

10/01/03 – PROTECTION OF COPYRIGHT AND RELATED RIGHTS, LAW NO.

17.616

**ARTICLE 1** – The following final paragraph is added to Article 1 of Law No. 9.739 of December 17, 1937:

“Likewise, and based on the provisions arising from this law, it protects the rights of performers, producers of phonograms and broadcasting organizations. This protection shall in no way affect the copyright protection of protected works. Consequently, none of the provisions concerning copyright in this law may be interpreted as prejudicing such protection.

**ARTICLE 2** – Article 2 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 2 – The intellectual property right in protected works under this law covers the exclusive authority of the author to transfer, reproduce, distribute, publish, translate, adapt, transform, communicate or make available to the public their protected works by any means or process.

The authority to reproduce covers the fixation of the work or production protected by this Law, in any form or by any process, including obtaining copies or electronic storage of the work or production – permanent or temporary – that allows it to be perceived or communicated.

The authority to distribute covers the making available to the public of the original or one or more copies of the work or production through its sale, exchange or other form of

transfer of ownership, lease, lending, import, export or any other known or unknown form that involves exploitation of the work or production.

The authority to publish covers use of the press, lithography, photocopying and other similar processes; the transcription of improvisations, speeches, readings, etc., even if they are carried out in public, and likewise recitation in public by means of stenography, typewriting and other means.

The authority to translate covers not only translation from languages but also from dialects.

The authority to communicate to the public covers: public performance of dramatic, dramatico-musical, literary and musical works by any means or process, either with the direct participation of performers, or received or generated by mechanical, optical or electronic instruments or processes, or through a sound, audiovisual or other recording; the public projection or exhibition of cinematographic and other audiovisual works; the transmission or retransmission of any works through broadcasting or other means of wireless communication, or by wire, cable, optic fiber or other analogue process that disseminates signs, words, sounds or images over a distance, either through or without subscription or payment; making available, in a location accessible to the public and through any appropriate apparatus, of the work transmitted or retransmitted by radio or television; the public showing of artworks or reproductions of them.

In general, public communication covers any act through which the work is placed within the reach of the public, through any medium (wire or wireless) or process, including the making available of works to the public so that members of the public may access them from a place and at a time individually chosen by them.”

**ARTICLE 3** – Article 5 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 5 – Copyright protection shall extend to expressions but not ideas, processes, methods of operation or mathematic concepts as such.

For the purposes of this law, intellectual, scientific or artistic production covers:

- Musical compositions with or without words in print or on discs, cylinders, wires or films, following any process of printing, recording or perforation, or any other means of reproduction or performance; charts, atlases and geographical maps; all types of writing.
- Booklets.
- Photographs.
- Illustrations.
- Books.
- Professional consultations and forensic writings.
- Theatrical works, of any nature or extent, with or without music.
- Three-dimensional works related to science or education.
- Audiovisual works, including cinematographic works, produced and expressed by any means or process.
- Works of drawing and handicrafts.
- Scientific and technical documents or works.
- Architectural works.
- Paintings.

- Sculptures.
- Formulas of the physical or natural sciences, provided that they are not protected by special laws.
- Works broadcast by radio or television.
- Teaching texts and resources.
- Recordings.
- Lithography.
- Choreographed works whose arrangement and setting (*mise en scène*) are prescribed in a written form or by another process.
- Original titles of literary, theatrical or musical works, when they constitute a creation.
- Pantomimes.
- Literary pseudonyms.
- Plans or other graphic or graphical productions, printed by any method.
- Models or creations that have an artistic value in terms of clothing, furnishings, decorations, ornaments, headwear, dress or precious objects, provided that they are not protected by current industrial property legislation.
- Computer programs, whether in source or object code; compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations. This protection does not extend to the data or the material itself and is without prejudice to any copyright subsisting in the data or material contained in the compilation. The expression of ideas, information and algorithms, formulated in original sequences and ordered in a

manner appropriate for use as a mechanism for processing information or for automatic control, are protected in the same way.

And, lastly, anything produced in the domain of intelligence.”

**ARTICLE 4** – Article 6 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 6 – The rights recognized in this law shall be independent of the ownership of the material medium in which the work is embodied.

The enjoyment and exercise of said rights shall not be subject to any formality or registration; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work.

