

# GOVERNMENT AGREEMENT No. 233-2003

Guatemala, April 9, 2003

**The President of the Republic**

## WHEREAS:

The objective of the Copyright and Neighboring Rights Law, Decree Number 33-98 of the Congress of the Republic, amended by Decree Number 56-2000 is that of protecting the copyrights of literary and artistic works, performers, phonogram producers and broadcasting organizations.

## WHEREAS:

To correctly apply the precepts contained in the aforementioned Law, an appropriate legal instrument is required to formulate the regulations enabling the Intellectual Property Registry, as the administrative authority responsible for the organization and management of the copyright and neighboring rights, to carry out the procedures and of fulfill all the functions and attributions assigned to such by the mentioned Law, and to consequently promulgate the corresponding legal provisions;

## THEREFORE

In exercising the functions that are conferred by section 183, subparagraph e) of the Political Constitution of the Republic, and based on section 137 of Decree Number 33-98 of the Congress of the Republic, Copyright and Neighboring Rights Law, amended by section 39 of Decree Number 56-2000 of the same Body,

## DECREES:

To issue the following:

# COPYRIGHT AND NEIGHBORING RIGHTS LAW REGULATIONS

## CHAPTER I GENERAL PROVISIONS

### SECTION 1. Object

The objective of these Regulations is that of developing the regulatory provisions contained in the Copyright and Neighboring Rights Law-Decree Number 33-98, amended by Decree Number 56-2000, both of the Congress of the Republic- to apply the administrative procedures that shall be implemented by the Intellectual Property Registry, as the administrative authority responsible for the organization and management of the copyright and neighboring rights registrations, and fulfilling all the functions and attributions conferred by the mentioned Law, for the effect of providing legal security and certainty to the users of the mentioned Registry.

### SECTION 2. Definitions

The definitions contained in section 4 of the Copyright and Neighboring Rights Law and the ones that follow are applicable to these Regulations:

Tariff:	Tariff of the Intellectual Property Registry in matters of Copyright and Neighboring Rights
Berne Convention:	Berne Convention for the Protection of Literary and Artistic Works (1971)
Rome Convention:	International Convention for the Protection of Performers, Phonogram Producers and Broadcasting Organizations (1961)
Geneva Convention:	Convention for the Protection of Phonogram Producers Against the Unauthorized Duplication of Their Phonograms (1971)
Law:	The Copyright and Neighboring Rights Law, Decree Number 33-98 amended by Decree Number 56-2000, both of the Congress of the Republic
Registry:	The Intellectual Property Registry
Regulation:	The Regulations of the Copyright and Neighboring Rights Law
Registrar:	The Registrar or Sub Registrars of the Intellectual Property

### SECTION 3. Applications

Notwithstanding that the enjoyment and exercise of the copyrights and neighboring rights recognized under this Law are not subject to registration or any other formalities, in the case of opting to apply for registration, all applications filed with the Registry shall at least indicate, the following:

- a) Complete names and surnames of the applicant and, when concerning legal entities, the corporate name;
- b) Nationality or place of incorporation, as applicable, as well as profession and domicile;
- c) Complete names and surnames of the legal representative, if applicable;
- d) Address of service;
- e) The object of the application;
- f) Place and date of the application, and
- g) Signature of the applicant; if he doesn't know how to or cannot sign, another person or his lawyer must sign in his name.

When the application is filed by two or more persons, such will designate a common agent in whom to unify their representation. If there is no such designation, the party that first appears in the application shall be considered as such.

To facilitate the communication with the Registry, the applicant may indicate other data such as e-mail address, telephone and/or facsimile number in his application.

### SECTION 4. Requirements of the Other Formalities

In the other formalities submitted with regard to the same matter, the following shall be indicated:

- a) number of the file;
- b) complete names and surnames of the applicant or his representative;

- c) work or neighboring right to which it refers; and
- d) requirements considered in subparagraphs f) and g) of the aforementioned section 3.

#### **SECTION 5. Use of Forms**

The applications shall be filed in the forms provided by the Registry to the users.

#### **SECTION 6. Notifications**

The Registry without any formalities, shall notify of all resolutions in which the execution of an act is ordered, the delivery of a document is requested, and the final resolutions are issued in any of the following ways:

- a) In the registered office of the Registry;
- b) In the address of service;
  - b.1) through the personnel of the Registry;
  - b.2) through a notary; or
  - b.3) by certified mail at the expense of the interested party.

