

DSWD OPINION NO. 59 S. 2024DRN: LS-L-LO-24-05-86423-C**MEMORANDUM**

FOR : ATTY. KARINA ANTONETTE A. AGUDO
Director IV, Administrative Service

FROM : THE ASSISTANT SECRETARY FOR GASSG AND
CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE

SUBJECT : LEGAL OPINION ON THE COPYRIGHT REGISTRATION
OF PREMIS SYSTEM

DATE : 23 JULY 2024

This pertains to your MEMORANDUM requesting for guidance on the **copyright registration** of the Property Record and Equipment Monitoring Inventory System (PREMIS), an **electronic tool** developed by the Department through its AS-PSAMD for the purpose of maintaining a database system that produces accurate reports on acquired properties and monitors property accountability of DSWD personnel.

According to Social Welfare Institutional Development Bureau (SWIDB), since PREMIS is a work of the Department, it is not eligible for copyright registration under **Section 176.1 of Republic Act No. 8293**, or the **“Intellectual Property Code of the Philippines (IP Code)”** for being considered as **“work of the government”**. However, as stated in your Memorandum, the Intellectual Property of the Philippines (IPOPHL) – Bureau of Copyright recommended and advised SWIDB that the computer programmers responsible for the development of PREMIS could apply for the copyright registration as its authors and owners. Thereafter, they will transfer the ownership to DSWD through a Deed of Assignment or Transfer.

Comments***“Works of the Government”***

It is a rule under our IP Code that no copyright subsists in the works of the government, to wit:

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.

To be clear, **Section 171.11** of the same law provided a definition for what may be considered as **“Work of the Government”**. Under the law, it is defined as a work created by an officer or employee of the Philippine Government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations, as a part of the officer or employee’s regularly prescribed official duties. Further, **IPOPHL Memorandum Circular No. 2020-024**, with subject, *“Copyright Rules and Regulations for the Government”*, described **“Regularly Prescribed Official Duties”** as the duties and responsibilities stated in an employee’s or officer’s Civil Service Commission Memorandum Circular (CSC MC) Form No. 1, otherwise known as the “Position Description Form”, including functions related thereto.

Applying the laws and rules in the case, the PREMIS system was developed by the employees of the Department’s Property Supply and Asset Management Division (PSAMD) in the performance of their functions in relation to their duties and responsibilities, and as part of the mandate of their office to manage properties, supplies and assets of the Department.

It is, thus, our view that PREMIS cannot be registered for copyright as it is considered a “work of the government” as defined under existing law and IPOPHL rules.

Copyright Registration by DSWD Employees

You mentioned that the alternative approach that you are considering is the copyright registration of PREMIS through the computer programmers who developed the system as its authors.

Chapter VI of the IP Code on Rules on Copyright Ownership prescribes who shall be the considered owner of the copyright when the work was created during the course of his employment:

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.

As what has been discussed above, the PREMIS system was developed by the computer programmers as employees of the Department’s PSAMD in relation to the performance of their functions, and as part of the mandate of their office which manages properties, supplies and assets of the Department. Thus, the DSWD as the employer, should be considered the owner of the copyright and not the computer programmers.

Further, may we direct you to the Department's Intellectual Property (IP) Policy, through Administrative Order No. 05, series of 2024, viz:

4 Ownership of IP and Rights of Use

4.1 IP Created by DSWD

All intellectual properties created by DSWD personnel shall be fully owned by the DSWD under any of the following circumstances:

- 4.1.1 If the IP is created pursuant to the regular duties and responsibilities of the DSWD personnel employed or rendering service to the DSWD as stipulated in their contract;
- 4.1.2 If the IP is created using substantial resources of the DSWD;
- 4.1.3 If the IP is created using the funds from external entity and/or stakeholders coursed through the DSWD; and
- 4.1.4 If the IP is fully donated without conditions by an external party or employee to the DSWD.

4.2 IP Created by DSWD Employees

The DSWD employees shall fully own the IP under the following circumstances:

- 4.2.1 If the IP is created outside the regular duties and responsibilities of the employee; and
- 4.2.2 If the IP is created without use of DSWD's resources, including official time; or
- 4.2.3 If the DSWD has waived ownership of the IP.

Further, in the advice of the representative from the Copyright Registration of IPOPHL on 19 February 2024 via e-mail¹, the registration of the system (PREMIS) and the eventual transfer thereof to the DSWD was qualified in view of the condition mentioned:

“As mentioned in our phone discussion earlier today, your office (DSWD) may register the IT system provided that you obtain a Deed of Assignment/Transfer from all the author(s)/creators of the said work. This is of course only possible if the work was done outside of the functions or duties and responsibilities of the creator or employee, for that matter xxx” (Emphasis Supplied)

That is, the IPOPHL stressed that such course of action is only applicable if the work was not part of the functions or duties of the employee. The result of any IP application may depend on the appreciation of the IPO on the completeness and compliance with the existing laws, rules and regulation, and relevant IPO Circulars.


Thus, we respectfully submit that the copyright over PREMIS is considered to be **owned by the government**. However, such copyright cannot be registered for it is considered a **“work of the government”**, as defined under the IP Code and IPOPHL policy. Consequently, there is nothing to be transferred or assigned by the computer programmers or developers of PREMIS to DSWD.

¹ Annex A

Lastly, please be informed that the foregoing legal opinion, is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

For your consideration. Thank you.


ATTY. GINA V. WENCESLAO

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