

**03/05/04 * REGULATIONS UNDER LAW No. 17.616 OF JANUARY 10, 2003 ON
COPYRIGHT AND RELATED RIGHTS**

HAVING REGARD TO: Law No. 17.616 of January 10, 2003 on Copyright and Related Rights;

WHEREAS: (I) The said legislative norm introduces amendments into Law No. 9,739 of December 17, 1937 on Literary and Artistic Property;

(II) The set of regulations adjusts and updates the precepts of copyright for authors, performers, producers of phonograms and broadcasting organizations, in accordance with current legislative trends in comparative law and the international treaties adopted by Uruguay;

CONSIDERING THAT: It is necessary to adopt a text regulating the effective utilization of the Law, which makes it possible to apply the principles it lays down;

BEARING IN MIND: That which is set out above and the provisions of Article 168(4) of the Constitution of the Republic;

THE PRESIDENT OF THE REPUBLIC

DECREES:

CHAPTER I

**PROTECTION OF THE ECONOMIC RIGHTS OF COPYRIGHT HOLDERS AND THE
RIGHTS OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND
BROADCASTING ORGANIZATIONS**

Article 1. Protection of copyright for authors, performers, producers of phonograms and broadcasting organizations established under the Law shall be granted, in all cases and in the same manner, whether or not protection exists in the country of origin and regardless of the nature or source of the work, performance, phonogram or broadcast, the nationality of the author, performer, producer of phonograms or broadcasting organization, without distinction as to school, religion or philosophical, political or economic tendency.

Protection of copyright for performers, producers of phonograms and broadcasting organizations shall not in any way affect the protection of copyright in protected works. Without prejudice thereto, copyright holders for the performers, producers of phonograms and broadcasting organizations or their authorized representatives may exercise their rights independently.

CHAPTER II

REGISTRATION OF COPYRIGHT

(A) Organizational arrangements

Article 2. The National Library shall keep a registry of copyrights in which interested parties may enter the works and other intellectual property protected by the Law. Entry in the said Registry shall be merely optional. Failure to register shall in no way prejudice the enjoyment and exercise of the rights recognized by the law, apart from any exceptions as specified.

The Copyright Board shall exercise oversight and control over the said Registry and shall be competent to settle any disputes which arise with regard to registration.

Article 3. The Registry shall have the following sections:

1. Registration of works;
2. Registration of performances;
3. Registration of phonograms;
4. Registration of transfer or assignment of economic copyright;
5. Administrative or court decisions pertaining to copyright;

The Copyright Board may determine other ways of maintaining the Registry or decide to create other sections as it sees fit in order to perform its duties as best possible.

Likewise, it may stipulate that registration be documented by cybernetic means which guarantee full preservation of all information.

(B) Registration of works

Article 4. The author, his successor in title, the acquirer, assignee or publisher, as appropriate, may request the registration of a work, attaching to the form for the registration of the work the documentation providing satisfactory proof of his status.

Translators, adapters or compilers may request the registration of their translations, adaptations or compilations, if they have provided satisfactory proof that they have been duly authorized by the author.

Any persons who translate, adapt, modify or parody works belonging to the public domain shall be entitled to register in their name the translation, adaptation, modification or parody and shall be entitled to half of the proceeds of the royalties, but may not prevent the publication of other versions of the work in the same language or in any other language.

Requests for the registration of works shall be prepared by the interested party using the forms provided for this purpose by the Copyright Registry, in which he shall enter the following information, without prejudice to other information deemed relevant for registration:

1. Title of the work;
2. First name and surname, marital status, identity card or similar document in the case of a foreigner, residence and other information on the applicant, mentioning on what basis registration is requested;
3. First name and surname, marital status, identity card, residence and other known information on the author, if he is not the applicant;
4. The pseudonym of the author, as appropriate.