In any case the notifications made in the place indicated by the applicant will be considered well served, as long as there is no change of address.

#### **SECTION 7. Duplicate and Copies**

All the applications and documents submitted shall include a copy for replacement purposes, unless the Registry establishes another system that assures the existence of duplicates or copies for replacement purposes.

All the rulings that are issued shall have a copy for replacement purposes, which can be contained in a magnetic media.

#### **SECTION 8. Filing of Applications**

When any type of application has been submitted, the Registry will write down the date and time of its reception, will assign a number to the file, when applicable, and will hand over a copy of such application in which the mentioned data is recorded to the interested party.

#### **SECTION 9. Proof of Payment of Fee**

The payment of the fees established in the Tariff, may be proven with the original document issued in favor of the interested party, or else, with a photocopy of the same legalized by a notary.

#### **SECTION 10. Terms**

The Registry will have a term of ten workdays to answer any application or formality made with regard to copyright or neighboring rights, unless otherwise specified in the Law or in these Regulations.

#### **SECTION 11. Registration of Works**

The works and other productions registered and protected by the Law and these Regulations, shall be declaratory and not constitutive of rights.

## **CHAPTER II COPYRIGHT**

## **SECTION 12. Conditions for Protection**

The works protected by the Law are those original creations, susceptible to being disclosed or reproduced by any means.

The protection provided by the Law is granted to the works from the moment of their creation, independently of the merit, use or way of expression, but in order to proceed with their filing and deposit they must have been fixed in a media.

## **SECTION 13. Exclusions**

The following, among others, are not the object of copyright protection:

- a) Ideas, formulas, solutions, concepts, methods, systems, principles, discoveries, processes and inventions of any type;
- b) The industrial or commercial use of the ideas contained in the works;
- c) Sketches, plans or rules to perform mental actions, games or businesses;
- d) Isolated letters, digits or colors;
- e) Isolated names and titles or phrases;
- f) Simple blank formats or forms to be filled out with any type of information, as well as their manuals;
- g) Unauthorized reproductions or imitations of coat-of-arms, flags or emblems of any country, State, municipality or an equivalent political administrative division, or the denominations, rules, symbols, acronyms or emblems of international governmental or nongovernmental organizations, or of any other organization officially recognized, as well as the verbal designation of the same;
- h) The informative content of the news; and
- i) Information of common use such as proverbs, sayings, legends, events, calendars, and metric scales.

## **SECTION 14. Works of Applied Art**

The works of art applied to the industry are only protected as far as their artistic value may be separated from the industrial nature of the object or objects in which they can be applied.

## **SECTION 15. Translations**

When the translation of a work is performed based on another translation, the translator, in addition to the name of the author, shall mention the name of the previous translator, and the language of the original work and of the translation upon which it is based.

## **SECTION 16. Co-Authorship Works**

The name of all the co-authors shall be included in all cases of co-authorship works and despite any transfer in favor of a third party.

## **SECTION 17. Proofs of the Author or Publisher**

The proofs of the author or publisher and all others that are made with non-commercial purposes, may only be put up for sale by the publisher when the entire edition is sold out and a term of at least five years has passed from the moment of its production.

## **CHAPTER III NEIGHBORING RIGHTS**

### **SECTION 18. Scope**

Performances, phonograms, and broadcasts are protected in the terms of the Law, regardless of whether or not they embody protected works.

### **SECTION 19. Performers**

The term performer, in accordance with the definition contained in the Law, also names the persons who narrate or declaim and any other person that interprets or performs a literary or artistic work or expressions of folklore, even in the absence of a previous text that regulates its development.

The so-called extras and eventual participants or those who are merely present are not included in the corresponding definition.

### **SECTION 20. Phonogram Producer**

The phonogram producer, in accordance with section 58 of the Law, is every individual or legal entity that records the sounds of a performance or other sounds or digital representations of the same for the first time, and is responsible for editing, reproducing, and publishing the phonograms.

### **SECTION 21. Phonogram Requirements**

In order to identify the right holder, the phonograms may use the symbol of the letter P enclosed in a circle, followed by the complete name of the product of the phonogram, and the year in which the production was first published, for identification purposes.

