

CHAPTER VIII: COPYRIGHTS AND NEIGHBORING RIGHTS

1. Concept

Copyrights are intended to protect the expression of human creation, product of the intellect of a human being, original works of authorship.

On the other hand, Neighboring Rights are rights related to Copyrights, intended to protect activities that are not a literary, scientific or artistic creation *per se*, such as *interpretation or performances, phonographic productions and radio emissions*.

2. Legal Framework

In the Republic of Panama, Copyrights and Neighboring Rights are protected by a large range of legal norms, to wit:

- i) Law 15 of August 8th, 1994, "whereby is enacted the Law on Copyrights and Neighboring Rights and other provisions"
- ii) Decree No. 261 of October 3rd, 1995, implementing Law 15 of August 8th, 1994.
- iii) Law 3 of January 3rd, 1996, "whereby is implemented the Berne Convention for the Protection of Literary and Artistic Works of September 9th, 1886, as amended in Paris, on July 24th, 1971 and amended on September 28th, 1979".
- iv) Law 92 of December 15th, 1998, "whereby is implemented the Treaty of the WIPO on Copyrights, as adopted in Geneva by the Diplomatic Conference on December 20th, 1996".
- v) Law 93 of December 15th, 1998, "whereby is implemented the WIPO Treaty on Interpretation or Performances and Phonograms, adopted in Geneva by the Diplomatic Conference, on December 20th, 1996".
- vi) Law 20 of June 26th, 2000, "of the special regime of the intellectual property applied to the collective rights of the native nations, for the protection and defense of their cultural identity and of their traditional knowledge, and other provisions".
- vii) Executive Decree No. 12 of March 20th, 2001, implementing Law 20 of June 26th, 2000.

3. Types of Works Protected

a) According to the Holder of the Rights

Law 15 of 1994 contemplates several modalities of the protected works, among which:

- i) Original work: Is a work originally produced and ideated.
- ii) Derivative work: Is the work based upon preexisting work; originality, in this case, is in the adaptation or transformation of the original work, or the ingenuity of its translation into a different language.
- iii) Collective work: Is the work created under the responsibility of one natural or juridical person, but all contributions thereto are so united that it is impossible to identify the different contributions, either because of their number or because of their indirect character. Collaboration Work: Is the work created jointly by two or more natural persons.
- iv) Anonymous work: Is the work in which no natural person is identified as author.

- v) Pseudonymous work: Is the work which author uses a fictitious name. For a work to be considered as a pseudonymous work, the fictitious name or pseudonym shall not provide any clue as for the civil identity of the author.

Title over patrimony and moral rights correspond to the author. Exception is made of works carried out by order or assignment contract.

b) According to Protected Object

Copyrights Law protects all kinds of works resulting from the intellectual creation. Among others, the Law protects : Written works, computer programs included, conferences, addresses, sermons and other works expressed orally; musical compositions, with or without lyrics, and the drama and musical drama works, choreographic works, pantomime works, audiovisual works, regardless of the material support or the proceeding; photographic works and those expressed by means of processes analogous to photography; fine arts works, including pictorial, drawing, sculptural, engraving and lithography works; architecture works, applied arts works, illuminations, maps, plans, sketches and Geography, Topography, Architecture or Sciences works; and, summing up, all literary, artistic, didactic or scientific works susceptible of publication by any means or proceeding.

Law 15 establishes a special juridical regime for audiovisuals, computer programs, architecture, visual arts, and journalistic articles.

4. Protected Copyrights

a) Moral Rights

In general, moral rights are inalienable, cannot be waived by the author, are not susceptible of precautionary measure or seizure of any kind, and they do not prescribe.

After death of the authors, moral rights pass to their heirs with the limitations set forth by the law.

Moral rights acknowledged by our Copyright Law and subscribed international conventions:

- i) The right to publicize the work, which is the right of the authors to decide on the communication of the subject matter of their work and the means for so doing.
- ii) Paternity Right, which is the right of every author to be recognized as such, whether using his/her real name or a pseudonym or anonymously.
- iii) Right of Integrity, which is the power of the author to forbid the modification, deformation or alteration of the work by its acquirer.
- iv) Right to demand from the acquirer access to the work in order for the authors to exert their patrimonial and moral rights.
- v) Right to revoke the assignment or to retire the work from commerce, subject to compensation for damages to the assignee by the authors. This right is also known as *Derecho de Arrepentimiento (Right of Redemption)*.

b) Patrimonial Rights

Summarily, the author or the person with the title over the work has the exclusive right to exploit the work in any way and to obtain benefits from the said work. Patrimonial rights include the following:

- i) The right to modify the work.