The form shall be accompanied by the following:

1. In the case of a literary or musical work: two printed or written copies or an appropriate medium for its registration.
2. In the case of sculptures: two photographs.
3. In the case of an audiovisual work: two copies in the medium appropriate for its registration or, failing this, two copies of the cinematographic script, accompanied by two copies of the medium which contains the score and two copies of photographs representing the main scenes of the audiovisual work.
4. In the case of a work broadcast on radio or television: two copies of the media containing the recording of the same.
5. In the case of a computer program: two copies of the same or enough parts of the program to characterize its creation. As the information based on the registration of computer programs is secret, it may only be disclosed for purposes of its examination by the Copyright Board, at the request of its own holder or to clarify an objection to registration or a denunciation of plagiarism or by court order.
6. In the case of photographs, blueprints or maps: two copies.
7. In the case of a work of art or a model applied in industry: two photographs or copies of the work or model, accompanied by a written description of the characteristics or details which cannot be assessed therefrom.
8. In the case of an architectural work: two copies of the blueprints and the corresponding descriptive reports, in any class of medium suitable for registration.

(C) Registration of performances

Article 5. The following may request registration in this section: performers or their successors in title, or the acquirers or assignees with regard to musical performances fixed on any medium.

Requests for registration shall be prepared by the applicant using the form provided by the Copyright Registry, in which he shall set down the following information, without prejudice to any other information deemed relevant for registration:

1. The title of the works performed.
2. If the performance is fixed on a commercial phonogram, its title, date of publication and record stamp name.
3. First name, surname, marital status, identity card or similar document for a foreigner and other information to differentiate performers.

The form must be accompanied by two copies of the medium on which the performance is fixed. The successors in title, acquirers or assignees must attach the documents providing proof of their status.

(D) Registration of phonograms

Article 6. Producers of phonograms or their licensees or assignees may request registration in this section.

Requests for registration shall be prepared by the interested party using the form supplied by the Copyright Registry, in which he shall include the following information, without prejudice to any other information deemed relevant for registration.

1. Title of the medium of the phonogram.
2. Number of the phonogram and the medium.
3. Name of the producer of the phonogram, indicating his marital status, identity card or domicile in the case of a natural person, or the registration number in the Consolidated Registry of Taxpayers and domicile in the case of a legal entity.
4. The titles and authors of the works fixed on the phonogram, with all necessary particulars.
5. The names of the main performers, their full particulars, with an indication of the work performed.

6. Date of publication of the phonogram.

The form shall be accompanied by two copies of the medium of the phonogram and documentary proof that the corresponding authorizations have been obtained from the authors or representatives of the works fixed therein.

The successors in title, assignees or licensees shall include the documentation providing satisfactory proof of their status.

(E) Registration for transfer or assignment of copyright

Article 7. To be valid, transfers or assignments of the economic copyrights of the authors of the works shall be in writing, and shall only be enforceable against third parties upon entry in the Registry, in accordance with the provisions of Articles 8 and 54 of Law No. 9.739 of December 17, 1937 and amendments thereto.

The above-mentioned entries shall only be optional in cases involving the transfer or assignment of the above-mentioned rights to audiovisual works, computer programs and databases based on the provisions of Article 6(2) and 29 of Law 9.739 of December 17, 1937, in the wording given in Article 10 of Law 17.616 of January 10, 2003, and with respect to foreign works, in accordance with the provisions of Article 15(1) and (2) of the Paris Act of July 24, 1971, or the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, ratified by Uruguay by means of Decree-Law No. 14.910 of July 19, 1979.

Requests for the registration of transfers or assignments shall be prepared by the interested party using the forms supplied by the Copyright Registry, in which he shall include the following information, without prejudice to any other information deemed relevant for registration:

1. The work transferred or assigned;
2. The term, as appropriate;
3. The territory in which this shall apply;
4. Identification of the holder of the copyright and the acquirer or assignee, indicating his full particulars, with an express reference to the identity card number in the case of a natural person, or the number of registration in the Consolidated Registry of Taxpayers in the case of a legal entity.

The document shall contain certified signatures.

(F) Joint provisions for the registration of works and transfers or assignments

Article 8. The Registry shall provide a receipt for the documents submitted for registration, with details identifying the work or its transmission, transfer or assignment, and for the payment of the corresponding registration fees and the cost of publications, as need be.

