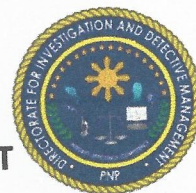




Republic of the Philippines
NATIONAL POLICE COMMISSION
NATIONAL HEADQUARTERS PHILIPPINE NATIONAL POLICE
DIRECTORATE FOR INVESTIGATION AND DETECTIVE MANAGEMENT
Camp Crame, Quezon City



NOV 21 2016

INVESTIGATIVE DIRECTIVE
No. 2016-15

**GUIDELINES AND PROCEDURES FOR INVESTIGATION AND DETECTION OF
CRIMES INVOLVING VIOLATION OF INTELLECTUAL PROPERTY RIGHTS
LAWS**

1. REFERENCES:

- a. Letter of Instructions: Integration of IPR in PNP Functions;
- b. Revised PNP Operational Procedures, 2013 Edition;
- c. The Rules of Procedure for Intellectual Property Rights Cases (A.M. No. 10-3-10-10-SC), October 3, 2011; and
- d. Republic Act No. 9711 Food and Drug Administration (FDA) Act of 2009;
- e. Executive Order No. 736 entitled "*Institutionalizing permanent units to promote, protect and enforce Intellectual Property Rights (IPR) in different law enforcement and other agencies under the coordination of the National Committee on Intellectual Property Rights (NCIPR)*" dated July 21, 2008;
- f. Republic Act No. 8293 Intellectual Property Code of the Philippines dated June 6, 1997;
- g. Republic Act No. 7394 Consumers Act of the Philippines, April 13, 1992;
- h. Presidential Decree No. 49 entitled "*Decree on the Protection of Intellectual Property of 1972*";
- i. P.D. No. 49 – Decree on the Protection of Intellectual Property of 1972
- j. Republic Act No. 3720 Food, Drug and Cosmetic Act, June 22, 1963;
- k. Art. 315 of the Revised Penal Code, Swindling (Estafa), December 8, 1930;
- l. Art. 172 of the Revised Penal Code, Falsification by Private Individual and Use of Falsified Documents, December 8, 1930.

2. BACKGROUND:

The advent of technology brought not only opportunities, but also prejudice to the rightful owners of intellectual property through various modus operandi such as infringement; trademarks and service marks; patents; copyrights and related rights; industrial designs; geographic indicators; layout designs of integrated circuits; and protection of undisclosed information.

The Philippine National Police (PNP) is mandated by law to investigate all violations of laws of the land, including intellectual property laws. Hence, the PNP

recognizes the importance of the laws which provides protection and security of the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual properties and creations, most especially when these are beneficial to the people.

Thus, the PNP, being a member of the National Committee on Intellectual Property Rights (NCIPR) which was created through Executive Order Number 736 as an Intellectual Property Unit (IPU), is further mandated to enforce Republic Act No. 8293.

3. PURPOSE:

This Investigative Directive prescribes the procedures and guidelines to be observed by all PNP units tasked in the investigation and detection of cases involving violations of IPR laws in order to ensure the propriety and the orderly conduct thereof.

4. SCOPE OF APPLICATION

This Investigative Directive shall apply to all investigation and detection on violations of IPR laws to be conducted by the Intellectual Property Teams (IPTs) that will be designated by the Regional Directors in PROs together with the CIDG as the lead IP unit nationwide.

5. GUIDELINES AND PROCEDURES:

a. Pre-Operation Phase

1. Receipt of Letter Complaint from IPR owner requesting for Police assistance/intervention addressed to the RD, Police Regional Office/D, CIDG, with the following Documentary Requirements:
 - a) Proof of IP ownership;
 - b) SEC Registration;
 - c) Complaint Affidavit of IP Owner or authorized representative; and
 - d) Special Power of Attorney with Board Resolution designating the representative as such.
2. Designated IP Team Leaders determine whether a buy-bust or search warrant operation will be conducted;
3. Start Investigative preparation:
 - a) Taking of sworn statements;
 - b) Identification and verification of targets;
 - c) Surveillance and test-buy;
 - 1) Photographs/sketches of targets;
 - 2) Official receipt of test-buy if any; and
 - 3) Examination and eventual issuance of certification – if any, for the purchase of the subject counterfeit product during the test buy by the IP owner/technical expert witness.