The omission of such information shall not imply in any case the loss or limitation of the exercise of the rights that correspond to the phonogram producer.

### **SECTION 22. Public Performance**

For the effects of what is provided in section 59 of the Law, any type of public communication in the terms of subparagraph d), section 21 of the Law is considered as a public performance of phonograms.

### **SECTION 23. Signals**

The signals object of the broadcasts and transmissions of the broadcasting organizations may be:

a) due to the possibility of access to the public:

1. Encrypted or encoded, those that have been modified to be received and decoded only and exclusively by the persons expressly authorized; and
2. Free, those that may be received by any device suitable for their reception.

b) due to the moment of their emission:

1. Of origin, those that carry programs or live performances; and
2. Recorded, those that carry previously fixed programs or events.

## **CHAPTER IV MORAL AND ECONOMIC RIGHTS**

#### **SECTION 24. Identification of the Works**

To identify the author or the right holder, the works protected by the Law that are published or disseminated may use the expression "All rights reserved" or its abbreviation "D.R." (initials in Spanish of "all rights reserved") followed by the year on which the protection started, the letter C enclosed in a circle ©, and the complete name of the copyright holder.

When choosing to use this information, such shall appear on a visible part of the work. The omission of such shall not, in any case, imply the loss of the respective rights or a limitation regarding their exercise.

#### **SECTION 25. Works Used for Advertisement**

Unless otherwise agreed, it will be presumed that the authors that contribute with their works for their use in advertisements or for commercial or non-commercial advertising, have authorized the omission of their authorship during the use or exploitation of the same, and this does not imply that they waive to their moral rights.

#### **SECTION 26. Defense by the State**

The General Attorney's Office, fulfilling the responsibility of the State, as stated in section 20 of the Law, will be in charge of defending the moral authorship and integrity rights corresponding to the works of such authors that at the time of their death have not designated any heirs, as well as of those works of public domain and that are part of the cultural heritage of the nation.

#### **SECTION 27. Responsibility**

The owner of the literary and artistic work media shall not be responsible, in any case, for the deterioration or destruction of the work or of its media resulting from aging or from its normal use.

The preservation, restoration or conservation of literary and artistic works may be carried out by means of an agreement between the author and the owner of the media or of the only copy, as the case may be.

#### **SECTION 28. Royalties**

For the effects of the Law and these Regulations, royalties shall be understood as the economic remuneration generated by the use or exploitation of the works, performances, phonograms or broadcasts in any way or means.

The royalties for public performances, exhibitions or representations of literary and artistic works will be generated in favor of the authors and neighboring right holders, as well as of their assignees, when these are performed with direct or indirect profit purposes.

#### **SECTION 29. Payment of Royalties**

The payment of royalties to the author, neighboring right holders and assignees shall be made separately to each of those entitled to such according to the given exploitation method.

#### **SECTION 30. Profit Purposes**

An activity performed with direct profit purposes shall be understood as that activity whose objective is to obtain an economic benefit as an immediate consequence of the use or exploitation of the copyrights and neighboring rights, as well as carrying out any act that enables the possession or use of a device or system to deactivate or remove an electronic protection devices of a work.

The use resulting from an advantage or interest that is additional to the main activity developed by the agent shall be understood as a use performed for indirect profit purposes.

The fact that the expected profit is or is not obtained shall not be a condition to classify the infringing activity or behavior.

## **CHAPTER V REGARDING REGISTRATIONS IN GENERAL**

### **SECTION 31. Recordable Matter**

In addition to what is expressly established in the Law, the Registry may, among others, register:

- a) Powers granted to exercise the derivative rights of a registered work;
- b) Contracts or agreements executed for copyrights and neighboring rights; and
- c) Judicial resolutions that in any way modify or terminate copyrights or neighboring rights or registered contracts or agreements.

### **SECTION 32. Registrations of Good Faith**

All registrations are presumed to be made in good faith and based on the applications and documents that for the effect are submitted by the interested parties.

### **SECTION 33. Sworn Statement**

The notarial certificate that documents the sworn statement referred to in section 106 of this Law does not exempt the party interested in a registration from filing of the corresponding application based on the form established by the Registry.

In addition to the general identity data of the copyright holder or holders, or of the publisher or producer, the authorizing Notary will also preferably record the data pertinent to the identification document of the applicant. Otherwise he shall attach a photocopy of such document to his application.

