

**Republic of Colombia**

**Ministry of the Interior**

**Decree No. 1721 of**

**August 6, 2002**

**Regulating Law No. 719 of 2001, which amended Law No. 23 of 1982 and  
Law No. 44 of 1993**

(English version\*)

**THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,**

**Exercising his constitutional powers, especially those granted by Article  
189(11) of the Political Constitution of Colombia,**

**DECREES:**

**CHAPTER I**

**GENERAL PROVISIONS**

**Article 1. Exclusive right.** The author of a musical work or his/her successor in title shall have the exclusive right to carry out, authorize or prohibit any communication to the public of a work, by wire or wireless means, including the making available to the public of the work in such a way that members of the public may access it from a place and at a time individually chosen by them.

**Article 2. Remuneration right.** Performers and phonogram producers shall have the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.

**Article 3. Definitions.** For the purposes of the present Decree, the terms below shall be understood as follows:

(a) User: Natural or legal person that publicly transmits musical works, artistic performances or phonographic productions;

(b) User associations and organizations: Lawfully established legal entity that brings together a group of natural or legal persons, either for specific purposes or because they carry out the same activity, profession or trade, and/or publicly transmit musical works, artistic performances or phonographic productions.

**Article 4. Term of obligation.** In accordance with the provisions of Article 158 of Law No. 23 of 1982, any act of the public transmission of musical works shall have the prior and explicit authorization of the author or right holder; consequently, without such authorization neither the users nor the

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\* Courtesy translation provided by WIPO.

associations/organizations representing them shall be able to make legitimate use of the works.

## CHAPTER II

### REGISTERING TARIFFS WITH THE NATIONAL COPYRIGHT DEPARTMENT

**Article 5. Proposal used as basis for negotiation.** Each society for the collective management of copyright or related rights shall maintain a tariff treatment to be used as a proposal for negotiating a tariff with users and user associations and organizations.

The tariff treatment referred to in the present Article shall comply with the criteria established in Article 1 of Law No. 719 of 2001.

**Article 6. Application for registration.** The application to register the tariff treatment to be used as a proposed basis for negotiation with users and user associations and organizations shall be accompanied by a copy of the act recording its approval, in accordance with the Rules, as well as the tariffs to be registered.

**Paragraph.** Where there arise new forms of use not considered in the tariff treatment registered with the Special Administrative Unit of the National Copyright Department, the Society may file a new application for registration that shall explain the reasons why it is considered to be a new use of works.

**Article 7. Registration with the National Copyright Department.** Once the Department has received the application, it will carry out a study to check:

- (a) that the documentation requested in the previous Article has been provided;
- (b) that the tariff treatment being registered complies with the criteria established in Article 1 of Law No. 719 of 2001;
- (c) that the tariff treatment being registered establishes in a specified or specifiable way the amount of the tariffs to be paid.

Within fifteen (15) days following the receipt of the application, the Department shall declare, by means of a resolution stating the grounds, whether or not it is appropriate to proceed with the registration.

**Article 8. Publication.** Each society for the collective management of copyright or related rights shall publish the tariff treatment registered under the terms of the previous Article in a national daily newspaper or the website of the management society. In addition, the tariff treatment shall be displayed in a visible position in the Secretariat of the society and published in the Official Journal, for which it must provide proof to the Department that it has paid the publication fees within five (5) days.

## CHAPTER III

### NEGOTIATION PROCESS WITH USERS WHO ARE NOT MEMBERS OF ASSOCIATIONS OR ORGANIZATIONS

**Article 9. Opening the process of tariff negotiation.** Once registration and publication have been completed in accordance with the previous Chapter, the societies for the collective management of copyright or related rights shall send users a document containing a tariff offer, and specifically indicating that the receipt of the offer shall signal the opening of the negotiation process.

**Paragraph.** The tariff offer shall include the information needed to establish that the offer is in accordance with the tariff treatment of the society in question.

**Article 10. Ending the negotiation process.** If the user agrees to the amount proposed by the society, the user shall make the relevant payment, which shall be understood as a negotiated agreement.

If the user does not agree with the amount charged, the user may ask the respective management society to review this in accordance with the provisions of paragraph 2 of Article 1 of Law No. 719 of 2001.

## CHAPTER IV

### NEGOTIATION PROCESS WITH USER ASSOCIATIONS AND ORGANIZATIONS

**Article 11. Opening the process of tariff negotiation.** Once registration and publication have been completed in accordance with Chapter II of the present Decree, each collective management society shall inform the user associations and organizations accordingly, and this shall be understood as opening the negotiation process.

**Article 12. Duration of negotiation process.** In order to negotiate the tariff referred to in the present Chapter, the collective management society concerned and the user associations and organizations shall have one (1) year from the date when the society communicates the tariff proposal under the terms of the previous Article.

**Article 13. Negotiation procedure.** The relevant society for the collective management of copyright or related rights and the user associations or organizations shall move forward with the negotiations referred to in the present Chapter using the analysis of the documents that support the criteria established in Article 1 of Law No. 719 of 2001 as a parameter.

**Article 14. Meetings.** Once the negotiation process has been opened, user associations and organizations shall write to the collective management society concerned to express their interest in holding a preparatory meeting between the representatives of both parties, to agree a date and venue for the first formal meeting, as well as the names of those who will intervene for each party during the entire process.

At the first meeting, attendees shall appoint a secretary for the entire process from among the representatives of the collective management society.

**Article 15. Proceedings and documents.** The secretary appointed in accordance with the previous Article shall be responsible for drafting the proceedings of meetings and keeping all the documentation relating to the

negotiation process, which shall be stored at the headquarters of the society to which the secretary belongs.