In order that owners of works and other rights protected by this law shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to sue infringers, it shall be sufficient for their name to appear on the work, performance, phonogram or broadcast in the usual manner.”

**ARTICLE 5** – Paragraph (D) of Article 7 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“(D) The performer of a literary or musical work, over his performance; the producer of phonograms, over his phonogram; and broadcasting organizations, over their broadcasts.”

**ARTICLE 6** – Article 9 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 9 – In the event of resale of three-dimensional works of art or sculptures by public auction, in a commercial establishment or through an agent or dealer, the author, or on his death his heirs or legatees – until the work passes into the public domain – shall have the inalienable and unrenounceable right to collect three per cent of the resale price from the seller. The auctioneers, dealers or agents who are involved in the resale shall act as withholding agents of the author’s resale right in the price of the resold work and shall be required to submit the said amount to the author or the corresponding management society within thirty days following the auction or negotiation. Failure by the auctioneer, dealer or agent to fulfill this obligation shall make them jointly and severally liable for payment of the amount.

**ARTICLE 7** – The protection period is increased from 40 years, as established in Articles 14, 15 and 40 of Law No. 9.739 of December 17, 1937, to 50 years.

Works and related rights protected under this law that enter into the public domain before the term of protection provided for in this Law has passed shall automatically return to the private domain, without prejudice to rights acquired by third parties to reproduce those works and related rights during the period in which they were in the public domain. The period in which the works referred to in the previous paragraph were in the public domain shall not be deducted from the 50 years.

This Article shall apply as appropriate to performers.

**ARTICLE 8** – Article 17 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 17 – In anonymous and pseudonymous works, there shall be a period of 50 years from when the work was lawfully made accessible to the public, except if the author reveals his identity before that period elapses. In such a case, the provision in Article 14 of this Law shall apply.

In collective works, economic rights shall lapse 50 years after their first publication or, failing that, their duly authorized making or disclosure.

The time periods established in Articles 14 ff. shall be calculated from January 1 of the year following the author’s death or, if applicable, that of the duly authorized making, disclosure or publication.”

**ARTICLE 9** – Article 18 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 18 – The recognized economic rights of producers of phonograms and broadcasting organizations shall be for 50 years starting from:

- (A) January 1 of the year following that of publication, in the case of phonograms and recorded performances.
- (B) January 1 of the year following that in which the performance took place, in the case of non-recorded performances.
- (C) January 1 of the year following that in which the broadcast took place, in the case of broadcasts.”

**ARTICLE 10** – Article 29 of Law No. 9.739 of December 17, 1937, as amended by Article 1 of Law No. 9.769 of February 25, 1938, is replaced by the following:

“ARTICLE 29 – Contributors, by virtue of the right granted by Article 26, may publish, translate or reproduce the work, on the sole condition that they respect the proportional usefulness for others.

In the absence of proof to the contrary, it is presumed that audiovisual works have coauthors: the director or producer, the writer, the screenplay writer, the script and dialogue writer, the composer, if any, and the animator in the case of animations.

Unless otherwise agreed, it is presumed that the authors of the audiovisual work have assigned their economic rights exclusively to the producer, who furthermore retains ownership of the right to change or alter it, as well as being authorized to make decisions concerning its disclosure.

Unless otherwise agreed, the right of authors of musical works or composers to receive remuneration upon the public communication of the audiovisual work, including public showings of cinematographic films, as well as the rent and sale of promotional materials, is safeguarded.

Unless otherwise specified, the producer may defend the moral rights in the audiovisual work, without prejudice to the right of the authors.

Unless otherwise agreed, it is presumed that the producer of the audiovisual work is the natural person or legal entity credited as such on the work in the usual manner.

Unless otherwise agreed, it is presumed that the authors of the creations referred to in the paragraph on computer programs and databases in Article 5 of this Law have assigned the economic rights in those programs and databases to the producer, in an unlimited and



exclusive manner, which implies authorization to make decisions regarding their disclosure and to exercise the moral rights therein.

Unless otherwise agreed, authors may not oppose the producer's making or authorizing of changes or successive versions of such creations.

