil.) v. Shoemart*, 456 Phil. 474, 489 (2003) [Per J. Corona, Third Division].
- [55] *Joaquin v. Drilon*, 361 Phil. 900, 914 (1999) [Per J. Mendoza, January 8, 1999].
- [56] AXEL GOSSERIES, ET AL., INTELLECTUAL PROPERTY AND THEORIES OF JUSTICE 162 (2008).
- [57] Id. at 160.
- [58] MEIR PEREZ PUGATCH, THE INTERNATIONAL POLITICAL ECONOMY OF INTELLECTUAL PROPERTY RIGHTS 16 (2004).
- [59] AXEL GOSSERIES, ET AL., INTELLECTUAL PROPERTY AND THEORIES OF JUSTICE 160 (2008).
- [60] RONAN DEAZLEY, RETHINKING COPYRIGHT: HISTORY, THEORY, LANGUAGE 23 (2006).
- [61] PAUL GOLDSTEIN, INTERNATIONAL COPYRIGHT: PRINCIPLES, LAW, AND PRACTICE 5 (2001).
- [62] Id. at 5-6.
- [63] RONAN DEAZLEY, ON THE ORIGIN OF THE RIGHT TO COPY 46 (2004).
- [64] Id.
- [65] PAUL GOLDSTEIN, INTERNATIONAL COPYRIGHT: PRINCIPLES, LAW, AND PRACTICE 6 (2001).
- [66] Id. at 6-7.
- [67] US Copyright Act of 1909, sec. 23.
- [68] US Copyright Act of 1909, sec. 5.
- [69] US Copyright Act of 1909, sec. 6 and 7.
- [70] PAUL GOLDSTEIN, ET AL., INTELLECTUAL PROPERTY IN ASIA: LAW, ECONOMICS, HISTORY AND POLITICS, 201 (2009).
- [T]he Spanish patent law [was] promulgated on March 27, 1826 ... Several royal decrees paved the way for the amendment of the laws of the Spanish colonies to place questions on patents under the jurisdiction of ordinary tribunals in the colonies. During the Spanish period, all patent applications of Philippine residents had to be sent to Spain for examination and grant.
- [71] Id.
- [72] Id.
- [73] The intellectual property system: a brief history, INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES, available at <<https://www.ipophil.gov.ph/news/the-intellectual-property-system-a-brief-history/>> (last accessed on September 7, 2020).

[74] PAUL GOLDSTEIN, ET AL., INTELLECTUAL PROPERTY IN ASIA: LAW, ECONOMICS, HISTORY AND POLITICS, 201 (2009).

[75] Republic Act No. 165 (1947).

[76] Republic Act No. 166 (1947).

[77] The intellectual property system: a brief history, INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES, available at <<https://www.ipophil.gov.ph/news/the-intellectual-property-system-a-brief-history/>> (last accessed on September 7, 2020).

[78] Pres. Decree No. 49 (1972).

[79] Republic Act No. 8293 (1997), sec. 172 provides:

SECTION 172. Literary and Artistic Works. — 172.1. Literary and artistic works, hereinafter referred to as "works," are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

- (a) Books, pamphlets, articles and other writings;
- (b) Periodicals and newspapers;
- (c) Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
- (d) Letters;
- (e) Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
- (f) Musical compositions, with or without words;
- (g) Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
- (h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
- (i) Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- (j) Drawings or plastic works of a scientific or technical character;
- (k) Photographic works including works produced by a process analogous to photography; lantern slides;
- (l) Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
- (m) Pictorial illustrations and advertisements;
- (n) Computer programs; and
- (o) Other literary, scholarly, scientific and artistic works.

[80] Pres. Decree No. 49 (1972), sec. 2 and Republic Act No. 8293 (1997), sec. 172.

