



**CENTRO COLOMBIANO DEL DERECHO DE AUTOR CECOLDA  
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**QUESTIONNAIRE**

**MAIN THEME: COPYRIGHT, NEIGHBOURING AND SPECIAL RIGHTS - STATE OF AFFAIRS AND  
FURTHER OUTLOOK**

**PANEL I - PERFORMERS RIGHTS - A COMPARATIVE OVERLOOK**

**1. What types of performers are there according to your legal framework?**

According to Article 8/k of Law No. 23 of 1982, performers may be the actor, announcer, narrator, declaimer, singer, dancer, musician or any other person who plays or performs a literary or artistic work.

**2. Do all types of performers enjoy Neighboring Rights protection?**

Yes, Colombian Copyright Law provides Neighboring Rights to all performers, indistinctively. (Chapter XII of Law No. 23 of 1982).

**3. Does the law distinguish between featured/non-featured performers? How?**

No, Colombian law treats featured and non-featured performers in an indistinctive manner. Nevertheless, there are provisions that accept the equitable remuneration to performers depending on their participation in the performance. Hence, the remuneration rights can be distributed in different amounts depending on the participation of each performer (Law No. 1403 of 2010).

**4. Which rights are awarded to each type of performer?**

i. Live performances:



a. Fixation; performers have the right to authorize or reject the fixation of their performance or execution in an visual or audiovisual work. In any case, performers are granted the right to receive an equitable remuneration for the public communication (broadcasting) of the work containing their performance (Article 1, Law No. 1403 of 2010).

b. Broadcasting; performers are granted the right to accept the broadcasting of the work where they performed. Once they exercise the right (and receive an equitable remuneration for the broadcasting of the work), they are not able to forbid, alter or suspend the production or commercial exploitation of the work they performed in.

ii. Fixed performances:

a. Reproduction;

Yes, performers are granted reproduction rights over the work they performed in. As long as they receive this remuneration, they are not able to forbid, alter or suspend the production or commercial exploitation of the work.

b. Distribution;

Yes, until the authorization of performers to include their performance in an image or audio fixation. Then, they will have just a remuneration right.

c. Rental;

Yes, performers are granted rental rights over the work they performed in. As long as they receive this remuneration, they are not able to forbid, alter or suspend the production or commercial exploitation of the work.

d. Making Available to the public;

As a mechanism of public communication, it follows the structure of the following literal.

e. Communication to the Public;

Yes, performers are granted rights to authorize or refuse the communication to the public of the work they performed in. If they authorize it and receive remuneration for it, they are not able to forbid, alter or suspend the production or commercial exploitation of the work.

f. Public performance;

Yes, likewise, this faculty also follows the public communication structure.



g. Broadcasting;

Performers are granted the right to accept the broadcasting of the work where they performed. Once they exercise the right (and receive an equitable remuneration for the broadcasting of the work), they are not able to forbid, alter or suspend the production or commercial exploitation of the work they performed in.

h. Retransmission;

Not specifically established in Colombian Laws. It is understood as public communication.

i. Direct Injection;

Not established in Colombian Laws. It can be understood within public communication.

iii. Are moral rights attributed to performers? Which prerogatives does it comprehend?

Yes, performers are granted the same moral rights as the authors. This is determined by article 171 of Law No. 23 of 1982. The moral rights granted to the performer are the following:

- a) Claim "Paternity" of their performance at any time, so that their name or pseudonym is always indicated whenever the work/performance is reproduced, translated, adapted, modified or communicated to the public (through representation, broadcasting or any other means).
- b) "Integrity", Stand against the distortion, mutilation or any other modification to the work/performance when they may cause, or in fact cause, damages to the performer's honor or reputation.
- c) To preserve the inedited and anonym work/performance until their death, or after it in case determined in their will.
- d) To modify the work/performance after it is performed or published. Only if damages are previously compensated.
- e) To remove the work/performance from circulation. Only if damages are previously compensated.

5. **What is the nature of those rights? – Statutory? Contractual?**



Statutory, they are set forth in the Copyright Law (Law No. 23 of 1982). It is worth mentioning that these moral rights are perpetual and inalienable.