### **SECTION 34. Collection of Works**

In case that several works are the object of the registration application, the Registry shall consider the collection of works under a same title.

The Registry may set a term of eight workdays if the applicant of the registration does not provide the title for the collection, warning that such collection shall otherwise be identified by the institution simply as the Collection of Works.

### **SECTION 35. Summary**

The summary referred to in subparagraph c) of section 104 of the Law, shall at least contain the following:

- a) Complete names of the contracting parties;
- b) Works or rights object of the contract or agreement;
- c) Essential conditions established by the parties, such as the term, scope, limitations, territorial scope and others;
- d) Place and date of the execution; and
- e) Signatures of the contracting parties or of their legitimate agents.

### **SECTION 36. Registration Requirements**

The registrations made by the Registry shall at least contain the following:

- a) Nature of the work or neighboring right registered;
- b) Number of the registration;
- c) Complete name of the author, and if other than the author, of the holder of the corresponding rights;

- d) Complete name of the applicant of the registration;
- e) Place and date; and
- f) Name and signature of the Registrar.

The registration certificate issued in favor of the author or the corresponding holder shall contain the same requirements.

#### **SECTION 37. Entries on the Margin**

The Registry shall make an entry on the margin of every registration record regarding any facts or circumstances that modify that which has been registered or is related to such, referring to any other registration that has been originated, as the case may be. The same will apply for explanations, extensions or corrections.

#### **SECTION 38. Pseudonym**

In the case of a registration application of works written or created with a pseudonym that have not been published, the submittal of the sworn statement referred to in section 106 of the Law will not be legally required, and will be replaced by recording the pertinent information in the application. In the case of published or produced works, the sworn statement may be filed by the publisher or producer himself.

In the closed envelope that must be attached to the registration application of a work written with a pseudonym, the identification data of the author such as his full name and surname, age, legal status, occupation, nationality, and domicile shall be recorded. The related envelope shall indicate the pseudonym and a clear and precise identification of the given work.

The Registrar will take the necessary measures to hold the corresponding envelope in the strictest confidentiality, assuring that such circumstance is evident in the file and in the registration.

## **CHAPTER VI REGISTRATION IN PARTICULAR**

#### **SECTION 39. Deposit**

The obligation to submit a copy of the work referred to in section 108 of the Law, is likewise applicable to the applicant of the registration of phonogram productions, performances, and radio and television productions, in which cases the applications shall be accompanied by copies of the related media.

In the case of unpublished works and computer programs, the copy being filed will be kept under deposit in the Registry, unless the authorization is certified in writing with the legalized signature of the author or the holder of the related rights. Consequently, such copies cannot be object of consultation without such authorization.

When because of the nature of the given work, the application is accompanied by graphic reproductions of the same or photographs; these shall not exceed the size of a sheet of letter paper measuring 21.6 centimeters by 27.9 centimeters, except for special cases expressly authorized by the Registrar.

#### **SECTION 40. Other Requirements**

Every application for registration and deposit in addition to the general requirements and the specific information required by the Law and by these Regulations shall contain:

- a) Information indicating if the work is unpublished or published, original or derivative, individual, collective or of joint authorship or any other applicable classification;
- b) The country of origin, when involving a foreign work;



- c) The year of creation or production, when it has not been published or disclosed;
- d) Information indicating whether the application is filed as the author or right holder, as well as the title by which such right was acquired, if applicable; and
- e) The type of media on which such work or its copies are contained.

#### **SECTION 41. Literary Work**

In the case of an application for registration of a literary work, said application shall additionally state the following:

- a) Name or corporate name and address of the publisher and printer;
- b) Publication number and print run;
- c) Size, number of pages, and ordinary or deluxe edition; and
- d) Any other information or circumstance helping to identify the work.

#### **SECTION 42. Musical Work**

If the registration application refers to a musical work with or without lyrics, the application shall also indicate the following:

- a) The genre and/or rhythm to which it corresponds;
- b) The score;
- c) If the work has been recorded with commercial or non-commercial purposes; and
- d) Any other information or characteristics that enable the work to be identified.

If the registration application refers to the lyrics without including the score, the application shall be adjusted to what has been provided for in the case of literary works, as appropriate.