[81] Pres. Decree No. 49 (1972), sec. 26 provides:

Section 26. After the first public dissemination or performance by authority of the copyright owner of a work falling under subsections (A), (B), (C) and (D) of Section 2 of this Decree, there shall, within three weeks, be registered and deposited with the National Library, by personal delivery or by registered mail, two complete copies or reproductions of the work in such form as the Director of said library may prescribe. A certificate of registration and deposit for which the prescribed fee shall be collected. If, within three weeks after receipt by the copyright owner of a written demand from the director for such deposit, the required copies of reproductions are not delivered and the fee is not paid, the copyright owner shall be liable to pay a fine equivalent to the required fee per month of delay and to pay to the National Library the amount of the retail price of the best edition of the work. With or without a demand from the Director, a copyright owner who has not made such deposit shall not be entitled to recover damages in an infringement suit and shall be limited to

the other remedies specified in Section 23 of this Decree.

[82] *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 930 (1996) [Per J. Regalado, En Banc].

[83] Pres. Decree No. 49 (1972), sec. 26.

[84] Rep. Act No. 8293 (1997), sec. 191.

[85] *ABS-CBN v. Gozon*, 755 Phil. 709, 740 (2015) [Per J. Leonen, Second Division].

[86] DEBORAH E. BOUCHOUX, *INTELLECTUAL PROPERTY THE LAW OF TRADEMARKS, COPYRIGHTS, PATENTS, AND TRADE SECRETS* 203 (4[TH] ED., 2012).

[87] *Id.*

[88] *Id.* at 203-204.

[89] Pamela Samuelson, *The Quest for a Sound Conception of Copyright's Derivative Work Right*, 101 *GEORGETOWN LAW JOURNAL* 1505, 1526 (2013).

[90] Deidri: A. Keller, *Recognizing the Derivative Works Right as a Moral Right: A Case Comparison and Proposal*, 63 *CASE WESTERN RESERVE LAW REVIEW* 511, 541 (2012).

[91] Amy B. Cohen, *When Does a Work Infringe the Derivative Works Right of a Copyright Owner?*, 17 *CARDOZO ARTS & ENT. L.J.* 623, 626 (1999).

[92] Copyright, Designs, and Patents Act, 1988, c. 48, sec. 16 provides:

Section 16. The acts restricted by copyright in a work.

(1) The owner of the copyright in a work has, in accordance with the following provisions of this Chapter, the exclusive right to do the following acts in the United Kingdom -

....

(e) to make an adaptation of the work or do any of the above in relation to an adaptation.

[93] Canadian Copyright Act, R.S.C. 1985, c. C-42, sec. 3(1)(a)(b)(c) provides:

Section 3(1). For the purposes of this Act, copyright, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

(a) to produce, reproduce, perform or publish any translation of the work,

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,

(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,

[94] Copyright Act 1968, sec. 10(1), 31(1)(a)(vi) provide:

Section 10. Adaptation means:

(a) in relation to a literary work in a non-dramatic form a version of the work (whether in its original language or in a different language) in a dramatic form;

(b) in relation to a literary work in a dramatic form a version of the work (whether in its original language or in a different language) in a non-dramatic form;

(ba) in relation to a literary work being a computer program—a version of the work (whether or not in the language, code or notation in which the work was originally expressed) not being a reproduction of the work;

(c) in relation to a literary work (whether in a non-dramatic form or in a dramatic form):

- (i) a translation of the work; or (ii) a version of the work in which a story or action is conveyed solely or principally by means of pictures; and
- (d) in relation to a musical work-an arrangement or transcription of the work.

Section 31. Nature of copyright in original works

- (1) For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a work, is the exclusive right:
- (a) in the case of a literary, dramatic or musical work, to do all or any of the following acts:
 - (vi) to make an adaptation of the work;

[95] US Copyright Act of 1909, sec. 6 provides:

That compilations or abridgements, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such work, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this Act; but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works.

[96] Act No. 3134, sec. 3(b) provides:

Section 3(b) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute it if it be a model or design;

[97] The Philippines became a party to the Berne Convention on August 1, 1951. See WIPO Lex, Contracting Parties, available at <<https://wipolex.wipo.int/en/treaties/parties/remarks/PH/15>> (last accessed on September 7, 2020).

