

Bill 306 of 2013 House of Representatives

Translation

ARTICLE 1. Article 8 of Law 23 of 1982 will be as follows:

“For the purposes of this law, the following definitions apply:

Author. Natural person who achieves the intellectual creation.

Interpreting artist or performer. Is the actor, singer, musician, dancer or any other individual playing a role, singing, reciting, declaiming, interpreting or performing in any way literary or artistic works or folk expressions.

Communication to the audience of an interpretation or performance of a phonogram. It is the broadcasting to the public, by any means except for radio broadcasting, of sounds of an interpretation or performance or the sounds or representations of sounds fixed into a phonogram. For the purposes of rights acknowledged to phonogram interpreters or performers and producers, the “communication to the public” also includes making the sounds or representing the sounds fixed into a phonogram becoming audible for the public.

Copy or specimen. It is the supporting material included in the work, as a result of an act of reproduction.

Beneficiary. Individual or legal person to whom by any title the known rights are transmitted in this law.

Public Distribution. Making the original or faithful copies of the work available to the public, by selling, leasing, loaning or any other.

Dissemination. Making the work accessible to the public by any means or procedure.

Broadcasting. Remote dissemination of sounds or images and sounds to be picked up by the public.

Fixation. Incorporation of signs, sounds or images, or its representation, from which they may be perceived, reproduced or communicated using a device.

Phonogram. is the fixation of all sounds of a performance or of other sounds not in the shape of a fixation included in film or audiovisual work.

Temporary Recording. Sound or audiovisual fixation of a representation or performance or radio broadcasting, carried out by a brief period by a radio broadcasting body, using its own means and used in property owned broadcasting activities.

Rights management information. Information which identifies the work, interpretation or performance or phonogram; the author of the work, the performing artists interpreting or performing or the producer of the phonogram; or the owner of any right over the work, interpretation or performance or phonogram; or information regarding the terms and conditions of usage of the works, interpretations or performances or phonograms; or any number or code representing such information, whenever any of these elements are present in a sample of the works, interpretation or performance of a phonogram or being included along with the communication or the availability to the public of a work, interpretation or performance or phonogram.

Profit. Exploitation or gain obtained from something

Effective technologic measure. Means any technology, device or component which, in the course of normal operation, controls the access to protected work, interpretation or performance or phonogram, or which protects any copyright or any other right related to the author.

Work. Any original, intellectual property of artistic, scientific or literary nature, susceptible of being disclosed or reproduced in any fashion.

Anonymous work. Is a work which does not include the name of the author; from its own volition or because it is not known.

Audiovisual work. Is any creation expressed from a series of images associated with or without sound included, which is essentially destined to be displayed using a projector or any

other mean of communication of images and sound, regardless of the characteristics of the supporting material containing it.

Collective work. Is a work produced by a group of authors, from the initiative and under the orientation of an individual or legal person coordinating, broadcasting and publishing it under its name.

Derivative work. Is a work based upon adapting, translating or any other transformation of an original work, as long as it is of independent creation.

Work in collaboration. Is the one produced, jointly, by two or more individuals whose contribution may not be divided.

Individual work. Is the one produced by a single individual.

Unique work. Is the one which has not yet been released to the public.

Original work. Is the one previously created.

Posthumous work. Is one which has not been advertised but after the death of its author.

Pseudonymous work. Is the one in which the author hides behind a pseudonym which prevents him from being identified.

Broadcasting body. Is a radio or television broadcasting enterprise broadcasting programs to the public.

Producer. An individual or a legal person acting on its own initiative, coordination and the responsibility in the production of the work, for example, the audiovisual work or the software program.

Phonogram producer. Is the individual or legal person acting on his own initiative and having the responsibility of the first fixation of the sounds of an interpretation or performance or other sounds or representations of sounds.

Publication Is the production of samples made available to the public with the consent from the

owner of such right, as long as the availability of such samples allows meeting the reasonable needs of the public, considering the nature of the work.

