

Kluwer Copyright Blog

The Recent and Relevant Copyright Bill in Colombia (Law 1915-2018)

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The new Colombian Copyright Act bill brings different and important modifications. The following points explain the most significant changes:



- **Copyright Duration has Increased for Legal Persons:**

The copyright and neighboring rights duration for legal persons has increased from 50 to 70 years. The 70-year term is counted from the year following the date of publication, and where a work has not been published, the year following its creation. This is one of the main points that had been urgently pending approval since the Free Trade Agreement was signed with the United States.

There are still other urgent pending matters to be implemented as a consequence of the Trade Agreements signed with the United States and Europe, such as the Internet Services Providers Liability regulation, however, this new bill contains the most important copyright reform since the enactment of the Colombia Copyright Act of 1982 and the Andean Community Decision # 351 of 1993 that covers the Andean Community Countries (Colombia, Peru, Bolivia and Ecuador).

As Colombia is a continental law and authors' rights dualistic system country, it is important to specify that when addressing copyright, we are referring to the *economic* rights related to the works.

- **Parody as a Limitation of Copyright:**

Surprisingly, neither the Copyright Act of 1982, nor the Andean Community Decision 351 of 1993, included parody within the list of copyright limitations and exceptions. Only with this new bill has it been included to allow transformative uses of works in which parodies are made. Despite there being no relevant case law expressing a need for this exception, it was very important to

include parody as a limitation, due to the exhaustive list of copyright limitations typical of continental law systems, such as Colombia.

- **New Limitations and Exceptions:**

Beside the parody limitation, the following limitations and exceptions were also introduced:

- Public loan of works in relation to archives, libraries or documentation centers.
- Making works available in terminals inside libraries, documentation centers and archives.
- The reproduction of plastic, photographic and figurative works for teaching purposes or for the performance of exams.
- The so called “streaming exception” by which it is permissible to reproduce works temporarily and electronically, when the reproduction is essential for a technological process and facilitates the transmission of data.

Finally, Law 1915 establishes that every three years the government, with the involvement of the Copyright Office, should convene a public hearing with different entities to evaluate the need for implementing, deleting or modifying limitations and exceptions.

- **New Enforcement Provisions**

There are new provisions concerning enforcement in copyright infringement matters, and perhaps the most important among them is the introduction of statutory damages. Before the new bill, damages in copyright infringement actions had to be proven by the plaintiff by filing evidence primarily demonstrating the loss of profits. With this new regulation, the plaintiff can choose between the previous system or new statutory damages. Despite this new provision, the law did not regulate the exact amounts of statutory damages and instead left this point to a decree that must be issued by the government.

Another development in the new bill is a provision that empowers judicial authorities to request that infringers provide information on any person involved in the infringement, as well as the means, production instruments or distribution channels used in the infringement. The reform also modifies Article 271 of the criminal code by providing that reproduction of a work by computer means will be prosecuted if performed with the intent to obtain a direct or indirect economic benefit, or if performed on a commercial scale. Furthermore, the new law established that judicial authorities are empowered to order the destruction of infringing merchandise in copyright infringement proceedings, and other proceedings involving related rights, technological measures, and suppression or alteration of any information about rights management. It is important to mention that all of these new features in the copyright law, concerning enforcement provisions such as statutory damages, destruction of infringers’ products, and requests to provide information on distribution channels, were already applicable in trademark infringement cases, and were urgently pending applicability in copyright matters.

- **The Regulation of Orphan Works**

The regulation of orphan works is yet another important modification, as Colombian law contained no significant provisions on orphan works before this bill. Under the new bill, education centers, libraries, archives, conservation agencies and museums can make certain use of orphan works after exhausting a detailed procedure. The procedure requires that the user attempt to contact authors and right owners, and if the authors or right owners cannot be contacted after the proscribed

procedure, the works qualify as orphan works.

- **A New Legal Presumption on Copyright Ownership**

The law establishes a new legal presumption that copyright vests in the individual named (including pseudonyms) in a work, interpretation or phonogram. The presumption not only applies to copyright ownership, but also to neighboring rights as it states that it is applicable to interpretations and phonograms.

- **Exhaustion of the Distribution Right**

Before the new law there were differing views on the exhaustion of the distribution right. The new law is clear that exhaustion of the distribution right is established for authors' rights and neighboring rights.

- **Other Modifications**

– Editors and producers of audiovisual and phonogram works that are established in Colombia must deposit their works after 60 working days from publication. The law has also established a fine for breaching this obligation. Despite the existence of this new provision, as in other areas, the law provides leave for the government to regulate pending matters on the deposit of works.

– The statutory period of limitation for collective societies to claim remunerations that have not been collected by its associates has increased from 3 to 10 years.

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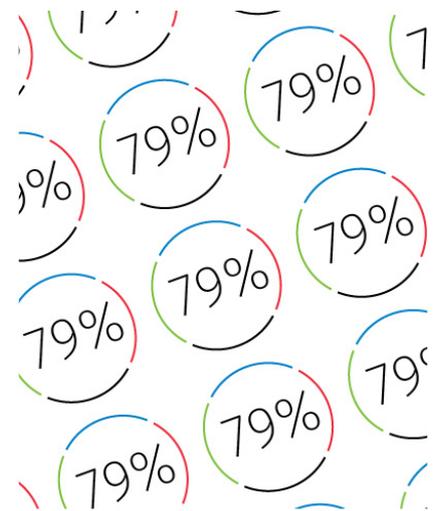
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