[98] Republic Act No. 8293 (1997), sec. 171 provides:

Section 173. Derivative Works. — 173.1. The following derivative works shall also be protected by copyright:

- (a) Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and
- (b) Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents.

[99] Pres. Decree No. 49 (1972), sec. 8.

[100] Berne Convention, art. 8, 12.

[101] Rollo, p. 42.

[102] DEBORAH E. BOUCHOUX, INTELLECTUAL PROPERTY THE LAW OF TRADEMARKS, COPYRIGHTS, PATENTS, AND TRADE SECRETS 203-204 (4[TH] ED., 2012).

[103] Rollo, pp. 87 and 96; and pp. 88 and 97.

[104] Id. at 14.

[105] Id.

[106] Pres. Decree No. 49 (1972), sec. 6, par. 1 provides:

Section 6. The creator or his heirs or assigns shall own the copyright in any of the works mentioned in Section

2 of this Decree. If the works is produced by two or more persons, the copyright shall belong to them jointly and their respective rights thereto shall be governed by the Rules of the Civil Code on co-ownership.

[107] Republic Act No. 8293 (1997), sec. 178.1 provides:

Section 178. Rules on Copyright Ownership. - Copyright ownership shall be governed by the following rules:

178.1. Subject to the provisions of this section, in case of original literary and artistic works, copyright shall belong to the author of the work;

178.2. In case of works of joint authorship, the co-authors shall be the original owners of the copyright and in the absence of agreement, their rights shall be governed by the rules on co-ownership. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the copyright in the part that he has created[.]

[108] Republic Act No. 8293 (1997), sec. 171.1.

[109] E.I. Dupont De Nemours and Co. v. Francisco, 794 Phil. 97, 127 (2016) [Per J. Leonen, Second Division].

[110] Agreement On Trade Related Aspects of Intellectual Property Rights, art. 9, par. 2.

[111] DEBORAH E. BOUCHOUX, INTELLECTUAL PROPERTY THE LAW OF TRADEMARKS, COPYRIGHTS, PATENTS, AND TRADE SECRETS 199 (4[TH] ED., 2012).

[112] 755 Phil. 709 (2015) [Per J. Leonen, Second Division].

[113] Id. at 741-744.

[114] 361 Phil. 900 (1999) [Per J. Mendoza, January 8, 1999].

[115] Id. at 912.

[116] Id. at 912-914.

[117] Id. at 912.

[118] Id.

[119] Id. at 915.

[120] Id. at 30-31.

[121] Id.

[122] Pres. Decree No. 49, sec. 6, pars. 2 and 3:

Section 6. Where the work is commissioned by a person who is not the employer of the creator and who pays or agrees to pay for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of it but the copyright thereto shall belong in joint ownership to him and the creator, unless there is a stipulation to the contrary.

[123] Pres. Decree No. 49, sec. 6, par. 2.

[124] Republic Act No. 8293 (1997), sec. 178.3 provides:

Section 178. Rules on Copyright Ownership. - Copyright ownership shall be governed by the following rules:

178.3. In the case of work created by an author during and in the course of his employment, the copyright shall belong to:

- (a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.
- (b) The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary[.]

[125] Pres. Decree No, 49, sec. 6, par. 3:

Section 6. Where the work is commissioned by a person who is not the employer of the creator and who pays or agrees to pay for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of it but the copyright thereto shall belong in joint ownership to him and the creator, unless there is a stipulation to the contrary.

[126] Rep. Act No. 8293 (1997). sec. 171.4 provides:

Section 178. Rules on Copyright Ownership. - Copyright ownership shall be governed by the following rules:

....

178.4. In the case of a work commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of the work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary[.]

[127] Rollo, p. 18.

[128] Pres. Decree No. 49 (1972), sec. 15.

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