6. **Which of them are exclusive rights/remuneration rights?**

Public communication, broadcasting and distribution (in form of rental) of fixation of the performance is remuneration right. Other rights are exclusive rights.

7. **Which exceptions/limitations generate remuneration rights for performers?**

None. Remuneration rights are not conceived as exceptions/limitations in Colombia.

8. **Which rights are transferred to music/audiovisual producers? For how long?**

i. There are no performer rights that are automatically transferred to music/audiovisual producers.

They can be transferred by agreement. However, remuneration rights for public communication and rental (distribution) will remain in head of the performer, because they cannot be transferred and any contractual disposition assigning these remuneration rights is understood as non-existent.

9. **Are there any legal presumptions of transfer or is it voluntary/contractual?**

No, there are not legal presumptions of transfer for performers.

10. **Are there any unwaivable and inalienable remuneration rights?**

Yes, even when economic rights can be transferred. Remuneration rights are inalienable. This is to protect the rights of the performers.

11. **What type of compensation is paid in exchange? How is it set? For how long?**

As the remuneration right is inalienable, there would not be a compensation for transferring it. What the Law 1403 of 2010 states is that the interpreters of the works have the right to receive equitable remuneration for the public communication or rental of the works or audiovisual recordings in which their performance is fixed. As long as it is equitable, the interpreters can directly negotiate the remuneration of their performance or it can be fixed by the profits that the work generates by making it available. This negotiation is usually made by CMOs and PROs.

12. **How is “streaming” qualified in your Country for rights awarding purposes?**

Streaming is considered an act of public communication which will necessarily imply a reproduction.

13. **Whose authorization is it required for the “streaming” of music/audiovisual content?**



It is required authorization for reproduction right. Regarding public communication, this would be a remuneration right for performers. Both rights are usually negotiated by CMOs and PROs, but their competence is not exclusive, there also exist individual management.

**14. What is the estimated level of copyright infringement in your Country?**

We do not have an updated estimate.

**15. What is the current level of disclosure on economic returns from digital platforms?**

Digital platforms does not have an obligation to disclose their economic returns. However, in practice, they are disclosed to CMOs and PROs to negotiate the tariffs of these entities.

**16. How is performer's compensation determined for each business model?**

It would depend on the organization and structure of CMOs and PROs, in some cases it is not clear.

**17. Are there minimum amounts due? Any other economic benefits?**

No, there are no minimum amounts for remuneration rights. as a private right, it would depend on the negotiation.

**18. Do UGC platforms contribute to such compensation schemes? How?**

No, UGC are treated like any other user who communicate to the public works/performances. The compensation model would be the same for them.

**19. Has the Beijing Treaty been implemented in your Country, at least, in part?**

Yes, although Colombia has been a signatory to the treaty since 2012, Colombian legislation already complied with the minimum margins of protection granted to the interpreter by Law 1403 of 2010.

**20. Which rights are collected by Collective Management Organisations (CMOs)?**

21. Most of them collects public communication. However, some of them have mandate to collect reproduction and other economic rights for a few amount of affiliates.

**22. Which CMOs represent performers in your Country?**

According to Colombian law, duly registered collective management organizations can be consulted on the website <http://derechodeautor.gov.co:8080/sociedades-existentes>. These are the ones for performers:

- Music performers: ACINPRO.



- Audiovisual performers: ACTORES.

**23. Do these CMOs comply with transparency principles?**

Yes, according to Law 44 of 1993, the CMOs must publish how to periodically inform the registered partners of the income, expenses and relevant corporate movements regarding the existence, management and control of the companies. Likewise, while the member has the right to be informed and consult about the administration of their rights, they must be fully informed about any query that may arise while the owner belongs to the association.

Under the control budget, the CMOs cannot hide, eliminate or modify information from the control government entities, which is why they must be ready to provide the information and documentation that is necessary so that the entities can be fully informed of compliance with the provisions of the companies.

Finally, under the provisions of Decree 1066 of 2015, the CMOs must publish information such as the rates to which their partners will be creditors at the time they subscribe and agree for the Collective Management Companies to administer their rights.

