

Current proposed amendments to the Colombian copyright legislation

Fully aware of the myriad challenges posed by digital technologies to the copyright industries, Colombia has embarked on a timely revamping of its copyright legislation in this regard. We present you a boiled-down recount of the current affairs concerning the regulation of copyright, digital and otherwise.

I. Proyecto de Ley 241 de 2011

One bill in particular, Proyecto de Ley 241 de 2011 (from here on in, 241), amusingly dubbed "Ley Lleras" by the local populace in reference to its proponent, Minister of the Interior Germán Vargas Lleras, has garnered considerable notoriety within the media and the community alike for its intention to amend current regulation in a manner not unlike some DMCA provisions pertaining limitations on the liability of both ISPs and users, as well as the implementation of the "Notice & Take Down & Put Back" system already in use in many countries including the US.

A. Limitation on Liability

Provisions limiting the liability of Internet Service Providers under the 241 will be applied cautiously in accordance to the proposed "safe harbours", first assessing whether the ISPs conduct, and therefore its liability, can be disregarded. Discerning between the type of services being provided, four safe harbours have been proposed in Articles 5, 6, 7 and 8 the bill, as follows:

1. Related to offering of internet network communication services such as internet connections, the liability of ISPs will be limited as long as the ISP: (a) does not modify the content of the transmission; (b) does not initiate the transmission; (c) does not select who will receive the transmission; (d) establishes general conditions under which contracts with content providers may be ended due to copyright infractions.
2. Regarding "caching" of data, the liability of ISPs will be limited as long as the ISP: (a) respects the conditions in which users access the service and complies with the rules relative to the updating of the stored information; (b) doesn't interfere with compatible and standardized technology utilized in the original website to obtain information about the use of the stored data; (c) doesn't modify the content; (d) takes down the content once it has been requested to do so under the relevant procedure established in Articles 9, 10, 11 and 12; (e) establishes general conditions under which contracts with content providers may be ended due to copyright infractions; (f) doesn't generate or select the material (g) doesn't interfere with copyright protection measures.
3. Regarding "hosting" of contents and data, the liability of ISPs will be limited as long as the ISP: (a) does not have effective knowledge of the infringing nature of the contents; (b) does not obtain any kind of economical benefit in relation to the illicit activity; (c) expeditiously takes down or denies access to the illicit content under the procedure established in Articles 9, 10, 11 and 12; (d) appoints a representative to receive take down applications or requests; (e), (g) and (f) are the same as in the "caching" section above.
4. Regarding services in which the ISP allows for the use of "search engines", the liability of

ISPs will be limited as long as the ISP: (a) does not have effective knowledge of the infringing nature of the contents; (b) does not obtain any kind of economical benefit in relation to the illicit activity; (c) expeditiously takes down or denies access to the illicit content under the procedure established in Articles 9, 10, 11 and 12; (d) appoints a representative to receive take down applications or requests.

B. Notice, Take Down and Put Back.

Under the 241 system, rights holders must file requests to ISPs to initiate the taking down of the infringing material. If the request meets the prerequisites in Article 10, ISPs must proceed to inform the infringer of its intentions to block access or take down said content. Notified users can of course make use of the appeals system proposed in the provisions, requesting the uploading of the content if there is reason enough to believe there was no infraction.

C. Other Provisions

Some additional advances are noteworthy.

1. The Colombian Criminal code will be amended by endowing the criminal offence of *infringing economic rights or rights related to copyright* with new supposition of fact, to address copyright infringement in the digital world. The amended article shall read: *Article 271: Those who fall into the following conducts without authorization from the rights holder will incur in prison from two to four years and fines from 26.66 to a thousand minimum wages: Use a digital network to make a literary or artistic work (mentions all types of protected content)¹ available to the public.*
2. *Law 23 de 1982 will be amended with some preliminary injunctions devised to prevent infringement beforehand and has granted judges the ability to allow for the taking down of allegedly infringing contents, so long as the rights holder furnishes security in a proportionate amount to what the presumed infringer would lose with the preliminary injunction.*

II. Plan Nacional de Desarrollo (National Plan for Development)

The National Plan for Development is the base document serving as a strategic outline for the public policies formulated by the government. Approved in June 16 2011, it modified two provisions in Law 23 de 1982, law that regulates copyright-related matters in Colombia. Here is a translation of the modified articles in their new form:

1. *Intellectual Property: Works (artistic creations) in compliance with an employment contract*

1 Comment not in the original.

or work made for hire.

"Article 20: The author is the owner of the moral and economic rights on a work. However, when crafted under an employment contract or work made for hire with a natural person or legal entity, it is presumed, unless otherwise agreed, that the economic rights have been transferred to the person hiring the work or the employer, as long as it was within the scope of the job specification at the time the work was created.. This presumption will require that the contract be executed in writing. The rights holder may exercise actions against moral rights-infringing acts, provided the author is duly notified to avoid duplicity of actions.

2. Economic rights of the author

"Article 183. Economic rights or rights related to copyright may be assigned by the author; the assignment will be limited to the way of exploitation established contractually. If not established, the assignment will last for 5 years and will only be valid in the country or territory where the assignment was executed.

The acts or contracts through which the economic rights are partially or entirely assigned, must be executed in writing."

III. Proyecto de Ley 119 de 2011

A bill that intends to regulate civil (or private) judicial activity using a single procedural code. Under the proposed legislation, several national organisms will be given jurisdiction to make pronouncements in relation to various proceedings concerning IP-related aspects. The provision can be found in Article 24 of the bill, and reads the following in relation to the main Copyright authority in Colombia, Dirección Nacional de Derecho de Autor (National Copyright Direction):

"Article 24. Jurisdiction over intellectual property and consumer-protection matters. The following authorities will have jurisdiction over the subjects detailed below:

2. *National Copyright Direction, over proceedings established in Ley 23 de 1982 with regard to the current Procedural Law."*