4. Documentation for Search Warrant;
 - a) Application for Search Warrant;
 - b) Affidavit of IP owner/authorized representative;
 - c) Affidavit of deponent/expert witness;
 - d) Inventory of property seized form/document; and
 - e) Chain of custody seized evidence form/document.
5. Secure pre-operation clearance to CIDG/RHQ Command Group;
6. Ensure operational worthiness of equipment (Breaching tools, Tactical shields, Radios etc.);
7. Check personnel gears (Firearms, Bullet vests, Ballistic helmets etc.);
8. Preparedness and readiness of vehicles;
9. Team leader conducts tactical briefing; and
10. Inform the Headquarters, thru SMS or cellphone, prior to jump-off of the operating teams.

b. Operation Phase

1. Implementation of Search Warrant.
 - a) Coordinate the operation with the territorial PNP units;
 - b) Coordinate with management of establishment/building and/or Barangay officials if practicable to act as supplemental witnesses during the search;
 - c) Approach the subject of IPR law enforcement;
 - d) Present identification and authority;
 - e) Signify intent and purpose of operation;
 - f) Assume control and contain the area of operation and its immediate premises;
 - g) Execute operation swiftly and cautiously;
 - h) Proceed with the orderly and systematic operation;
 - i) Seize subject of IPR violations and pieces of evidence;
 - j) Arrest suspects; and
 - k) Record and document the entire duration of police operation.
 - 1) Accomplished inventory of property seized form/document;
 - 2) Examination of the seized items to be conducted by the expert witness/rights holder;
 - 3) Certification whether or not the confiscated items are counterfeit issued by the rights holder;
 - 4) Chain of custody of seized evidence form/document;
 - 5) Affidavit of the seizing officers or arresting officers, or both as the case maybe; and
 - 6) Supplemental affidavit of the owner/authorized representative, if needed.
2. For Buy-bust Operation.
 - a) Coordinate the operation with the territorial PNP units;
 - b) Approach the subject of IPR law enforcement;
 - c) Assume control and contain the area of operation and its immediate premises;

- d) Execute operation swiftly and cautiously;
- e) Proceed with orderly and systematic operation;
- f) Seize subject of IPR violations and pieces of evidence;
- g) Arrest suspects; and
- h) Record and document the entire duration of police operation:
 - 1) Marked money duly notarized;
 - 2) Actual buy-bust operation;
 - 3) Inventory of items;
 - 4) Examination of the seized items by the expert witness;
 - 5) Certification whether or not the confiscated items are counterfeit;
 - 6) Chain of custody of seized items;
 - 7) Affidavit of the seizing and arresting officers; and
 - 8) Supplemental affidavit of the IP Owner/authorized representative, if needed.

c. Post Operation Phase

1. Custody and Disposition of Confiscated, Seized, Surrendered Fake and Counterfeit Items;

The designated IP Team shall take charge and have custody of all confiscated, seized, and/or surrendered items, to include prohibited and regulated substances/chemicals prior to their turn over to the appropriate office. Chain of custody as required in the PNP POP and Investigation Manual shall be strictly observed.

2. Conduct of Physical Inventory of the Seized Items;
 - a) Signed copies of inventory shall be made available;
 - b) On site inventory shall be performed when practicable unless there are security risks; and
 - c) All seized items shall be photographed during the physical inventory with caption indicating the case, date and initial of the photographer.
3. Conduct of Forensic Examination and Custody;
 - a) In case of seized firearms and explosives, existing pertinent SOP shall apply;
 - b) In case of prohibited and regulated substances, existing pertinent SOP shall apply; and
 - c) In case of toxic, radioactive and poisonous substances, existing pertinent SOP and protocols shall apply.
4. Arrested person/s together with the pieces of evidence **MUST** be referred for inquest proceedings before the Prosecutor's Office of Jurisdiction;

NOTE:

Inquest proceedings before the prosecutor's office of jurisdiction is ***within the prescribed period in Article 125, RPC (12 hrs or 18 hrs,***

as the case maybe). The IP owner/authorized representative must be present during the inquest proceedings to be examined personally by the inquest prosecutor, and

In the event that NO ARREST was made, the complaint MUST be filed with the Prosecutor's Office within 60 days upon the issuance of the search warrant, otherwise said search warrant maybe quashed by the issuing court, and order the return of the seized goods.