Registration fees for works and transfers shall be fixed at the proposal of the Copyright Board, between a minimum of one (1) Readjustable Unit and a maximum of ten (10) Readjustable Units, with a report to the Ministry of Education and Culture, which may observe them within ten working days of receipt of the communication. The Executive Branch shall decide with or without observation. The proceeds from the same shall be assigned to the Copyright Board for the performance of its duties.

Article 9. Once the request for registration has been received – except in the case of the Transfers and Assignments Section-, the Copyright Registry shall provide for a single publication of the request in the “Official Gazette” at half the prevailing rate, which shall be paid by the interested party. The edict shall indicate the type of work registered, the title, author and other particulars deemed necessary to distinguish it.

Article 10. Thirty days after publication, if there is no objection from an interested party, the Copyright Registry shall register the work definitively and send a certificate to that effect.

Article 11. Opposition to the request for registration and the denial or cancellation of a registration already made shall be resolved by the Copyright Board, in accordance with the administrative procedure applied by the Central Administration.

CHAPTER III

COLLECTIVE MANAGEMENT

Article 12. Collective copyright management associations that wish to be recognized as such shall obtain express authorization from the Executive Branch, subject to a binding opinion issued by the Copyright Board.

The said associations shall include proof of the following details in their request for authorization:

1. They are not-for-profit civil associations with legal status, which do not exercise any activity of a political or religious nature, and are authorized by virtue of their statutes to exercise collective management of the rights they aim to administer.
2. They have rules for the distribution of royalties between the holders establishing the following:
 - a. A system for fair distribution is used, which excludes arbitrariness and is applied in a manner that is actually proportionate to the use of the works, performances or

productions, as the case may be. Collective management bodies shall provide authors, performers and producers with detailed information on the respective uses of the said works, performances or productions.

b. Distribution intervals shall not be longer than one year, and deductions for administrative expenses and social services or assistance must coincide with the amount actually spent and with international practice.

c. The owners of the rights have entrusted them with the administration of the same. For this purpose, proof shall be provided in writing, in accordance with the provisions of Article 24 of Law No. 17.616 of January 10, 2003, of the existence of a sufficient number of partners to exercise collective management of the rights to be administered, along with mutual representation contracts with foreign collective management societies, which shall confirm that the respective owner is among their associates, so that they are legally empowered to grant licenses for the use of the rights administered by those foreign societies. Proof of the existence of mutual representation contracts may be provided by means of notarized certification detailing the source of information and the documents available for consultation.

4. The necessary infrastructure for effective collective copyright management must be put in place.

The collective management bodies shall submit, for endorsement by the Copyright Board, the up-to-date percentages – approved by the assembly of partners – of allowances for administrative or management expenses and for activities of a social nature and assistance, including, as appropriate, the reimbursement of expenses for partners who hold positions on the Board of Directors.

Likewise, the statement of assets and results and the accounting documents shall be submitted to an external auditor appointed by the assembly held the previous year or in the year in which it is drawn up, whose reports shall form part of the collection at the associates' disposal, without prejudice to the examination and report to be carried out by the internal oversight bodies in accordance with their statutes. Institutions which collect less than two hundred (200) Readjustable Units shall be exempt from this obligation.

The Copyright Board shall constantly monitor compliance by collective management associations with all of their legal obligations, taking note of all stages in accounting instrumentation and retaining the power to sanction institutions in case of breaches of rules, in accordance with the powers conferred upon it by law.

Article 13. The Executive Branch, subject to a binding opinion issued by the Copyright Board, shall grant authorizations to institutions which have so requested to exercise collective management with a view to validly representing the owners of works, editions, productions, performances and broadcasts, provided they have complied with the requirements set out in the foregoing article.

