

# **Law No. 719 of 2001 Amending Laws No. 23 of 1982 and No. 44 of 1993, and Laying Down Other Provisions**

**The Congress of Colombia**

## **DECREES:**

### **Article 1. PROPORTIONALITY OF FEES**

Article 159 is hereby added to Law No. 23 of 1982 with the following subparagraphs and paragraphs:

The fees to be charged by collective administration societies for copyright and related rights shall give rise to consultation with the users of the works, artistic performances or phonographic productions, as appropriate, and shall be proportional to the following:

- (a) Category of user;
- (b) Modality and intensity of use of the work, artistic performances or phonographic productions, as appropriate, in the marketing of the good or service;
- (c) The importance the work, artistic performances or phonographic productions, as appropriate, in the development of the activity;
- (d) The income obtained by the establishment as referred to in the trade and industry declarations of the immediately preceding year.

For this purpose, a fee system shall be adopted and published to form the proposal for consultation with users or the trade bodies that represent them, and then registered with the National Copyright Department in the Ministry of the Interior.

In cases where works, artistic performances or phonographic productions are not used, there shall be no payment of copyright and related rights. Collective administration societies and organizations and associations thereof shall be obliged to grant clearance free of charge.

In order to consult on the fees that are the subject of this Article, collective administration societies and user associations and organizations shall have one year from the date when the consultation among parties begins. If the parties have not reached an agreement by the end of this period, they shall communicate this fact to the Ministry of the Interior within five (5) days; in which event the Ministry shall summon them to a conciliation hearing that shall take place within thirty (30) days following notification of the hearing. Should conciliation fail, the Ministry of the Interior shall set the fees, within a period of ninety (90) days, subject to the criteria established in this Article, expressed as fractions of the minimum legal wage currently in force.

**Paragraph 1.** The fees determined by the Ministry of the Interior by virtue of this Article shall not be higher than those that were being paid when this Law enters into force, plus the rise in the consumer price index (CPI) from the immediately preceding year.

**Paragraph 2.** Users may request that their fees be amended when they are not in keeping with the provisions of this Article.

**Article 2. EQUITABLE DISTRIBUTION:** Article 14(5) of Law No. 44 of 1993 shall read as follows:

The amount of the remuneration collected by the collective administration societies of copyright and related rights shall be distributed among the beneficiaries in proportion to the effective use of their rights.

To enforce the previous subparagraph, they shall be obliged to implement a system of monitoring, inspections, record sheets, polls, surveys and other means of control.

Under no circumstances may collective administration societies retain collected remunerations that correspond to their members or those they represent, except any unclaimed by beneficiaries five (5) years reckoned from the relevant approval of distribution.

**Article 3. LIMIT OF COSTS.** The first subparagraph of Article 21 of Law No. 44 of 1993 shall read as follows:

The Board of Directors of Collective Administration Societies for Copyright and Related Rights shall discuss and adopt a budget of income and expenditure for periods no longer than one year. The amount of expenditure for the function directly fulfilled by the collective administration societies and the function of collection delegated to third parties shall not exceed in total 30 per cent of the gross income collected from users, income from abroad, financial profits, etc.

**Transitional Article.** The amount mentioned in the previous Article shall be forty per cent (40%) during the year following the entry into force of the present Law.

**Article 4. RESPONSIBILITIES.** Subparagraph 3 of Article 21 of Law No. 44 of 1993 shall read as follows:

Only the Board of Directors of Collective Administration Societies for Copyright and Related Rights shall authorize outlays that have not been initially included in each budget, without exceeding the spending limit according to the first subparagraph.

Officials of the National Copyright Department shall be found guilty of serious misconduct for failing to carry out their duties in application of this Law, and shall be obliged to provide an annual report about their actions to the Congress of the Republic.

**Article 5.** To guarantee payment of copyright, payment shall be demanded of commercial establishments in accordance with the provisions of Law 232 of 1995, and their owners must be notified in advance by the copyright holders or their representatives or the police authorities, by means of an educational order and the basis and justification for collecting copyright. This procedure shall take place within ten (10) days before the demand provided for in the above-mentioned Law.

The educational order mentioned in the previous subparagraph does not absolve of civil or criminal responsibility, as appropriate, the person using works, artistic performances or phonographic productions without complying with the rules in force on copyright and related rights.

**Article 6.** Collective administration societies shall be obliged to publish in a major national daily newspaper or website, within 30 days of the approval by the General Assembly, their financial statements with a report indicating the remunerations paid by users the previous year, profits of all kinds, the society's expenditure during the period in question and the name, identification and sum received by holders. The list of beneficiaries and their national identity document number shall be forwarded to the National Copyright Department within the same period.

**Article 7. RIGHTS OF ASSOCIATION.** The holders of copyright and related rights have the right to be admitted as members of collective administration societies authorized by the State. Each collective administration society shall produce its own regulations, which shall establish a system of sanctions and membership.

In the event of a member being expelled, his/her copyright shall be protected for a period of no less than six (6) months.

The National Copyright Department, which comes under the Ministry of the Interior, shall monitor compliance with this rule and has the power to impose any necessary sanction.

**Article 8.** Those establishments in which music is performed by any known or future means, solely and exclusively to entertain their workers and under no circumstances to entertain customers, shall not pay copyright.

**Article 9.** The present Law applies from the date of its publication in the Official Gazette (*Diario Oficial*) and repeals legal provisions that contradict it.

**PRESIDENT OF THE HONOURABLE SENATE OF THE REPUBLIC**

**CARLOS GARCIA ORJUELA**

**SECRETARY GENERAL OF THE HONOURABLE SENATE OF THE REPUBLIC (E)**

**LUIS FRANCISCO BOADA GOMEZ**

**PRESIDENT OF THE HONOURABLE CHAMBER OF REPRESENTATIVES**

**GUILLERMO GAVIRIA ZAPATA**

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**REPUBLIC OF COLOMBIA – NATIONAL GOVERNMENT**

**TO BE PUBLISHED AND ENFORCED**

**Done in Bogotá, D.C. on 24 December 2001**

**MINISTRY OF THE INTERIOR**

**ARMANDO ESTRADA VILLA**

Signed by the President of the Republic.

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