

**ALAI 2011 – Congreso de Dublín (16 – 17 de junio de 2011)**

**Questionnaire – Boundaries and Interfaces**

**URUGUAYAN REPLY**

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**1. The subject Matter of Protection – Works**

**1.1 How do your legislators or caselaw define a literary work? In particular, how is speech protected? Is ex tempore speech a literary work and what are the conditions for protection?**

The legislation or case law in Uruguay give no generic definition of literary works, but a protected work is defined as a “production from the domain of intelligence” and this concept has been developed in Uruguayan doctrine and case law. Article 5 of Copyright Law No. 9.739 (amended by Law 17.616) provides a list of works considered protected. Although the list is long and detailed, it is still open, therefore it is merely regarded as by way of example; there may exist protectable works which are not mentioned in Article 5, as it was the case of computer programs before said amendment, which were recognised both by doctrine and case law as protected work although these were not expressly included within the list of protected works.

In what refers to literary works, said Article 5 mentions the following: “letters”, “writings of any kind”, “pamphlets”, “books”, “professional advice and forensic writings”, “Theatre works whatever their nature or extension, with or without music”, “computer programs”, etc.

Uruguayan doctrine is in favour of a broad concept of literary work that includes “any work that uses human language as the means of expression”.

Article 25 of the Uruguayan Copyright Law particularly refers to speeches as well as literary, scientific and political speeches and, generally, to conferences on intellectual matters, and establishes that these could not be published without the author's authorization. As an exception to this rule same article establishes that parliamentary speeches can be freely advertised unless for profitable purposes, in which case the author's authorization will be required, with exception of journalistic information.

The *ex tempore* speech of a literary work is not regarded as a work separated from the literary work, but as a form of exploitation thereof (particularly, it is a communication to the public of a literary work).

**1.2 For short works – headlines in a newspaper, phrases (including slogans), book titles, for example; are these covered by statute? Does case-law provide guidance on protection? Is this issue dealt with by de minimis rules? [In the EU discuss Infopaq and how the case is accommodated in national law].**

The title of a literary work is expressly protected under Article 5 of Copyright Law. The condition requisite for protection is that it should be original and be a creation.

For case law, slogans have double protection: as literary works (provided these are original) and as trademarks. Case law openly accepts the admissibility that slogans be protected as trademarks, provided that they comply with the requirements for distinctive signs (Law 17.011).

**1.3 How does your legislation define an artistic work? A closed and defined list of works? Open-ended definitions for greater flexibility?**

Artistic works are not defined in Copyright Law. Nevertheless, the works listed in Article 5 of Copyright Law (which, as mentioned in reply 1.1, is an open list) include the following ones that can be regarded as artistic works: “photographs”, “illustrations”, “three-dimensional works relative to science or for teaching”, “works of drawing and manual works”, “works of sculpture”, “engravings”, “lithography”.

**1.4 Have court decisions provided any rulings on the availability of copyright protection for contemporary forms or types of artistic expression? e.g.**

- **surveillance art, installations, collage.**
- **performance art.**
- **Conceptual art**

NO

**1.5 Are there any judicial decisions/ academic opinions on other forms of expression, whether protected or not (e.g. Perfumes)?**

NO.

**1.6 Is there case-law related to the protection of sporting events (soccer game, marathon race, ice skating competition, etc)? What is the basis of the protection? (dramatic or choreographic work, other?)**

There has been a situation where a side aspect of this question was discussed. It referred to determining whether the radio broadcasting of a football game was protected under Copyright Law. In that issue, the case law understood that the radio broadcasting was not protected by copyright for lack of sufficient originality to be regarded as a protected work.

In another case where it was discussed the protection of “the Tour of Uruguay” as a work, both the title as well as the event, case law determined in a Second Instance that none of them had protection: the title for lack of originality; the event for not being suitable for reproduction in the facts.

The protection of sport events should be regarded within the protection of the image right of sportsmen, which in spite of not being an author's right *in strictu sensu* it is regulated in Uruguay in Articles 20 and 21 of the Copyright Law.

Summing up, the law has not a specific protection for these events.