Unless otherwise agreed, when the creations referred to in the paragraph on computer programs and databases in Article 5 of this Law have been produced within employment relations, whether public or private, whose complete or partial objective was of a similar nature to said creations, it is presumed that the author has assigned, in an unlimited and exclusive manner, the economic rights and exercise of the moral rights to the employer or the person commissioning the work.”

**ARTICLE 11** – The title of Chapter VII of Law No. 9.739 of December 17, 1937 is replaced by the following:

“The rights of performers, producers of phonograms and broadcasting organizations.”

**ARTICLE 12** – Article 39 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 39 – Exclusive rights of performers, producers of phonograms and broadcasting organizations:

(A) Performers shall have the exclusive right to authorize: the reproduction of their performances fixed in phonograms, by any process and in any format; the making available to the public of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership; and the commercial leasing to

the public of the original and copies of their performances fixed in phonograms, either by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

Likewise, they enjoy the right to authorize: the broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast performance; and the fixation of their unfixed performances.

(B) Right of producers of phonograms.

Producers of phonograms shall enjoy the exclusive right to authorize: the reproduction of their phonograms, in any manner or form; the making available to the public of the original and copies of their phonograms through sale or other transfer of ownership; commercial rental to the public of the original and copies of their phonograms, even after distribution of them by or pursuant to authorization by the producer; and the making available to the public of their phonograms by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

(C) Broadcasting organizations shall have the exclusive right to authorize: the rebroadcasting of their broadcasts, live or prerecorded, by any known or unknown means or process; the making available to the public of their broadcasts, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; the fixation in any form, audio or audiovisual, of their broadcasts, including of any individual image disseminated in the broadcast; and the reproduction of their broadcasts.

Likewise, broadcasting organizations shall have the right to obtain equitable remuneration for the public communication of their broadcasts, where it occurs in places to which the public has access on payment of an admission or entry charge. It is lawful for a broadcasting organization to make ephemeral recordings with their own facilities and for use once only, in their own broadcasts, of a work in respect of which they have the right to broadcast, without the author's permission or payment of special remuneration. Such a recording shall be destroyed within three months, unless a longer period has been agreed with the author. However, such a recording may be preserved in official archives, also without the author's permission, where it possesses exceptional documentary character.

(D) Joint provision for performers and producers of phonograms.

Performers and producers of phonograms shall enjoy the right to single equitable remuneration for the direct or indirect use in broadcast or any communication to the public of phonograms published for commercial purposes. In such cases, the provision contained in Article 36 does not apply.

The user shall be called on to provide such remuneration by either the performers or producers of phonograms or by the collective management society to which the collection of such remuneration has been assigned.”

**ARTICLE 13** – Subsection (1) of paragraph (A) of Article 44 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“1. The printing, fixation, reproduction, distribution, communication or making available to the public of a work without the consent of the author.”

**ARTICLE 14** – Subsection (1) of paragraph (B) of Article 44 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“1. The representation, performance or reproduction of works in any form or by any means, in public theaters or places, without permission from the author or his successors in title.

For the purposes of this Law, it is understood that everything taking place outside of the home is in a public place.

However, representations or performances carried out in strictly family gatherings outside of the home shall not be considered unlawful when the following requirements are met:

- (I) The gathering is not for profit-making purposes.
- (II) It does not use a discotheque, audio or other service, and live artists do not take part.
- (III) Only domestic (non-professional) musical equipment is used.

As part of the capacities recognized by this Law, collective management societies may verify if the above-mentioned requirements have been met.

Representations or performances that take place in public or private educational institutions and in places of religious worship shall not be considered unlawful either, provided they are not for profit-making purposes.”

**ARTICLE 15** – Article 46 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 46 – Anyone who publishes, sells, reproduces or has reproduced – completely or partially – by any means or instrument; distributes; stores with the intention of distributing to the public; or makes available to the public by any means or process, in order to make a profit or unreasonably prejudice a published or unpublished work, performance, phonogram or broadcast without written authorization from their respective owners or successors in title for any reason, or attributes it to themselves or someone other than the respective owner, contravening in any way the provisions of this Law, shall be punished with a prison sentence of between three months and three years.

(B) Anyone who makes, imports, sells, rents or places in circulation in any other manner, devices or products, or their components or tools, or offers any service that impedes, circumvents, eliminates, deactivates or evades in any way the technical provisions that holders have provided to protect their respective rights shall be subject to the same punishment.

