

ENACTING PROVISIONS REGARDING THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS IN DECISION 351 OF THE CARTAGENA AGREEMENT

SUPREME DECREE NO. 03-94-ITINCI

The President of the Republic

WHEREAS:

Through Decision 351 of the Board of the Cartagena Agreement, the new Common Provisions on Copyright and Related Rights for Member Countries have been established; and Decision 351 establishes the powers of the Offices and Competent National Authorities to enforce and protect copyright and related rights;

The status of Office and Competent National Authority for the purposes of such Decision, in accordance with existing national legislation, should be specified;

Similarly, the power of individuals to pursue directly judicial remedies for alleged offenses related to copyright and related rights should be specified; and matters regarding the enforcement of administrative sanctions as distinct from criminal sanctions should be clarified;

Pursuant to the provisions of Article 118(8) of the Political Constitution of Peru;

DECREES:

Article 1.— It is specified that pursuant to Decree-Law No. 25868 and Supreme Decree No. 025-93-ITINCI, the dual status of Office and Competent National Authority as regards copyright and related rights to which Decision 351 of the Board of the Cartagena Agreement refers, is incumbent on the Copyright Office of the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI), except for the provisions set out in the following articles.

Article 2.— The judiciary is the only Competent National Authority for ordering embargoes, pursuant to the provisions of Article 56(b) and (c) of Decision 351 of the Board of the Cartagena Agreement; as well as exercising the powers stipulated in Article 57(a), (b) and (d) of the foregoing Decision.

Article 3.— It is specified that the competence of the Copyright Office, both as Competent National Authority, in the framework of Decision 351 of the Cartagena Agreement and as Competent Administrative Authority, pursuant to Decree-Law No. 25868, does not prevent interested persons from choosing, as regards matters which constitute an alleged offense, to pursue criminal proceedings directly. Administrative sanctions shall be applied without prejudice to any sanctions that might ensue.

Article 4.— When the subject matter of the administrative proceedings constitutes an alleged offence, the Copyright Office of INDECOPI may file a criminal complaint with the Office of the Public Prosecutor.

In the event that the Administrative Authority has destroyed or disposed of the samples of copyright infringement, in accordance with the provisions of Article 129(2) of Law No. 13714 and of Article 57(c) of Decision 351 of the Board of the Cartagena Agreement, the criminal complaint shall be accompanied by a certified copy of the administrative decision and the proceedings related to such measures in which a link to the goods concerned is established, for the purposes of assessing it as evidence of an alleged offense.

Article 5.— This Supreme Decree shall be countersigned by the President of the Council of Ministers, the Minister of Foreign Relations and the Minister of Industry, Tourism, Integration and International Trade Negotiations.

Done at the House of Government, in Lima, on the eighteenth day of March one thousand, nine hundred and ninety-four.