**2. Creativity – the Originality Standard**

**2.1 How does your legislation set out the requisite originality standard?**

The requisite of originality is not expressly or generally established in the Legislation. Notwithstanding, both doctrine and case law have understood that the intellectual creations should be

original in order to have copyright protection. A 1977 sentence determined that “the creation is the efficient cause of literary and artistic property, thus in order that the work enjoys legal protection, it is applicable to require that it should have a certain degree of originality which materialisation is the reflection of the author's psychological activity and compromises the work in front of the society for which he presents the product of his intelligence where the concept of 'creation' by no means is attributable to the production of a work extracted from nothing, but to the improvement of the pre-existent culture by incorporating some features deriving from the author himself”.

More recently, in a sentence from 2003, the Supreme Court of Justice established that “the originality of a work has to do with its individuality not with the circumstance that it is new. This is so because the product of creation should have sufficient characteristics of its own in its form of expression such as to make it distinguishable from any other of the same kind, unlike copies, the creations of others, or the mere mechanical application of knowledge or other one's ideas with no interpretation or personal mark”

**2.2 Does the legislation or case-law suggest a different test of originality is imposed for different kinds of work?**

Yes, see the following reply.

**2.3 For compilations / collections is the standard identical to that provided for in relation to works? [For common law jurisdictions there are significant differences on the standard e.g. IceTV (Aust) CCH (Canada). How has “sweat of the brow” been treated in recent case-law?]**

Our Copyright Law expressly provides for the protection of compilations of data or other materials, in any form, which due to the selection or arrangement of their contents can be regarded as intellectual creations (Article 5).

This article further clarifies that this protection does not include the data or components by themselves and is to be understood without prejudice of any subsisting author's rights with respect to the data or components included in such compilation, and the expression of ideas, information and algorithms, as long as they are formulated in original sequences sorted in a proper manner so as to be used by a data processing device or of automatic control, are likewise protected.

**2.4 Does your legislation/case law recognise copyright protection for collections such as television listings, yellow pages/white pages telephone directories? If yes, what is protected (headings, content, or both?) If not, why is protection denied (e.g. spin-off theory, competition law considerations).**

There is no specific protection for such descriptions, but these would be protected as data bases (see previous reply 2.3.). The protection covers also the selection and arrangement of the contents, though not the contents by themselves.

**3. Achieving Access for the visually impaired**

**3.1 Does your national legislation provide exceptions or limitations in favour of the visually impaired? For wider categories of disabled persons? On what condition: is there a remuneration right or right to compensation?**

NO

**3.2 What kind of works are or would be subject to limitations or exceptions? Literary works only? Works and performances fixed in sound recording? Will the visually impaired or other beneficiaries of the exceptions or limitations obtain copies of covered works directly, or only via libraries or other institutions?**

NO

**3.3 Are the exceptions and limitations confined to the reproduction of the work? If making available or adaptation is possible, on what conditions?**

NO

**3.4 Has your Government expressed a view on support for international initiatives (e.g. World Blind Council Treaty)?**

Yes, the Government is at present, together with other countries of the region, supporting this initiative.

The Uruguayan Government passed in 2010 the “law of Integral Protection of the rights of the disabled”. It establishes that “...the rights of persons with disabilities will be the ones established in the Declaration of the Rights of Disabled Persons of December 9, 1975 and the Declaration on the Rights of Mentally Retarded Persons proclaimed by the United Nations on December 20, 1971; the declaration of rights of mental health contained in the 2002 Geneva Covenant and the Convention on the Rights of Persons with Disabilities approved by the United Nations General Assembly resolution 61/106 of December 2006, as ratified by law N° 18,418 of November 20, 2008.” The law contains its own and particular list of rights of the disabled. Likewise, Article 8° provides that: “The Government will provide coordinated assistance to the persons with disabilities who lack some or all of the benefits referred to in the foregoing paragraphs of this article, in order that they can play in society a role equivalent to that played by other persons.

To that end it will take the corresponding measures in the areas that follow hereunder, as well as in any other ones established by the law:...

L) Access to computer technology by the incorporation of existing technological developments.”

