

Bogotá, D.C., September 1, 2010

Messrs.
Executive Committee
ALAI

Dear Sirs:

Through this report we wish to summarise in a chronological order, the most relevant facts that took place in the area of Copyright and Related Rights, during the period comprised between September 2009 and September 2010 in Colombia.

1. Decree 1162 of 2010

Dated April 13, 2010, Decree 1162 organises the National Administrative Intellectual Property System and creates the Inter-sector Intellectual Property Commission.

- **National Administrative IP System:** This system has been designed to coordinate private and public initiatives, to the end of achieving an appropriate level of protection, use and promotion of the intellectual property rights. This would increase the impact of these assets on Colombia's competitiveness and productivity.

The system should take into account and balance the rights holders; the public interest; the users of knowledge; the protected assets; and the national cultural heritage.

The Inter-sector IP Commission should coordinate the National Administrative IP System.

- **Inter-sector Intellectual Property Commission:** The Decree creates this Commission in order to coordinate the national policy in intellectual

property and its effective implementation. The Commission will be formed by voting entities and non-voting members.

- **Voting Entities:** The Ministry of Home Affairs and Justice; the Ministry of Treasury; the Ministry of Agriculture and Rural Development; the Ministry of Health and Social Security; the Ministry of Trade, Industry and Tourism; the Ministry of Education; the Ministry of Environment, Housing and Territorial Development; the Ministry of Information and Communication Technologies; the Ministry of Culture; the Director of the National Development Agency; and the Director of the Science, Technology and innovation Agency.

- **Non-voting Entities:** the Director General of the National Copyright Directorate; the Director of the National Tax Agency; the Manager of the National Agriculture Institute; the Director General of the National Institute for Medicines and Food Surveillance.

2. Law 1403 o July 19, 2010

Law 1403, so-called "Ley Fanny Mikey", in memory of an Argentinean actress who was a tireless promoter of the theatre industry in Colombia, establishing "La Fundación teatro Nacional" and the "Festival Internacional de Teatro de Bogotá." Mikey passes away in August 2008.

This piece of legislation adds to Article 168 of Law 23, 1982, an inalienable remuneration right in favour of the performers of the audiovisual work for any communication to the public, including making available and commercial rental to the public, of the audiovisual work where their performance has been fixed.

This right shall be administrated by the collective management organisation, created by performers of the audiovisual works, according to the current legislation.

Limitations and exceptions to this remuneration right are:

- The act of communication that is carried out strictly with educational purposes, within the grounds or premises of educational institutions, shall not be deemed as communication to the public for the purposes of this law, provided that the entry is free of charge.

- Payment of this remuneration right does not apply to those establishments open to the public using audiovisual works for the entertainment of their employees; or where the communication of the audiovisual work carried out by shops, bars, canteens, supermarkets, drugstores, beauty salons, and gymnasiums, is not intended to entertain their costumers nor for profitable purposes.

3. Decision of the Supreme Court

On May 28, 2010, the Criminal Chamber of the Colombian Supreme Court handed down a decision addressing for the first time in history a case of plagiarism. The Court concluded that plagiarism is a criminal offense, although it is not included as such in the Colombian Criminal Code.

The Court found guilty professor LUZ MARY GIRALDO for extracting and copying, without authorization or quotation of the author, complete paragraphs of a Master's thesis in literature, to include them in a specialised paper that was published in magazine distributed in Mexico and Colombia. It is worth noting that both the professor and the Master's student were part of one of the most prestigious universities in the country.

However, the downside of the decision is that the Court delivered its ruling on an infringement of the moral right of the author to maintain his or her work unpublished. The criminal offense stipulated in the Colombian Criminal Code penalises the individual who "*publish, in whole or in part without prior authorization of the rights holder, an unpublished work of literary, artistic, scientific, film, audiovisual or sound recording, computer program or software.*"

Since the Master's thesis was a published work, so it is not clear whether the Court had enough grounds to base its decision. As in many other jurisdictions, judges cannot give broader interpretation to a criminal offense that has been already defined, and limited, by the legislator.

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