#### **SECTION 43. Audiovisual Work**

If the registration application refers to an audiovisual work or a radio or television broadcast, the application shall also include the following:

- a) Name of the producer and the persons responsible for each individual contribution referred to in section 28 of the Law.
- b) Genre, type, length, and duration; and
- c) Any other information or characteristics that enable the work to be identified.

The above is without prejudice of what has been provided for in the last paragraph of section 108 of the Law.

#### **SECTION 44. Fine Arts**

If the registration application refers to fine arts, the application shall also indicate the following:

- a) Genre or class to which it corresponds;

- b) Place of exhibition or construction, as the case may be; and
- c) All information regarding location and description that enables such to be identified.

When concerning registration applications of works of architecture, engineering, maps, sketches and those relating to geography, engineering, topography or sciences in general, the type of the work in question must be mentioned and a general description of the characteristics must be included.

#### **SECTION 45. Dramatic Work**

If the registration application refers to a dramatic work, dramatic-musical, choreographic or others of the same nature, the application shall also indicate the following:

- a) Genre or class to which it corresponds;
- b) Duration;
- c) A general reference to its story line and of the music or movements; and
- d) Any other information that enables such to be identified.

#### **SECTION 46. Computer Program**

If the registration application refers to a computer program, the application shall also indicate the following:

- a) The year of its creation and, if applicable, of the first publication and/or disclosure of such;
- b) Number of authorized versions with the indications enabling such to be identified;
- c) Brief description of the technical tools used for the creation, functions and tasks, as well as the technical requirements of the equipment in which they can operate; and
- d) Any other information or characteristic that enables the identification of such.

In addition to the copy of the program, the applicant shall accompany a copy of the user's manual or guide and any other technical documentation about such program.

#### **SECTION 47. Performance**

If the registration application refers to a performance, the application shall also indicate the following:

- a) Name and information that identifies the performers or, in the case of orchestras, musical or social groups, the name of the group and of the director;
- b) Name of the work object of the performance, including the name of the author or authors;
- c) Information regarding its media, including the year of fixation; and
- d) Any other additional information that enables such to be identified.

#### **SECTION 48. Phonograms**

If the registration application refers to a phonogram production, the application shall also indicate the following:

- a) Title or name of the phonogram in the original language and its translation, if it is not in Spanish:

- b) Year of its recording;
- c) Titles of the works recorded in the phonogram and the name of its corresponding authors;
- d) Name of the performers; and
- e) Any other additional information that enables such to be identified.

#### **SECTION 49. Broadcasting Transmissions**

If the registration application refers to a broadcasting transmission, the application shall also indicate the following:

- a) Name and identification of the broadcasting organization;
- b) Works, phonograms or productions object of the emission; and
- c) Place and date of the transmission and, in case it is fixed in a medium for commercial purposes, the year of its fixation;
- d) Duration of the broadcast; and
- e) Any other additional information that enables such to be identified.

#### **SECTION 50. Other Registrations**

If the registration application refers to the conveyance, transfer or to any other way of disposing of the rights of a previously registered work, the application shall also indicate the following:

- a) The name of the parties entering into the contract or agreement;
- b) The nature of the action, contract or agreement;
- c) Its object;
- d) The rights or exploitation methods that are established;
- e) The term and duration;
- f) The place of execution; and
- f) Any other additional information deemed relevant.

In any case, the applicant shall enclose a copy of the corresponding document, or a summary of the same signed by both parties.

#### **SECTION 51. Guarantee of the Registration**

Once the registration is filed, evidence of such shall be provided by numerical and chronological order in information mediums or agencies of any nature, appropriate to undoubtedly, and with the appropriate guarantee of legal security, conservation security, and ease of access and comprehension, to collect all the data that must be recorded in the Registry.

## **CHAPTER VII REGISTRATION OF COLLECTIVE MANAGEMENT SOCIETIES**

### **Section 52. Types**

The Registry shall authorize the collective management societies that may operate to defend the rights and privileges of the authors or holders of the neighboring rights and their assignees, in accordance with the following:

- a) By branch or category of created works; or
- b) By exploitation methods when several categories of created works concur with regard to their title ownership or neighboring right holders concur with regard to their title holders, as long as the nature of the rights which management is entrusted justifies such methods.

### **SECTION 53. Other Requirements**

In addition to the requirements required by section 113 bis of the Law and the general requirements provided for in these Regulations, every non-profit association which intends to be authorized for