(C) In addition to the sanctions mentioned, as part of the conviction the court shall order the confiscation and destruction, or provide another means of removing the copies of works or productions and their infringing packaging or wrappers, as well as all the articles, devices or equipment used to produce them. In such cases where the equipment used for the unlawful activities is not solely designed for such a purpose, the judge shall replace its destruction with its delivery to official educational institutions.

(D) Anyone who alters or deletes, without authorization from the owner of the rights protected by this Law, electronic information distributed by the owners of the copyright or related rights to allow the management of their economic or moral rights, in such a way that could prejudice those rights, shall be punished with a prison sentence of

between three months and three years. The same punishment shall apply to anyone who distributes, imports for the purposes of distribution, broadcasts or communicates to the public, without permission, copies of works, performances or phonograms, knowing that the electronic information collected by the owners of the copyright or related rights has been deleted or altered without permission.

(E) Anyone who reproduces or has reproduced, by any means or process, not for profit-making purposes or to prejudice unreasonably a work, performance, phonogram or broadcast, without the written permission of its respective owner, shall be punished with a fine of between 10 UR (ten readjustable units) and 1,500 UR (one thousand five hundred readjustable units).”

**ARTICLE 16** – Article 47 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 47 – As a preparatory measure, owners of the rights protected under this Law may request a judicial inspection in order to ascertain which actions constitute infringements under this Law.

The judge may order a search of the property or location reported to be where the infringement is being committed, drafting a statement describing the facts ascertained and selecting, as far as possible, which of them have probative value.

The inspection ordered by the judge shall not require a bond for costs.

The judicial inspection shall be confidential and shall be ordered without notifying the person against whom it is requested.”

**ARTICLE 17** – Article 48 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 48 – The judge, at the request of the owner of the respective right or of his representative, or collective management societies, may stipulate the use of the precautionary measures needed to avoid the infringement being committed, or the continuation or repetition of a previous violation of the exclusive rights of the owner, in particular, the following:

- (1) The immediate suspension of unlawful manufacturing, reproduction, distribution, communication or import, as appropriate.
- (2) The confiscation of the copies produced or used and of the material or equipment used for the infringing activity.
- (3) The seizure of the income earned through the unlawful activity or, if appropriate, of the amounts owed in respect of remuneration.”

**ARTICLE 18** – Article 51 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 51 – The injured party, the author or his successor in title may take civil action to put a stop to the unlawful activity and obtain compensation for damage and harm, and a fine of up to ten times the value of the infringed product.

A subrogatory action shall be used in all cases, in accordance with Article 1295 of the Civil Code.”

**ARTICLE 19** – Article 53 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 53 – The National Library shall hold a Copyright Register in which interested parties may enter the works and other intellectual property protected under this Law.

Entry in the Register mentioned in this Article is merely optional; consequently, non-registration does not prejudice in any way the enjoyment and exercise of the rights recognized under this Law.

The request, collection, processing, registration and assignment of publications shall be carried out in accordance with the relevant regulations. Any disputes arising as a result of entry in the Register shall be resolved by the Copyright Council.”

**ARTICLE 20** – Article 58 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 58 – The associations established or being established to defend and manage the economic rights recognized under this Law require, in their capacity as such, express authorization from the Government, in accordance with this Law and the implementing decree.

Such associations that call themselves collective management bodies must be non-profit civil associations, have legal personality and their own assets, and may not undertake any activity of a political or religious nature.

The Government, on receipt of the mandatory opinion of the Copyright Council, taking into account the requirements included in this Law, shall determine which societies shall



undertake collective management for the purposes of representing the owners of works, editions, productions, performances and broadcasts. The collective management societies may subject to agreement join together in their representation, in order to act jointly towards users or to create a collecting agency with legal personality.

The copyright holders, performers and producers of phonograms that they represent shall enter into contracts with broadcasting companies, or their representative associations, on the broadcast of their works, performances or phonograms. If the parties do not reach an agreement on tariffs, either may request the Copyright Council to set up an Arbitration Tribunal, within 20 days of its communication. The Arbitration Tribunal shall deliver its verdict within the strict time limit of 45 working days from its inception. Should the dispute be resolved in the meantime, authorization for broadcasting the repertoire shall be understood as granted, provided that the previous tariff continues to be paid and without prejudice to the obligation to pay the differences that may result from the arbitration procedure. The implementing decree shall establish the form that the Arbitration Tribunal will take, and the procedures relating to the arbitration.”