**24. Is it possible to find out how much income is provided by each type of rights?**

Yes, by administrative means, the government control entities must be duly informed about the income and expenses of the companies, however, if they refer to the partners, they have the right to be periodically informed of the income, expenses and any decision of operation that may condition their works and rights.

**25. What is the current litigation level for performers' rights in your Country?**

We do not have an updated estimate.

**26. Are there any relevant Court Decisions concerning performer's rights?**

Case Law T-407a-18 of the Constitutional Court confirm the right to privacy and the rights over the self-image.

Case Law C-069-19 and C-912-11 of the Constitutional Court explore the figure of the fair and equitable remuneration of performers.



Case Law SL2885-2019 and SL3962-2014 of the Supreme Court of Justice establishes the conditions to recognize the labor relation of performers of the audiovisual industry.

Preliminary Interpretation 142 – IP – 2020 of the Andean Community Court of Justice develops the moral rights of performers.

**27. Does the Principle of National Treatment apply to all foreign performers?**

Yes, the Andean Decision 351 establishes that:

*Each Member Country shall grant to the nationals of another country, a protection no less favorable than that recognized to its own nationals in terms of Copyright and Neighboring Rights.*

**28. Are there “appropriate and proportionate remuneration” provisions?**

Yes, as mentioned in questions 4 and 6, equitable payment is granted to performers depending on their participation in the performance. Law No. 1403 of 2010 is the most relevant provision on this matter and it was the result of an arduous process assumed by performers. This is also called “Fanny Mikey Law”

**29. Are CMO’s mandates always exclusive and encompassing all rights?**

No, mandates to CMOs do not need to encompass all rights.

**30. Are there any partial/global revocation of transfer of rights agreements provisions?**

No.

**31. Are there any provisions on contractual remuneration adjustments?**

No.

## **PANEL II - PHONOGRAM PRODUCERS' RIGHTS**

**1. Which rights are awarded to phonogram producers?**

In Colombia, the following exclusive rights are recognized in favor of phonogram producers, in accordance with article 172 of Law 23 of 1982, modified by article 8 of Law 1915 of 2018:

- a) The **reproduction** of the phonogram (Also recognized in article 37 [a] of Andean Decision 351 of 1993)
- b) The public **distribution** of the original and copies of their phonograms, through sale or through any form of property transfer (Also recognized in article 37 [c] of Andean Decision 351 of 1993)



- c) The **import** of copies of the phonogram (Also recognized in article 37 [b] of Andean Decision 351 of 1993)
- d) The **commercial rental** to the public of the original and copies of their phonograms even after their distribution by themselves or with their authorization;

Also, in accordance with article 173 of Law 23 of 1982, and article 37 [d] of Andean Decision 351 of 1993, producers of phonograms are recognized the right to receive remuneration for **public communication**.

## 2 What is the nature of those rights? – Statutory? Contractual?

In Colombia, the nature or source of the rights in favor of phonogram producers is statutory, in accordance with the aforementioned laws.

## 3 Which of them are exclusive/remuneration rights?

The rights of reproduction, distribution, importation and commercial rental are exclusive rights in favor of the producers of phonograms. The right of communication to the public is a remuneration right.

## 4 Which exceptions/limitations generate remuneration rights for phonogram producers?

None. Remuneration rights are not conceived as exceptions/limitations in Colombia.

## 5 Are there any legal presumptions of transfer or is it voluntary/contractual?

No, there are not legal presumptions of transfer for phonogram producers.

## 6 What type of compensation is paid in exchange? How is it set? For how long?

As the remuneration right is inalienable, there would not be a compensation for transferring it. What the Law 23 of 1982 states is that the phonogram producers have the right to receive equitable remuneration for broadcasting or public communication. Exclusive rights can be negotiate whether directly or through CMOs and PROs.

## 7 How is producer's compensation determined for each business model?

It would depend on the organization and structure of CMOs or editors.

## 8 Are there minimum amounts due? Any other economic benefits?

No, there are no minimum amounts for remuneration rights. As a private right, it would depend on the negotiation.

