

Venezuela

The ongoing process of modernising copyright protection

Since the 1990s Venezuela has been implementing changes to modernise copyright protection in an effort to make it compatible with international standards. To achieve this goal, Venezuela has brought into force various pieces of legislation in regard to copyright, including:

- the Copyright Act (October 1993);
- Decision 351 of the Cartagena Agreement (October 1993), which establishes a common regime for copyright and related rights for the member countries of the Andean Community; and
- regulations relating to the Copyright Act and Decision 351 of the Cartagena Agreement, which establish a common regime for copyright and related rights for the member countries of the Andean Community (March 1995).

Venezuela is a member of the World Trade Organisation and a signatory to the following international treaties which deal with intellectual property:

- the Berne Convention for the Protection of Literary and Artistic Works (May 1982);
- the Universal Copyright Convention (April 1966);
- the Geneva Convention for the Protection of Producers of Phonograms against Unauthorised Reproduction of their Phonograms (December 1981);
- the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (September 1955);
- the World Intellectual Property Organisation (WIPO) Copyright Treaty (December 2004); and
- the WIPO Performances and Phonograms Treaty (January 2005).

National Copyright Office

The Venezuelan government has established a centralised agency, the National Copyright Office (NCO),

which is part of the Autonomous Service for Intellectual Property, overseen by the Ministry for Light Industries and Trade.

The NCO carries out many activities, including:

- complying with and ensuring compliance with the provisions of the Copyright Act and its regulations,
- maintaining the Intellectual Property Register;
- authorising and supervising the operation of organisations for the collective management of economic rights in accordance with the provisions of the regulations;
- supervising parties which make use of protected works, products and productions insofar as this gives rise to the exercise of the rights provided for by law;
- serving as an arbitrator when requested by those involved in disputes arising between:
 - rights owners and collective management organisations;
 - collective management organisations and their members; and
 - collective management organisations or rights owners and users of works, products or productions protected by law;
- imposing the penalties set down by law, with the exception of criminal penalties, which are imposed by the criminal courts; and
- such other functions as specified in the Copyright Act or the regulations.

Moral and economic rights

The law provides that two types of right are covered by copyright: moral rights and economic rights.

Moral rights including the following:

- the right to choose whether to publish the work;
- the right to claim authorship of the work at any time; and

- the right to object to any distortion, mutilation or alteration of the work that is prejudicial to its integrity or to the reputation of the author.

Economic rights include the exclusive right to carry out, authorise or prohibit:

- the reproduction of the work by any means or process;
- the communication of the work to the public by any means serving to convey the words, signs, sounds or images;
- the distribution of copies of the work to the public by means of sale, lending or leasing;
- the import into the country of copies made without the authorisation of the rights owner; and
- the translation, adaptation, arrangement or other transformation of the work.

Copyright protection

The Venezuelan copyright legislation provides as follows:

- The general copyright protection term is the lifetime of the author plus 60 years. However, the copyright in audiovisual and radio works and software expires 60 years after first publication.
- Copyright protection begins from the creation of the work as the law provides that, by virtue of his or her creative act, the author of a work shall have rights to the work, including economic and moral rights as specified by the law.
- The concept of fair use exists in Venezuela; the law provides that 'fair use' is use that does not interfere with the normal exploitation of the work or does not unreasonably prejudice the legitimate interests of the author.
- In line with Article 9(2) of the Berne Convention, the following are not eligible for copyright protection:
 - the ideas contained in literary and artistic works;
 - the ideological or technical content of scientific works; and
 - the industrial or commercial exploitation of a work.

Registering a copyright

In order to obtain copyright registration, the interested party must follow the registration process set out by the NCO.

It is not compulsory to deposit a copyright with the NCO and there are no consequences for failure to make a copyright deposit. Copyright registration is not mandatory, and failure to carry out registration or deposit shall not prejudice the acquisition and exercise of the right

established by the law. However, registration is recommended because the applicant is presumed to be the author. In addition, registration facilitates all further proceedings within the Venezuelan administrative system.

All assignments of rights must be executed in writing.

Copyright owner

The author is the owner of the copyrighted work, but a person other than the author (a natural person or a legal entity) may own the economic rights in the work in accordance with the provisions of the law.

According to the Copyright Act, all economic rights in works created in the course of a person's work under an employment contract are presumed to have been assigned to the employer by the employee, unless otherwise agreed by the parties. This assignment is presumed to be unlimited and for the duration of the right.

In addition, the delivery of the work by the employee to the employer is presumed to imply an authorisation to the employer to:

- disclose the employee's work;
- translate it or perform on it any changes that the employer considers necessary;
- use the title of the work; and
- defend the moral rights in the work as necessary in order to exploit it.

Actions and remedies in case of infringement

In Venezuela, any use of a work without the specific permission of the copyright owner can result in copyright infringement.

Several pieces of legislation provide actions and remedies against copyright infringement. The Copyright Act sets forth the option to ask the court to declare the existence of a right. The copyright owner may:

- ask a judge for a declaration of its rights and the prohibition of the infringing activity;
- ask the judge to issue an order to destroy or withdraw the illicit copies; or
- sue for damages.

In addition, the act provides general measures intended to protect copyright, including the following:

- The court may order judicial inspections and expert studies, as well as any other form of proof provided for in the Civil Procedure Code;
- The court may seize items that constitute a violation of the exploitation right; and

- The court may order the seizure of revenue accruing to the owner of the disputed right.

Sequestration and seizure shall be ordered only if the request is accompanied by proof constituting a serious presumption of the alleged infringement or if such presumption emerges from the production of evidence.

Furthermore, the Anti-smuggling Act and the Administrative Decision on IP Rights Compliance regarding the Import and Custom Transit of Goods, issued by the Venezuelan Tax and Customs Agency, provide for the taking of action at the border either before, during or after the import of the goods protected by IP regulations.

Criminal copyright provisions

The criminal law also provides certain penalties for violation of copyright, including the following:

- A term of imprisonment from six months to 18 months may apply if any person, intentionally and without a right to do so:
 - makes use of the title of a work in violation of the law or communicates, in the original or a

developed form, in their entirety or in part, intellectual works, editions of the works of others or of texts, or photographs or products obtained by a process equivalent to photography, or images recorded on cinematographic film, being equivalent to photography; or

- distributes copies of intellectual works protected by the law, including copies of phonograms, or retransmits a broadcast without the consent of the owner of the rights concerned.
- A term of imprisonment from one to four years may apply if any person, intentionally and without a right to do so:
 - reproduces in the original or a developed form, in their entirety or in part, intellectual works, editions of the works of others or texts, or photographs or products obtained by a process equivalent to photography, or images recorded on cinematographic film being equivalent to photography; or
 - introduces into the country, stocks, distributes, sells or otherwise brings into circulation unlawful reproductions of intellectual works or products protected by the law.

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