Publication of an interpretation or performance of a phonogram. Is making the public available with copies of the interpretation or performance of the phonogram with the consent from the owner of the right as long as such samples made available to the public are in a reasonable amount.

Broadcasting. Means the transmission by wireless means or satellite to the public of sounds or sounds and images, or of the representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; “broadcasting” does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public.

Retransmission. Remittance of the signal or a program received from another source, carried out by wireless diffusion of signs, sounds or images or by means of cable, wire, fiber optics or any other analog procedure.

Ownership. Is the capacity of the rights acknowledged by this law”.

ARTICLE 2. Article 10 of Law 23 from 1982 will include a new final paragraph, which will be as follows:

“In all procedures before any jurisdiction related to copyrights and related rights, in absence of proof against it, shall be presumed that the individual or legal person, whose name is stated as usual, is the owner of the work rights, interpretation or performance or phonogram. It is also presumed that, in the absence of proof against it, the copyright or related right prevails in regards to the work, interpretation or performance or phonograms.

ARTICLE 3. Article 11th of law 23 from 1982 will be as follows:

“Pursuant to articles 61 and 71 of the Colombian Constitution, literary and artistic property will be protected as transferable property, for as long as the author’s existence and eighty years

more, according to the provisions of the law.

This law protects Colombian and foreign works, interpretations, performances, phonograms and broadcastings residing in Colombia or published for the first time in the country.

Foreigners non-residing in Colombia shall be granted the protection of this law as provided by the international treaties to which Colombia adheres or whenever national laws from another country imply effective reciprocity in protecting the guaranteed rights of Colombian authors, interpreters, performers, producers and broadcasting bodies in said countries.

PARAGRAPH. Whenever the protection of a phonograph or the fixed interpretation or performance within a phonogram is granted pursuant to the criteria of first publishing or fixation, such interpretation, performance or phonogram will be considered as published for the first time in Colombia, whenever such publishing is made within the 30 days following the initial publishing in another country.

ARTICLE 4. Article 12th of Law 23 from 1982 will be as follows:

“The exclusive right that the author or if applicable, his successors have over literary and artistic works to authorize, or prohibit:

- a) Any form of reproduction of the work, either permanent or temporary by any means of procedure, including temporary electronic storing.
- b) Communication to the public of the work by any means or procedure, either wire or wireless, including making it available to the public, so that the members of the audience can have access to it in the time and place each one of the choses to do so.
- c) Public distribution of the original or copies of the works by selling or in any other way transferring property.
- d) Importing copies made without permission from the owner of rights, by any means, including electronic broadcasting, without prejudice of the provisions of the Andean Decision Number 351 from 1993.

d) Trade leasing to the public of the original and samples of his works.

Translation, adaptation, arrangement or any other transformation of the work”

ARTICLE 5. Article 27th of Law 23 from 1982 will be as follows:

“In all cases where a literary or artistic work whose owner is a legal person, the protection term will be 70 years starting from the end of the calendar year of the first authorized publishing of the work.

If within the 50 years following the creation of the work, there has not been an authorized publication, the term will be 70 years from the end of the calendar year of the creation of the work”.

ARTICLE 6. Article 165th of Law 23 from 1982 will be as follows:

“The protection offered by the standards of this chapter will not have any effect whatsoever in the protection of the copyright over literary, scientific and artistic works guaranteed by this law. Therefore, none of the provisions included in it may be interpreted in detriment of such protection.

In order not to set any hierarchy between the copyright on the one hand and the rights of artists, interpreters or performers and producers of phonograms on the other, in such events where permission is necessary from the author of a work included in a phonogram as well as from the interpreter or performer or producer owner of the rights of a phonogram, the requirement of the permission from the author persists since permission from the artist, interpreter or performer or producer of phonograms may also be required.

Just as well, in such cases where permission from the author is not needed of a work included in a phonogram as well as from the interpreter or performer or the producer owning the rights of the phonograms does not cease to exist in case authorization from the author is also needed.”