## 9 Is digital piracy/streamripping still a major concern for phonogram producers?

Yes, it is known that the International Federation of the Phonographic Industry - IFPI together with Promúsica (an organization that brings together phonogram producers in Colombia) have been making efforts to reduce the practice of stream ripping that affects the royalties of phonogram producers.

## 10 Which rights are currently being collected via CMOs?



ACINPRO, the only entity of its kind in Colombia, manages the right of communication to the public in a broad sense, including the rights of execution and public representation and making available.

**11. Which CMOs represent phonogram producers in your Country?**

The Colombian Association of Phonographic Interpreters and Producers - ACINPRO is the collective management society that manages the related rights of artists, performers, and producers of phonograms.

**12. Do these CMOs comply with transparency principles?**

Yes, collective management societies in Colombia act following transparency rules. Some are aimed at the election of the members in their social bodies, others at the administration of the resources destined to the functioning of the company and its operations. In relation to the social bodies, Decision 351 in its article 50, establishes that "In order to have effects against third parties, the collective management societies are obliged to register before the competent national office, in the terms determined by internal legislation of the Member Countries, the designation of the members of their governing bodies, as well as the instruments that accredit the representations that they exercise of foreign associations or organizations."

In development of this requirement, Law 44 of 1993, specifies that: "The name of the members of the Board of Directors, of the members of the Surveillance Committee, of the Manager, of the Secretary, of the Treasurer and of the Prosecutor must be registered with the National Copyright Office (DNDA); Any modification will be communicated to the aforementioned dependency, attaching a copy of the act by which they were appointed or elected, indicating the address, name and identification document. Such designations will not produce any effect within the company or against third parties until their registration."

Also, the aforementioned Law incorporates a mechanism for contesting the elections, defining that "The acts of election carried out by the General Assembly and the Sectional Assemblies and the acts of administration of the Board of Directors, may be contested within thirty (30) days following its completion, before the DNDA by any of the associates when it does not comply with the law or the statutes." (Article 35). To this end, the DNDA "may carry out visits to the collective management societies, decree and carry out the tests it deems necessary in order to declare, when applicable, the nullity of the elections and the acts that have been produced in violation of the law and/or the statutes and will determine if there is room for the imposition of any sanction."

**13. Is it possible to find out how much income is provided by each type of rights?**

By legal provision, article 3 of Law 23 of 1982, added by article 68 of Law 44 of 1993, provided that the AUTHOR has the right to "... obtain remuneration for intellectual property for public execution or disclosure, where copyright prevails over others, in a proportion not less than sixty percent (60%) of the total collected. In accordance with this provision, the maximum phonographic producer could correspond to 40% of the economic exploitation of the phonogram.

**14. What is the current litigation level for phonogram producers in your Country?**

We do not have an updated estimate.

**15. Are there any relevant Court Decisions concerning phonogram producer's rights?**



Currently, there is not much jurisprudence with direct pronouncement on the rights of phonogram producers. In the majority of jurisprudence what is established in Decision 351 in its title X is reaffirmed, in this regard it is highlighted:

Ruling C-833 of 2007– Constitutional Court:

In this ruling, the Court ruled on the type of rights that covers producers of phonograms. In this regard, it mentions that, unlike those who are called authors of the work, the producers of phonograms enjoy related rights. “[...]On the other hand, rights related to copyright are those that are granted to performing artists, producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcasts, and have , also, moral and patrimonial manifestations.[...]”.

Judgment C-966 of 2012 – Constitutional Court:

In this ruling, articles 173 and 174 of Law 23 of 1982 on the remuneration rights of performers and producers of phonograms are confirmed and declared enforceable. This reiterates that the user of the phonogram is obliged to pay the remuneration to the producer of the phonogram, who in turn must transfer half of what is received to the performers, unless the two groups of owners agree something different. Thus, the right to remuneration in equal parts is recognized for performers and producers of phonograms.

Verbal process Rad: 1-2019-89443 before the Sub-directorate of Jurisdictional Affairs of the National Copyright Office.