**Paragraph.** The case file shall be in duplicate, in separate folders, with the sheets duly numbered in ascending order.

If a negotiated agreement is reached, one of the file folders shall be sent to the Legal Division of the Special Administrative Unit of the National Copyright Department, so that it can be registered accordingly, and shall be kept for five (5) years.

**Article 16. Term of tariffs.** The parties shall establish the term of tariffs in the negotiation agreement.

**Article 17. Expiry of term.** If no agreement has been negotiated by the expiry of the term referred to in Article 12 of the present Decree, within the following five (5) days, the collective management society shall send the Ministry of the Interior a detailed report on the procedure followed, accompanied by the relevant file.

## CHAPTER V

### CONCILIATION BETWEEN THE COLLECTIVE MANAGEMENT SOCIETY AND USER ASSOCIATIONS AND ORGANIZATIONS

**Article 18. Summons for conciliation.** Having learned of the lack of a negotiated agreement, the Ministry of the Interior shall, within fifteen (15) days, summon the parties to a conciliation hearing that will take place within thirty (30) days of notification of the summons.

The summons to attend the hearing shall be communicated to the parties in writing, with a brief indication of the subject of the conciliation and specifying that unwarranted failure to attend shall be interpreted as a lack of willingness to compromise.

**Paragraph.** If, within three (3) days of the date set for the hearing, one of the parties submits at least cursory proof of a good reason not to attend, the Ministry shall set a new time frame for it to be held.

**Article 19. Capacities of the conciliator.** The conciliator shall be accredited by the Ministry of Justice and Law, shall be an official of the Ministry of the Interior and shall be appointed by the Minister of the Interior for this purpose.

**Article 20. Action of the conciliator in the hearing.** The conciliator of the Ministry of the Interior shall freely lead the conciliation proceedings, guided by the principles of impartiality, equity, justice and lawfulness.

1. The conciliator shall give the floor to each of the parties for the time he/she deems necessary, so that the parties may present their arguments.
2. The interested parties shall justify their positions with the documents associated with the negotiation process, as well as any others they deem relevant.

3. Once the parties have been heard for the time agreed, the conciliator shall propose options.

**Article 21. Conciliation agreement.** If an agreement is reached, an act shall be drawn up to contain the:

1. venue, date and time of the conciliation hearing.
2. identification of the conciliator.
3. identification of the persons summoned, with a specific mention of those who attended the hearing.
4. brief account of the parties' arguments.
5. agreement reached by the parties, with a clear, explicit and specific indication of the agreed tariffs and their term of validity.

The act shall be signed by those involved and by the conciliator.

If the agreement is partial, a note shall be made of this, specifying the items that were the subject of agreement and those that were not.

Should no agreement be reached, the conciliator shall sign a statement declaring that agreement was impossible, and shall inform the Ministry of the Interior of this fact and attach the documentation provided by the interested parties.

**Article 22. Normative referral.** All those matters not explicitly regulated in the present Chapter shall be subject to the provisions of Law No. 640 of 2001, "under which rules relating to conciliation are amended and other provisions are issued", as well as other consistent provisions.

**Paragraph.** For the purposes of the present Chapter, parties shall be understood to mean the relevant collective management society and the respective user association or organization.

## CHAPTER VI

### SETTING OF TARIFFS BY THE MINISTRY OF THE INTERIOR

**Article 23. Tariff setting.** Once it learns of the lack of agreement, or where the agreement is partial, the Ministry of the Interior shall set the tariffs within ninety (90) days, subject to the criteria established in Article 1 of Law No. 719 of 2001, expressed in fractions of the minimum legal wage in force.

**Article 24. Tariff amounts.** Tariffs determined by the Ministry of the Interior under the present Chapter shall not exceed those that were being paid by the members of the relevant user associations and organizations at the time of entry into force of Law No. 719 of 2001, plus the CPI from the previous year.

## CHAPTER VII

### LIMITATION OF COSTS

**Article 25. Collection agencies.** For the purpose of checking compliance with the provisions of Article 3 of Law No. 719 of 2001, the Sayco Acinpro Organization, together with the collection agency set up under Article 27 of Law No. 44 of 1993, shall provide the following information to the Special Administrative Unit of the National Copyright Department:

1. Quarterly reports of operational activities, with monthly breakdowns, within twenty (20) calendar days of the end of each quarter.

The following should be attached to each report:

- (a) Balance sheet and annexes;
- (b) Statement of income and expenditure;
- (c) Income actually collected;
- (d) Declaration on one hundred per cent (100%) of total income, both caused and collected;
- (e) Analysis of the budget in relation to the actual executed budget.

Quarters shall run from the first of January of each year.

2. A copy of the following financial statements compared at December 31 with those from the previous year, within the first three months of each year:

- (a) Balance sheet;
- (b) Statement of income and expenditure;
- (c) Statement of changes in equity;
- (d) Statement of changes in the financial situation;
- (e) Statement of cash flow;
- (f) Explanatory notes on the above points; and
- (g) Survey report by the Statutory Auditor.

**Paragraph.** The foregoing shall be without prejudice to any additional information required by the Special Administrative Unit of the National Copyright Department.

**Article 26. Term.** The present Decree shall apply from the date of its publication and shall repeal all provisions that contradict it.

**FOR PUBLICATION, COMMUNICATION AND ENFORCEMENT**

**Done at Bogota, D.C., on August 6, 2002.**

**(signed)**

**Minister of the Interior,**

**(signed)**

**ARMANDO ESTRADA VILLA**