ARTICLE 7. Article 166th of Law 23 from 1982 will be as follows:

“The exclusive right that the interpreting artists or performers or their representatives have in

relation to their interpretations or performances of authorizing or prohibiting:

a) Broadcasting and communication to the public of non-fixed interpretations or performances, except when the interpretation or performance constitutes in itself a broadcasted performance or interpretation;

- b) Fixation of performances or interpretations are not fixed;
- c) Reproduction of their interpretations or performances fixed by any mean or any way, permanently or temporarily, by any procedure, including electronic, temporary storage
- d) Public distribution of the original and copies of their interpretations or performances fixed in the phonogram, by selling or by any means of transference of property.
- e) Commercial leasing to the public of the original and of its samples of their interpretations or performances fixed in phonograms, even after their distribution carried out by the interpreting artist or performer or with permission.
- f) Making their interpretations or performances available to the public in phonograms, so that the members of the public may have access to it at the place and time each one of them chose.”

ARTICLE 8. Article 172nd of Law 23 from 1982 will be as follows:

“The producer of the phonograms has the exclusive right to authorize or prohibit:

- a) Phonogram reproduction by any means either temporary or permanent, by any procedure including temporary, electronic storage.
- b) Public distribution of the original and copies of their phonograms, by selling or by any means of property transference.
- c) Commercial leasing to the public of the original and of the samples of their phonograms even after their distribution has been carried out by themselves or with their authorization.
- d) Making the phonograms available to the public, so that the member of the public may have access to them at the time and place each one of them chose to do so.”

ARTICLE 9. Article 2 of Law 44 from 1993 which modifies article 29th of Law 23 from 1982

will be as follows:

“All rights guaranteed to the interpreting artists or performers, the producers of phonograms and radiobroadcasting bodies will have the following extent:

Whenever the owner is an individual, the protection will be provided along his life and eighty years more from the time of his death.

Whenever the owner is a legal person, the protection term will be of 70 years starting from:

From the end of the calendar year of the first authorized publication of the interpretation, performance or of the phonogram. Due to the lack of an authorized publication within the following 50 years starting from the time of carrying out the performance, interpretation or the phonogram, the term will be 70 years starting at year end of the calendar in which the interpretation or performance or the phonogram took place;

From the end of the calendar year in which the first radio broadcasting took place”

ARTICLE 10. Limitations and exceptions defined in regards to copyright and related rights will be limited to those special cases not infringing the normal exploitation of the works, interpretations or performances, phonograms and broadcastings or causing unjustified prejudice to the legal interests of the owner or owners of such rights.

ARTICLE 11. Regardless of the possibility that the Government has of setting up limitations and exceptions to the exclusive rights foreseen in the national legislation over the copyright and related rights, no Internet broadcasting of the television signals is allowed, either being land, cable or satellite broadcasting without permission from the owner or owners of the copyright of the signal contents and if such is the case, of the signal.

ARTICLE 12. Regardless of an infraction concurring to the copyright or related rights, anyone incurring in any of the following behaviors will have civil liability and shall indemnify for damages caused:

a) Avoiding without permission all technologically effective measures imposed to control access and usage without authorization the works, artistic interpretations or performances, phonograms

or broadcasted transmissions.

b) Manufacturing, import, distribution, public offering, provision or otherwise trading devices, products or components or offering the public or providing services which regarding any effective technological measure are promoted, advertised or traded with the intent to avoid such measure; or having a limited purpose or a meaningful trading usage other than avoiding such measure; or are designed, produced, carried out mainly to allow or ease the avoidance of such measure.

c) Suppressing or modifying any information regarding management of rights.

d) Distributing or importing with the intent of distribution, information concerning management of rights knowing that such information has been suppressed or tampered with without permission.

e) Distributing, importing with the intent of distributing, broadcasting, communicating or making available to the public copies of the works, interpretations or phonograms, knowing that the information regarding management of rights has been suppressed or tampered with without permission.”