In this case, the Colombian Association of Phonographic Interpreters and Producers - ACINPRO sued the International Marathon Corporation of Medellin CSAL because in the event "CORRE POR AMOR" organized by the International Marathon Corporation of Medellin CSAL, phonograms and interpretations or executions were communicated to the public. musicals, whose rights were managed by ACINPRO, without the corresponding remuneration having been paid. In this case, the defendant was convicted.

**16. Are there any revocation of transfer of rights' agreements provisions?**

No.

**17. What is considered a “phonogram published for commercial purposes”?**

There is no definition for “phonogram published for commercial purposes” in Colombia. As commercial purpose is not a requisite to be entitled to forbid uses or to receive a remuneration right.

**18. Is there any type of phonograms that is published for non-commercial purposes?**

The law does not distinguish phonograms that do not have commercial purposes.

**19. Which rights are involved in audiovisual synchronization (“production music”)?**

The synchronization involves reproduction and transformation rights.

**20. Which rights are involved in mood music/sound branding licensing?**

The use of mood music usually requires licenses for its synchronization in audiovisual works or advertising spots. In addition, when background music is communicated to the public in establishments open to the public, in public shows or through the Internet, licenses are required to publicly communicate both the work, the phonogram and its interpretation.



### **PANEL III- BROADCASTERS AND FILM/AUDIOVISUAL PRODUCERS RIGHTS**

#### **1. Which rights are awarded to broadcasters in your Country?**

Broadcasting organizations have the exclusive right to authorize or prohibit the following acts:

- a) The retransmission of its radio broadcasts;
- b) The fixation of its radio broadcasts, and
- c) The reproduction of a fixation of its broadcast emissions:
  - 1. When the fixation from which the reproduction is made has not been authorized.
  - 2. Where the broadcast emission has been initially fixed in accordance with the provisions of this law but the reproduction is made for purposes other than those indicated

#### **2. What is the nature of those rights? – Statutory? Contractual?**

Statutory. These rights are established by Law. Particularly, Law 23 of 1982, Andean Decision 351 of 1993.

#### **3. Which of them are exclusive/remuneration rights?**

All of those rights are exclusive.

#### **4. Which exceptions/limitations generate remuneration rights for broadcasters?**

None.

#### **5. Are there any legal presumptions of transfer or is it voluntary/contractual?**

It is voluntary/contractual.

There is no legal presumption for broadcasters, however there is currently a dispute between broadcasters and TV channels to determine if Article 11 of Law 680 which states that *"Pay TV operators must guarantee at no cost to subscribers the reception of Colombian open television channels of national, regional and municipal character that are tuned in VHF, UHF or via satellite in the area of coverage only. However, the transmission of local channels by Pay TV operators will be conditioned to the technical capacity of the operator"* is or not an exception to broadcasters rights.

#### **6. What is the relevance of copyright infringement in relation to broadcasters' rights?**

In principle it would have no relevance and the infringement of a right does not affect the infringement of another right.

#### **7. Is digital piracy/streamripping still a major concern for broadcasters?**

Yes, it is a major issue. While there has been more and more awareness over digital piracy over



the recent years, including very expensive campaigns from broadcasters seeking to alert people of this issue, it still happens.

**8 Do UGC platforms contribute to broadcasters' rights? How?**

It is ignored whether UGC platforms do contribute to broadcaster's *rights*, but it has proven to be quite effective as a *marketing* activity that benefits both the UGC and the broadcaster, in general, not regarding the rights over the signals, but the recognition of the broadcaster itself.

**9 What is the current litigation level for broadcasters' rights in your Country?**

It has increased in the last years. We have heard about some injunctions granted by the Judge of Colombian Copyright Office against IPTV services which illegally rebroadcasted signals of a broadcaster in Colombia.

**10 Are there any relevant Court Decisions concerning broadcasters' rights in your Country?**

Not known.

**11 Are broadcasters acting as One-Stop Shop in relation to retransmission operators?**

No.

**12 Which rights are awarded to audiovisual producers in your Country?**

Audiovisual producers hold all economic rights on the work. Therefore they will have the faculty to authorize or prohibit the use of those rights.