**ARTICLE 21** – Collective management societies are required to:

- (1) distribute remuneration collected within one year and on the basis of its distribution rules, the only deduction being for administrative costs for infrastructure in keeping with its function and for management, and an additional deduction exclusively for social and welfare activities or services to benefit its associates.

- (2) present, for approval by the Copyright Council, the percentages approved by the Ordinary General Assembly related to administrative discounts, management costs and expenses for social and welfare activities, including, as necessary, reimbursements of costs from those who occupy posts in the Executive Committee.
- (3) communicate periodically, to their associates, information related to the activities of the society that may have a bearing on the exercise of their rights, containing, as a minimum, the society's balance sheets, the audit report and the text of resolutions adopted by its governing bodies that directly influence the management of its duties. This information must be sent to foreign societies with which they hold representation contracts for the national territory, except when those contracts exempt them from such an obligation.
- (4) submit the balance sheets and accounting documentation for examination by an external auditor appointed by the Assembly held in the preceding year or in the year of its establishment, and whose report must be part of the collection at the disposal of the members, without prejudice to the examination and report of internal oversight bodies, in accordance with the statutes.
- (5) set fair and equitable tariffs that determine the required remuneration for use of their repertoire, whether for national or foreign owners resident or not in the Republic, and keeping such tariffs available to the public.
- (6) apply distribution systems that exclude an arbitrary approach under the principle of equitable sharing between rights holders, in a manner actually proportional to the use of the works, performances or productions, as appropriate.

**ARTICLE 22** – Collective management societies may not retain, for longer than two years, funds whose owners or beneficiaries could not be identified.

After said period, such funds shall be distributed between the national and foreign owners represented by the society, in proportion with the sums that they would have received for the use of their works or performances, as appropriate.

**ARTICLE 23** – For the purposes of the oversight and supervisory system provided for in this Law, the Government and the Copyright Council may request any type of information from the collective management societies, as well as order inspections or audits thereof.

**ARTICLE 24** – Collective management societies are authorized, in the terms of their own statutes, to exercise the rights conferred on their administration, for both national and foreign owners, and to enforce them in any type of administrative or judicial proceedings, retaining for that purpose the broadest faculties of legal representation, including abandonment and settlement.

Such societies shall be required to confirm in writing that the administration of the rights that the holders of such rights claim to exercise has been entrusted to them.

Such authorization and representation are without prejudice to the faculty of the author, performer, producer of phonograms and broadcasting organization, or their successors or successors in title, to exercise directly the rights accorded to them by this Law.

**ARTICLE 25** – Article 63 of Law No. 9.739 of December 17, 1937 is replaced by the following:

“ARTICLE 63 (Border measures) – When the National Directorate of Customs or the holders of the rights protected under this Law have valid reasons for suspecting the carrying out or preparation of the import into the national territory of merchandise that, in accordance with the terms of the applicable legislation, has been manufactured, distributed or imported, or is intended to be distributed without the permission of the intellectual property right holder, they may request, before the competent federal court, special oversight measures to be made available for such merchandise, preventative seizure, or precautionary suspension of the relevant customs dispatch. They must present all the legal elements that give merit to the suspicion, and shall be obliged to decide on such measures within a twenty-four-hour period without any other processes or need for a bond for costs.

The judge may order the measures requested, in which case, once carried out, they shall be communicated to the interested parties. If ten working days pass from notification to the holder of the right or his representative, authorization shall not be given to initiate corresponding civil or criminal actions and the preventative measures shall be null and void, thereby providing for the dispatch of the merchandise, without prejudice to the responsibilities incurred by the instigator of the measures.”

**Article 26** – Article 49 of Law No. 9.739 of December 17, 1937 is revoked.

**Article 27** – Decree-Law No. 15.289 of June 14, 1982 is revoked. This legal text shall not be applied to litigation in process that applies said Decree-Law, rather said litigation shall continue to be subject to Decree-Law No. 15.289 of June 14, 1982.