Although these initiatives are programatic in nature and they do not pose any obligations on the owners of new technologies or any exceptions to intellectual property rights, they show a real intention of the authorities to move forward in the improvement of the living conditions of people with some kind of disabilities. This is shown in the fiscal waiving of taxes for the employers of this group of people and the obligation to include at least 4% of persons having this condition among public servants.

In 2007 the Convention on the Rights of Persons with Disabilities was approved by law 18,418. It provides in article 30 that: 1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities

a) Enjoy access to cultural materials in accessible formats;

b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials. “

However, these provisions have not been regulated up to now.

**3.5 On an extra-legal basis, are there any market initiatives, or business practices, that your national group are aware of?**

Yes, the Braille Foundation of Uruguay reproduces literary works of Uruguayan authors into Braille language and/or records them for the exclusive use of the visually impaired. In this operation neither the authors nor the publishers give an express consent but no legal claim has ever been raised by either the authors or the publishers. It is to be noted that this Foundation does not commercialize the works in any manner nor their reproductions but it merely allows the individuals to borrow them. There may be some tacit consent in some cases as some authors have their own voices recorded.

**4. Access to the Internet as a Human Right**

**4.1 Does your legislation/constitution/case-law define access to the Internet as a specific [or human] right?**

NO

**4.2 Are there any specific restrictions or limitations on this right [Europe: it is not necessary to refer to ECHR but any national decisions or rulings on ECHR should be mentioned]?**

NO

**5. Orphan Works**

**5.1 Are there extant legislative provisions allowing access/use in relation to orphan works? What kinds of work are involved? Performances?**

NO.

**5.2 On what conditions? Is there a remuneration right or right to compensation? Is there a court or administrative procedure to be satisfied prior to use?**

NO

**5.3 Are there proposals for the introduction of, or changes to, orphan works provisions?**

NO

**6. Graduated Response Laws or Agreements**

**6.1 Within the specific context of p2p file sharing of audio-visual works and sound recordings, does your national law contain laws (or proposed laws) providing for a graduated response “solution”? On what conditions? Three strikes, etc.?**

NO

6.2 **Do such proposals include an educational aspect – enhancing awareness of intellectual property protection, as well as measures to (1) make Internet access more secure in order to prevent illegal activity; (2) – favour availability of legal services?**

NO

6.3 **Is there a court procedure and/ or administrative agency that oversees the proceedings or authorises interruption or termination of internet access?**

NO

6.4 **Is it possible to assess the effectiveness of the implementation of these measures, both as a matter of stemming piracy, and with respect to the development of legal services ?**

NO

6.5 **Is there any case-law on the possible (own initiative) use of blocking or filtering technology by an ISP, as distinct from situations where an ISP is required by a court or administrative agency to terminate subscribers access (i.e. injunctive relief)?**

NO

6.6 **Are there private agreements among copyright owners and internet service providers that function similarly to “3-strikes” laws?**

NO

## 7. **Private Agreements and UGC**

7.1 **Are there private agreements among copyright owners and hosts of UGC content sites regarding the filtering of content posted to the sites? Are there inter-industry statements of “best practices” regarding filtering? Have government authorities in your country undertaken initiatives to encourage the adoption of such accords?**

The Uruguayan Chamber of Records, with the support of the Uruguayan General Association of Authors -being both collective management organisations, the first one relating to the producers of phonographs and the latter to composers and playwrights- are in contact with the government authorities for the regulation of this situation. As the main provider of communications and Internet services is a state entity (Antel) it is on that side that the solutions are being sought, together with electronic government authorities.

7.2 **How is the filtering to be accomplished?**

With the participation of the Agency of Electronic Government (Agesic), which acts within the scope of the Presidency of the Republic, the Council of Copyright and business sector, regulating all matters related to that purpose in order to distinguish or separate responsible and negligent attitudes, thus protecting the rights of authors.

**7.3 Have there been any cases concerning such agreements or “best practices”?**

NO

**7.4 Outside the existence of such accords, have courts themselves imposed remedies requiring measures such as "take down, stay down"?**

NO