PARAGRAPH. Except for a court order, no administrative authority may demand the design, or selection of parts and components for an electronic consumption product to be in accordance to a specific technological, telecommunications or computer measure, except when such product affects in any way the provisions of this article.

ARTICLE 13. The following exceptions to the liability guaranteed in subsections A and B of the previous article will be applied in relation to the paragraphs of this article.

a) Non-defaulting activities of reverse engineering concerning the copying of a software program legally obtained, carried out in good faith regarding the particular elements of such software program which have not been made available to the person involved in such activities in order to achieve interoperability of a software program created independently with other programs;

b) Non-defaulting activities carried out in good faith by a properly qualified researcher having legally acquired a non-fixed copy, interpretation or performance or sample of a work, interpretation, performance or phonogram who has made an effort, in good-faith to achieve

authorization to carry out such activities, to the necessary extent, and with the sole purpose of identifying and analyzing flaws and vulnerabilities of the technologies to encode and decode the information;

c) The inclusion of a component or a part of one with the sole intent of preventing access to minors to inappropriate contents on line in a technology, product, service or device which in itself is different to the ones mentioned in subsection b article 252 bis.

d) Non-defaulting activities in good faith authorized by the owner of a computer, a computer system or a computer network with the sole purpose of testing, researching or correcting the safety of such computer, computer system or computer network;

e) Access from libraries, files or non-profit educational institutions, to a work, interpretation or performance or phonogram to which they would not otherwise have access, with the sole purpose of making decisions regarding acquisitions.

f) Non-defaulting activities with the sole purpose of identifying and disabling the capacity of carrying out collection and dissemination of undisclosed identification of staff reflecting on line the activities of an individual with no other effect in the capacity of any person to get access to any work.

g) Non-defaulting usages of a work, interpretation or performance or phonogram in a specific kind of works determined by the law and considering the existence of substantial evidence of a real or potential impact in those non-defaulting usages. The National Government will periodically review such impact at intervals of no longer than 4 years, in order to determine the need and convenience of introducing a bill in the Congress of the Republic guaranteeing the non-defaulting usages to be the object of the exception not foreseen in this subsection.

h) The legally authorized activity of research, protection, information security or intelligence carried out by government employees, agents or contractors. For the purpose of this subsection, the term, “security of information” means activities carried out to identify and address the vulnerability of a government computer, computing system or computer network.

FIRST PARAGRAPH. all of the exceptions to the behaviors described in this article apply to

effective technological measures controlling the access to a work, interpretation, performance or phonogram.

SECOND PARAGRAPH. To the activities related in article 252bis subsection b, whenever they refer to technological measures controlling the access to a work, interpretation, performance or phonogram, only the exceptions described in subsections a, b, c, d of this article will apply

THIRD PARAGRAPH. To the activities related in article 252bis subsection b, whenever they refer to technological measures controlling non-authorized usages of a work, interpretation, performance or phonogram, the only exception described in subsection a of such article will apply.

ARTICLE 14. The provisions of the previous articles will apply to all the works, interpretations, performances, phonograms and broadcasts from broadcasting agencies that, at the time of going into effect, this law have not been made available to the public.

ARTICLE 15. Notwithstanding the provisions in article 33 of the Constitution, the administrative authorities in the exercise of the jurisdictional obligations and the competent judicial authorities to solve violation processes regarding intellectual property will have the power to order the violator to provide any information in his possession regarding any person involved in the violation, as well as the means or instruments of production or channels of distribution used for it.

ARTICLE 16. In processes regarding violations to the copyrights, related rights and brands, the judge will have the power to have all materials and tools used in the manufacturing or creation of such pirate or forged merchandises destroyed, at the expense of the defeated party and without any compensation, or under exceptional circumstances, without any compensation, they are withdrawn from commercial channels.