5. Upon the conclusion of the operation, release or turn-over the area of IPR operation to the proper party, or cordon it off in case of possible seizure;
6. Check individual operating members to prevent items taken for personal gain/use;
7. Have the acknowledgement receipt for seized items, contrabands and other pieces of evidence and the certificate of orderly search signed;
8. Render Incident Report Form (IRF) and submit the same to the local police unit where the operation took place; and
9. Submission of After-Activity Report.
 - a) The IP operating team must submit a report on the result of operation thru SMS within an hour after the termination of the operation and a Spot Report thru email and other practicable modes of communication within three hours after the termination thereof; and
 - b) Detailed progress report of the operation shall be rendered within 24 hours for updating of the status of the case.

d. Enforcement of R.A. No. 3720 (Food, Drug and Cosmetic Act), as amended by R.A. No. 9711 (Food and Drug Administration Act of 2009), and RA 7394 (Consumer Act of the Philippines), the PNP shall coordinate with the following implementing agencies:

- i. Department of Health (DOH) – with respect to food, drugs, cosmetics, devices and substances;
- ii. Department of Agriculture (DA) – with respect to products related to agriculture; and
- iii. Department of Trade and Industry (DTI) – with respect to other consumer products not specified above.

6. RESPONSIBILITIES:


- a. DDIDM
 - 1) Supervise the implementation of this Investigative Directive; and
 - 2) Perform other tasks as directed.
- b. Ex-O, DIDM

- 1) Assist DDIDM in the implementation of this Investigative Directive;
and
 - 2) Perform other tasks as directed.
- c. C, CMD
- 1) OPR in the case monitoring of all incidents involving violations Intellectual Property Laws;
 - 2) Designate a PCO to act as focal person to the NCIPR; and
 - 3) Perform other tasks as directed.
- d. C, PCEID
- 1) Ensure the filing of administrative cases pursuant to existing policies against PNP personnel who commit infractions either through commission or omission relative to the guidelines of this Investigative Directive; and
 - 2) Perform other tasks as directed.
- e. D, CIDG
- 1) OPR for the enforcement of IPR laws nationwide;
 - 2) Direct, C, IND to consolidate and maintain records of all incidents related to intellectual property cases;
 - 3) Designate the AFCCU as the primary CIDG IP unit to conduct investigation and detection nationwide;
 - 4) Direct all Chiefs, CIDG Regional Offices to maintain one IP team to operate only upon valid requests from legitimate IPR owner;
 - 5) Submit Report to DIDM (Attn: CMD); and
 - 6) Perform other tasks as directed.
- f. RDs, PROs
- 1) Responsible for the implementation of this Directive in their respective AOR;
 - 2) Direct C, RIDMD to consolidate and maintain record of all incidents related to intellectual property cases;
 - 3) Submit report to TDIDM (Attn: CMD) regarding the result of the investigation;
 - 4) Select and designate personnel who will compose the IP teams (Regional, Provincial, City Police Office IP Team), which will operate only upon valid request of legitimate IPR owner;
 - 5) Designate DRDO to be the over-all supervisor of IP teams (Regional and Provincial) while the Provincial Director will serve as supervisor of Provincial IP Team; and
 - 6) Perform other tasks as directed.
- g. D, ACG and D, CLO
- 1) Provide technical support to Operating IP teams as requested; and
 - 2) Perform other tasks as directed.

7. ADMINISTRATIVE SANCTIONS:

The filing of any administrative charge pursuant to NAPOLCOM MC 2016-002 shall proceed against personnel who commit infractions, either through commission or omission, relative to the guidelines set forth in this Investigative Directive.

8. For guidance and strict compliance.


AUGUSTO M. MARQUEZ, JR.
Police Chief Superintendent

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