- ii) The right to publicize the work.
- iii) The right to reproduce the work.
- iv) The right to distribute the work.

5. Duration of the Protection

Concerning patrimonial rights, Law 15 establishes that the protection is granted for a period equal to the life span of the author. In addition, and in general, the term of protection may be extended for fifty additional years as of the death of the author (individual work) or of the last co-author (collective work).

On the other hand, for other kind of works there is a protection period of fifty years, counted from:

- a. Year of the publication, if a pseudonymous or anonymous work, except if the identity of the author is disclosed, in which case will apply the general rule described in the first paragraph.
- b. The first publication or the completion of the work for cases of collective works, computer programs and audiovisual works.

All term shall be counted from January 1st of the year following author's death or publicizing of the work, or the first publication or its completion.

Consequence of the extinction of the patrimonial right shall be the inclusion of the work in the category of public domain, meaning that the public may be able to exert all patrimonial rights, as long as moral paternity rights and integrity rights are respected.

6. Limitations to Copyrights

The protection granted to the author is not absolute in view of the existing public interests that may be in conflict, to wit: information, free speech and privacy rights. That is why the law sets forth limitations to copyrights such as the "fair use" (in Anglo-Saxon countries), upon which public may perform certain acts without author's authorization. Among the most important said acts are:

- i) Non profit communications within the family circle, during official performances, religious ceremonies, or in educational institutions.
- ii) Communications with demonstration purposes to the clients within commercial establishments.
- iii) Non profit reproductions of the work for the exclusive use of the user, for judicial or administrative acts if the intended purpose is justifiable.
- iv) Non profit reproductions of one copy of the computer program, exclusively for back-up or security purposes.

7. Transfer of Patrimonial Rights

a) General Means of Transfer

Patrimonial rights may be transferred by the same means contemplated in the Civil Code, to wit : cession and *mortis causa* transfer, in addition to the non exclusive and not transferable use license.

These transfers shall be null and void if they include cession of rights for future works or the prohibition to create new works in the future.

Last, the only formality prescribed by the Law is a written contract, whether on paper or by electronic means, complying with provisions of Law 43 of July 31st, 2001 (also known as E-Commerce Law), among which accessibility, conservation and immutability of the information, this is to say the contractual clauses.

b) Edition Contract

It is the agreement whereby the author, his/her beneficiaries and successors assign to another person identified as the editor, the right to publish, to distribute and to publicize the work on his/her own account.

The clauses of this contract shall include the following:

1. Identification of the author, the editor and the work.
2. Whether the work is unpublished or not.
3. The exclusive character of the work, if agreed.
4. The number of authorized editions.
5. The term to circulate the copies of the edition.
6. The number of copies of the edition.
7. The number of copies reserved for the author, the critics and the promotion of the work.
8. The remuneration of the author.
9. The term for the author to hand the original work to the editor.
10. The quality and other features of the edition.
11. The method to fix the selling price of the copies.

c) Representation and Musical Performance Contract

This is the instrument whereby the author, or his/her beneficiaries, assign or grant a license for the interpretation or performance of a literary, dramatic, musical, dramatic-musical, pantomime or choreographic work in public for a pecuniary compensation.

These contracts may be executed for a determined time, or for a given number of public representations or performances.

The performance or audition shall be authorized, and the corresponding licenses issued by competent authority, when the person responsible for the representation or performance, or of the respective establishment, documented the authorization by the holder of the Copyright or the entity in charge of the collective administration, of the said activities.

d) Contract of Phonographic Inclusion

By means of this contract, the author of a musical work authorizes a phonogram producer to record or to fix a work for reproduction by a phonographic record, a magnetic band, a film or any other device or analogous mechanism, with reproduction and copies selling purposes.

This authorization does not cover the public performance of the work, an activity that requires the execution of a different contract, a reserve that shall be included in the label adhered to the record, device or mechanism of reproduction of the phonogram.