Furthermore, Art. 98 of Law 23 has established that there is a presumption that they have all economic rights without any exception or limitation.

**13 What is the nature of those rights? – Statutory? Contractual?**

Statutory.

**14 Which of them are exclusive rights? Which of them are remuneration rights?**

All of them are exclusive rights.

**15 Which exceptions/limitations generate remuneration rights for audiovisual producers?**

None.

**16 Which rights are transferred to audiovisual producers? For how long?**

All rights are transferred by legal presumption to the audiovisual producers in accordance with Article 98 of law 23 of 1982. While all rights are transferred, the authors of audiovisual works (directors and screenwriters) retain a right of equitable remuneration for the communication to the public of the audiovisual work. While all rights are transferred, authors retain the remuneration right.



**17. Are there any legal presumptions of transfer towards audiovisual producers?**

Article 98 of Law 23 of 1982 established the legal presumption of transfer of all copyright of the authors of an audiovisual production in favor of the audiovisual producers.

**18. What type of compensation is paid in exchange? How is it set? For how long?**

Not apply.

**19. How is audiovisual producer's compensation determined for each business model?**

It will depend on the specific case contract.

**20. Are there minimum amounts due? Any other economic benefits?**

No.

**21. Do UGC platforms contribute to such compensation schemes? How?**

No.

**22. Is digital piracy/streamripping still a major concern for audiovisual producers?**

Yes, it is a major issue. While there has been more and more awareness over digital piracy over the recent years, including very expensive campaigns from audiovisual producers seeking to alert people of this issue, it still happens.

**23. What is the most recent estimation of rights' loss on account of digital piracy in your Country?**

There has not been as such a sentence that talks about this estimation of right loss, we are waiting for the sentence. According to a study in December 2020, by the Centro de Estudios de Telecomunicaciones de América Latina, it says that there are losses in Latin America of a potential of USD 733 million per year. [Dimensión e impacto de la Piratería online de contenidos audiovisuales en América Latina - cet.la](#)

**24. What is the current rule in terms of audiovisual exploitation windows in your Country?**

No current rule; doesn't apply.

**25. Which CMOs represent audiovisual producers in your Country?**

EGEDA.

**26. Do these CMOs comply with transparency principles?**

Yes.

**27. Is it possible to find out how much income is provided by each type of rights?**

Yes, by administrative means, the government control entities must be duly informed about the income and expenses of the companies, however, if they refer to the partners, they have the right



to be periodically informed of the income, expenses and any decision of operation that may condition their works and rights.

**28. What is the current litigation level for audiovisual producers' rights in your Country?**

The current litigation level for audiovisual producer's rights has had a significant growth in recent years and thanks to the fact that our Colombian Copyright Office has had jurisdictional functions since 2012, it has served to increase the level of litigation for the audiovisual producers represented by EGEDA and by the audiovisual producers themselves.

**29. Are there any relevant Court Decisions concerning audiovisual producer's rights?**

221-IP-2021:

The Andean Court of Justice recently clarified that the retransmission of an audiovisual work, or a previous broadcast requires the authorization of producers.

105-IP-2021:

The Andean Court of Justice stated that the use of audiovisual works in business establishments requires the previous license in respect of producers rights over the productions.

Process 1-2016-54464 of the Colombian Copyright Office:

The Colombian Copyright Office stated that the retransmission of the content of different TV channels carried out by a pay-per-view TV service operator constitutes an act of public communication of the audiovisual productions which must be previously authorized by audiovisual producers.

**30. Are audiovisual producers acting as One-Stop Shop in relation to retransmission operators?**

No. There is no One-Stop Shop for audiovisual producers.

**PANEL IV - DATABASE PRODUCERS' AND PUBLISHERS RIGHTS**

**1. Are Databases legally protected in your Country? How?**

Yes, according to the Decision 351 of the Andean Community, databases can be protected as a work, in the following terms:

*Anthologies or compilations of various works and databases, which, due to the selection or arrangement of the materials, constitute personal creations.*

It means that if the database is original, in terms of copyright, it can be protected. So, not all the databases are protected themselves by copyright.