Article 14. For the purposes of the provisions of Article 58 of Law No. 9.739 of December 17, 1937, in the wording provided by Article 20 of Law No. 17.616 of January 10, 2003, and in Article 24 of that Law, it is hereby declared that any collective management bodies in operation as of January 10, 2003 meet the requirements set out in the said articles. Accordingly, the General Association of Authors of Uruguay (AGADU), the Uruguayan Society of Performers (SUDEI), the Uruguayan Chamber of Producers of Phonograms and Videograms (CUD) and the National Broadcasters Association of Uruguay (ANDEBU) shall continue to operate as such, with authority to exercise the rights established under the law, of both national and foreign rights holders. Within the six months following the approval of this Decree, they shall provide proof that they meet the conditions stipulated in this Chapter.

The court of arbitration established pursuant to Article 58 of Law No. 9.739 of December 17, 1937, in the wording provided by Article 20 of Law No. 17.616 of January 10, 2003, shall be composed of three members. For this purpose, each of the parties shall appoint an arbitrator to the Copyright Board; the third shall be designated directly by the said Board.

Proceedings shall be governed by the provisions set out in Articles 488ff. of the General Procedural Code.

Article 15. Persons or firms importing phonograms, such as CDs or cassettes, shall present to the National Directorate of Customs, as a prerequisite for the clearance of imports, a certificate issued by the author, his representative or the collective management body authorized for this purpose, stating that the importer is acting lawfully with regard to the royalties generated by the production of the phonograms that are to be imported.

Producers of phonograms who have signed a phonographic production licensing contract with a collective copyright management body shall merely have to provide a certificate issued by the said collective management body stating that the contract is in force.

The following shall be exempted from this provision:

(a) Broadcasting organizations, when they import or receive phonographic material from abroad (albums, cassettes, CDs) exclusively for broadcasting purposes, with a maximum of three copies of each phonogram;

(b) International Reply Coupons (IRCs) for non-profit use for a value of up to US\$50 (fifty US dollars), in accordance with Executive Decree No. 506/2001 of December 20, 2001.

Article 16. In case of the resale of works of sculpture or models at a public auction, in a commercial establishment or through an agent or dealer, the author, or at his death his

heirs or beneficiaries, shall enjoy the inalienable and non-waivable right to receive from the seller 3% (three per cent) of the price of the resale or auction sale. When the work passes into the public domain, this percentage shall revert to the State, which shall assign the proceeds to the Copyright Board for the performance of its duties. The auctioneers, dealers or agents involved in the resale shall be agents for including the share of the author or his successor in title in the price of the resold or auctioned work, and shall be obliged to hand over the said sum to the author or his successors in title or the collective management body he has entrusted with the exercise of his rights, within 30 days following the auction or deal. If they fail to comply with the said obligation, they shall be jointly responsible for the payment of the above amount, without prejudice to other applicable sanctions.

In any act of this nature, it shall be presumed that the model or sculpture has been resold, unless it can be proven that the work was handed over by its own author or his heirs for auction or commercialization under their signature.

Article 17. Performances given at family gatherings outside the home shall not be deemed unlawful when they meet the following requirements:

- (a) that the gathering has no profit-making purpose;
- (b) that discotheque, audio or similar services are not used and that live artists do not take part;
- (c) that only strictly home (non-professional) musical equipment is used.

Nor shall performances at private or public academic institutions and at places intended for religious worship be deemed unlawful, provided they have no profit-making objective.

Article 18. As defined by the provisions of Article 44 of Law No. 9.739 of December 17, 1937 in the wording provided by Article 14 of Law No. 17.616 of January 10, 2003, the domestic purview shall be interpreted as family gatherings in the home.

Article 19. The authors individually, their successors in title, their representatives or authorized collective management bodies may request police intervention in connection with Article 52 of Law No. 9.739 of December 17, 1937, to suspend a theatrical production or musical performance which is to be performed or which was being performed publicly without the authorization of the authors or representatives, in places which do not charge admission or when they do so, have made no advance publicity of the respective programs. Requests for police assistance shall be acted on forthwith.

In cases where an entry fee is charged and advance publicity has been given to programs, requests for assistance shall be made before the sectional Justice of the Peace.

In all cases, the registration receipt issued by the National Library shall be sent or presented as Prof., as defined by Article 6 of Law No. 9.739 in the wording given in Article 4 of Law No. 17.616. In the event that the above-mentioned registration receipt or supporting document cannot be produced, the author, his successor in title, representative or collective management body shall provide sufficient security.