For merchandises considered as pirate or forged, the judge shall rule them to be destroyed, at the expense of whoever is convicted in the process, unless the owner of the right agrees to dispose of them differently. In some cases the merchandises from forged brands may be donated with charitable purposes to be used outside the trading channels, when the elimination of the brand removes the violating characteristic and the merchandise cannot be related to the

removed brand. In no case will the judges allow exporting forged or pirated merchandises or allow for such merchandise to be subjected to other customs procedures, except for exceptional circumstances. In regards to forged brand merchandises, the sole removal of the brand which was illegally attached will not be enough to allow the merchandises to be returned to the commercial channels.

ARTICLE 17. Compensation being caused as a result of the infringement of copyright and related rights can be secured to the system of pre-established damages or the general rules of evidence in the compensation of damages, on the election of the right holder of the infringed right. The National Government will regulate the matter.

ARTICLE 18. Article 2 of Law 1032 from 2006 which amended article 271 of Law 599 from 2000 will be as follows:

“Article 2 In regards to the violation of proprietary copyrights and related rights, a penalty of four (4) to eight (8) years in prison and a fine of twenty six point sixty six (26.66) to one thousand (1,000) legal minimum monthly wages will be imposed to whom, with the exceptions foreseen by the law, without the previous and express authorization of the copyright owner:

By any means or procedure reproduced a literary, scientific, artistic or filming, phonogram, videogram, software or computer program or he who transports, stores, preserves, distributes, imports, exports, sells, offers, acquires for the purpose of selling or distributing or supplying any title of such reproductions.

Represents, executes or shows in public, theater plays, musicals, phonograms, videograms, films or any other literary or artistic work.

Leasing, or in any way trading phonograms, videograms, computer programs, software or films.

Fixing, playing or trading public representations or theater or musical plays.

Using, carrying out or using, by any means or procedure, the communication, fixation, exhibition, trading, dissemination and representation of one of the works protected in this title.

Broadcasting, fixating, playing or by any acoustic or audiovisual means, discloses the

broadcasting of radio broadcasts.

Receiving, spreading or distributing by any means the broadcasting of pay television.”

ARTICLE 19. Article 3 of Law 1032 from 2006 which modified article 272nd of Law 599 from 2000 will be as follows:

“In regards to the violation of copyrights and related rights protection mechanisms and other fraudulent acts, a penalty of four (4) to eight (8) years in prison and a fine of twenty six point sixty six (26.66) to one thousand (1,000) legal minimum monthly wages will be imposed to whom in order to achieve commercial advantage or private financial profit, acting without the authorization from the copyright and related rights owners and except for the exceptions foreseen by the Law:

1. Avoids the effective technological measures imposed to control the access or unauthorized usage of works, artistic interpretations or performances, phonograms or radiobroadcasts.
2. Manufactures, imports, distributes, offers to the public, provides or in any other way trades devices, products or components or offers to the public or provides services which, concerning any effective technological measure:

Are promoted, advertised or traded with the intention of avoiding such measure; or having a limited purpose or a meaningful trading usage other than avoiding such measure; or are designed, produced, carried out in order to allow or ease the avoidance of such measure.

3. Suppresses or tampers with any information regarding the management of rights.
4. Distributes or imports management of rights for the distribution of information knowing that such information has been suppressed or tampered without permission.
5. Distributes or imports for its distribution, transmits, communicates or makes available to the public copies of the works, interpretations or performances or phonograms knowing that the information concerning management of rights has been suppressed or tampered with without authorization.
6. Manufactures, assembles, modifies, imports, exports, sells, leases or distributes by any other

means a tangible or intangible device or system, knowing or having reasons to believe that the main function of the device or system is to assist in the decoding of a coded satellite signal carrying coded programs without the authorization from the legal distributor of such signal.

7. Receives or later on distributes a satellite signal carrying a program which originated as a coded satellite signal knowing that it has been decoded without the authorization from the legal distributor of such signal.

8. Shows statements or information destined to pay directly or indirectly, collect, liquidate or distribute financial copyrights or related rights, altering or misrepresenting by any means or procedure, the necessary information for these purposes.

PARAGRAPH Subsections 1 to 5 of this article do not apply when referring to a non-profit library, file or educational institution or non-commercial broadcasting government office.