**2. Is there a *Sui Generis* Database producers' right or equivalent protection in your Country?**



No, there is not such a right in Colombian law for Database producers.

**3. Is it possible to evaluate its efficiency and level of enforcement?**

No, as the concept of originality is subjective, the determination of the originality in a database, and therefore its enforceability, would correspond to the Judge.

**4. Is there any different form of protection for Database producers or for ownership of data?**

Yes, when referring to the protection of databases and the protection of personal data, it is important to differentiate the eventual protection that a database may have from the perspective of copyright and the protection that the data itself has, as it is information whose ownership is under third parties' control, which is different from the rights that those who prepare the database as such may have.

In Colombia, databases are subject to copyright protection, provided that the database incorporates creative elements that allow it to have enough original content to be considered as a work. In this regard, the Colombian Copyright Office has established that: *"the simple mechanical ordering or accumulation of data without any selection criteria, or the simple alphabetical, numerical or chronological ordering of these, however costly it may be, is not of high creative because it constitutes a mechanical task that can well be carried out by a machine."* In this sense, the protection that Colombian Law provides to databases that have creative and original content, seeks to guarantee the rights of the person or persons who created the database as a work protected by copyright.

On the other hand, the protection of the data contained in the databases is included in Law 1581 of 2012, regulated by Decree 1377 of 2013. This legal framework is aimed at protecting the owners of the data contained in databases. This Law and its Decree regulate aspects such as: i) the authorization of the owner of information for the processing of their personal data, ii) the treatment policies of those responsible and in charge, iii) the exercise of the rights of the holders of information, iv) the transfers of personal data and v) the demonstrated responsibility regarding the processing of personal data.

**5. How does it work? Is it effective?**

Regarding the protection of personal data, it is worth noting that literal d) of article 17 of Law 1581 of 2012 indicates that one of the duties of those responsible for data processing is the conservation of information, guaranteeing its conditions of security to prevent its adulteration, loss, consultation, use, unauthorized access or fraudulent use.

Likewise, literal g) of article 4 of the same regulation clearly indicates that one of the principles for the treatment of personal data is the security principle, which is defined as follows:

*"g) Principle of security: The information subject to Treatment by the Person Responsible for Treatment or Person in Charge of Treatment referred to in this law, must be handled with the technical, human and administrative measures that are necessary to grant security to the records, avoiding its adulteration, loss, consultation, use or unauthorized or fraudulent access;"*

Finally, an example of how information should be handled, stored and safeguarded is given in the Personal Data Policy of the Superintendency of Industry and Commerce, which expressly states:



**“12.3 Storage of Information;** *The storage of digital and physical information is carried out in media or environments that have adequate controls for data protection. This involves physical and computer security, technological and environmental controls in restricted areas, in our own facilities and/or computer centers or document centers managed by third parties.”*

The protection of personal data in Colombia is effective and there are mechanisms and judicial and administrative actions that allow its protection by i) filing a constitutional action at the ordinary jurisdiction or; ii) by filing an administrative action with the Superintendence of Industry and Commerce.

Regarding copyright protection of databases, we do not have knowledge of judicial cases to determine if it would be effective or not.

**6. How do the courts of your Country balance the sui generis right with freedom of information and freedom of competition?**

Protection of databases in Colombia is not granted by a sui generis right, but by the copyright itself as long as it is original.

The Colombian legal system in the Administrative Code, establishes in its article 24 the cases of reservation of information and the documents expressly subject to reservation by the Constitution or the Law. Moreover, article 25 of this same Code establishes the possibility that the State has to deny allowing information requests because the required data is protected by confidentiality.

**7. Is the sui generis right protected against circumvention of TPM designed for controlling access?**

As previously stated, there is no *sui generis* right over databases.

**8. Is there a special protection against online uses of press publications in your Country?**

No, there is no special protection. However, as long as press publications are original, they could be protected by copyright as literary/audio-visual works

**9. Does it apply to scientific journals and hyperlinks? How does it work?**

Not applicable, according to the previous answers.