Every copy of the phonogram shall include the following indications in their covers, or in the corresponding pamphlets when covers do not have the proper space:

1. Title of the works and the names or pseudonyms of the authors, the arrangers and adapters, if any. If the work is anonymous, it shall be so stated.
2. The names of the interpreters, the denomination of the orchestral or choral groups, and the names of their respective directors.
3. The acronym of the entity in charge or the collective administration of the Copyrights.
4. The mention of the reserved rights on the phonogram, with indication of the symbol (P). Followed by the year of the first publication.
5. The denomination of the phonographic producer.

e) Mandatory Licenses

The patrimonial rights over foreign works may be subject to mandatory, not exclusive, license for the translation and the production issued by competent authorities. These licenses shall meet the parameters set forth by Law No.8 of October 24, 1974, whereby the Universal Convention of Copyrights was implemented.

8. Neighboring Rights

Law 15 of 1994 recognizes the protection of rights related to the Copyright. In case of conflict between Neighboring Rights and copyrights, the latter shall prevail.

These rights are protected for fifty(50) years counted from January 1st of the year following the performance (if the work is not fixed) or from publication (is the work s fixed by sound or audiovisual support) in the case of artists, from the first publication of the phonogram in the case of producers of phonograms, and from broadcasting in the case of broadcasting organisms.

Neighboring Rights are recognized to the following persons:

a) Artists, Interprets and Performers

They shall have the exclusive right to authorize or prohibit fixing, reproduction or public communication of their interpretations or performances. However, once the authorization for fixing is granted, they shall not oppose public communication for commercial purposes.

Likewise, they have paternity rights for the interpretation or performance, and to impede any distortion of the work that endangers its integrity or reputation.

b) Phonograms Producers

They are as well protected under Law 15 of 1994, whereby are granted the rights to authorize or to forbid the reproduction of their phonograms, and to receive a remuneration for the public communication of their phonograms.

c) Broadcasting Organizations

Broadcasting Organizations have the exclusive right to authorize or to forbid the fixing, reproduction and re-transmission of their emissions, regardless of the means or the proceeding employed.

9. Requirements for the Registration of Works

Recording application in the Copyrights and Neighboring Rights Registry shall be accompanied by the following documents:

- i) Application in the form provided by the National Directorate of Copyright (original and two copies). The form shall include the following information:
 - 1.1 Personal circumstances of the author: Name, ID document and place of expedition, nationality, domicile, age, date of birth/death, pseudonym, authorship, personal circumstances of the successor, if the author is deceased. If a cinematographic, video gram or similar work, the names of the director, the authors of the script, of the music and the designs.
 - 1.2 Information of the Work: Title, year of creation, date and place of the first publication, type of work (if unpublished, published, individual, collective, in collaboration, anonymous, with pseudonym, *post-mortem*, by assignment, original or derivative). If a cinematographic or video graphic work: Original title in Spanish, nationality, genre, classification, date of completion, footage, duration and format.
 - 1.3 Personal circumstances of the producer/applicant: Name, ID document and place of expedition, domicile, and, if a juridical person, to add the incorporation jurisdiction or country.
 - 1.4 If a computer program, to add a description of its functions and elements (code of fonts, use manual and magnetic support).
 - 1.5 If a literary work, add the information of the editor and the printing house (See 1.3), and the ISBN number.
 - 1.6 If a cinematographic, a video gram or similar, add the name of the leading stars and a synopsis of the work.
 - 1.7 If a phonogram, add the names of the works embodied in the phonogram and the interpreters.
 - 1.8 If a registration of a contract : Information of the contracting parties, type of contract, object, value, duration, place and date of execution, personal circumstances of the applicant (See 1.3)
 - 1.9 Transfer of Copyrights, if done.
- ii) Power of Attorney duly notarized and authenticated by a Panamanian consul or affixed with the corresponding apostil.
- iii) ID document of the author or the holder of the right: If a natural person, copy of the personal identity card; if a juridical person, certificate issued by competent authorities as to the existence, legal representation and authority of the person that executed the Power of Attorney.
- iv) Two copies of the work if published before.
- v) One copy of the work if unpublished.

10. Effects of Registration

Even if the registration or deposit of a work is not necessary for the author or holder of the title to have the protection granted by the law, recording of the work presents the following advantages for the author, all of them provisioned for by Law 15:

- i) The registry shall attest, except for evidence of the contrary, of the existence of the work, its publication, and of the authenticity and juridical security of the transferring acts.
- ii) Presumption, except for evidence to the contrary, of the condition of holders of the right of the persons appearing in the registry.

Effectiveness of the recording of the work is active as of the date of presentation of the application.