CHAPTER IV

COPYRIGHT BOARD

Article 20. The Copyright Board shall draft its own Operating Rules, which shall be submitted to the Executive Branch for approval.

Article 21. The Ministry of Education and Culture shall provide the necessary infrastructure, staff and resources for its functioning.

Article 22. The Copyright Board may entrust a collective copyright management body with collecting the fees which go to the State for the use of works which have passed into the public domain or belong to the domain of the State, reporting back immediately to the Ministry of Education and Culture.

The designated entity shall make quarterly payments to the Ministry of Education and Culture of the amounts collected, subtracting the percentage fixed to cover collection costs. It shall also present lists for the royalties paid, specifying the title of the works, the names of the authors and composers and the dates of each performance, each signed by the competent representative.

In accordance with the provisions of Article 42(a) of Law No. 9.739 of December 17, 1937, the Copyright Board shall set fees for the use of works which have passed into the public domain or belong to the State, reporting back immediately to the Ministry of Education and Culture. These fees shall be moderate and general for each category of works.

In this connection, moderate fees shall be interpreted as rates which in no way exceed those set by collective copyright management societies for the private domain.

Article 23. The entity commissioned to collect the royalties for works belonging to the public domain shall place its books, lists, archives and any other documents which support the quantities levied at the disposal of the Ministry of Education and Culture, the Copyright Board and the National Internal Auditing Board.

Article 24. In addition to the tasks assigned by law to the Copyright Board, this body shall be responsible for arbitrating in disputes which arise between collective management societies and between such bodies and other collegiate associations, at the request of the interested parties.

CHAPTER V

OTHER PROVISIONS

Article 25. For the owners of the works and other rights protected under this Law to be considered as such and to be entitled to bring proceedings against infringers with the administrative or judicial authorities, it shall suffice if their name appears stamped on the work, performance, phonogram or broadcast in the usual form.

In the case of phonographic producers, it shall suffice if their name or that of the exclusive licensee appears stamped on the medium of the phonogram in the usual fashion followed by a circled “P” symbol accompanied by a mention of the year of first publication of the phonogram.

Article 26. In order to fix the beginning of the term of protection of the right of the phonographic producer stipulated in Article 9 of Law No. 17.616 of January 10, 2003, “publication” shall be considered to be the making available to the public of a sufficient number of copies to meet normal consumer demand.

Article 27. Producers of phonograms, in accordance with the provisions of Articles 2 and 39(B) of Law No. 9.739 of December 17, 1937, in the wording given in Articles 1, 2 and 12 of Law No. 17.616 of January 10, 2003, shall have the exclusive right to authorize the making available to the public of their phonograms, by wire or wireless, by any means that would enable members of the public to have access to them from a place and at a time of their individual choosing.

Other acts shall include the downloading of musical archives by any means that would enable members of the public to have access to them from a place and at a time of their individual choosing.

Article 28. For the purposes of the provisions of Article 51 of Law No. 9.739 of December 17, 1937, in the wording given in Article 18 of Law No. 17.616 of January 10, 2003, “product value” shall be considered to be the price of sale to the public of the copies lawfully placed in trade or, failing this, the value of the licenses for exclusive rights, set by the author or owner of the right or the corresponding collective management body.

Article 29. For the purposes of this Law, “profit motive” or “for profit” shall be considered to be any price, income, earnings or economic benefit obtained from the use or exploitation of a work, performance, phonogram or broadcast.

Article 30. The exclusive royalties and remuneration set in paragraphs 1 and 2 respectively of Article 39(C) of Law No. 9.739 of December 17, 1937, in the wording given in Article 12 of Law No. 17.616 of January 10, 2003, shall accrue to companies which effect broadcasts by wire or wireless means.

CHAPTER VI

FINAL PROVISIONS

Article 31. This Law replaces the Regulatory Decree of Law No. 9.739 of December 17, 1937, dated April 21, 1938.

Article 32. The foregoing shall be communicated, published and forwarded to the Ministry of Education and Culture for enforcement and other purposes.