

ANDEAN COMMUNITY- PERU-
ECUADOR-BOLIVIA-
VENEZUELA–COLOMBIA
Decision 351: Common Provisions on
Copyright and Neighboring Rights (of
December 17, 1993)

CHAPTER I: SCOPE OF PROTECTION

Article 1.- The provisions of this Decision are intended to afford adequate and effective protection to the authors of and other owners of rights in intellectual works in the literary, artistic or scientific field, whatever their nature or form of expression and regardless of their literary or artistic merit or purpose.

The neighboring rights referred to in Chapter X of this Decision are likewise protected.

Article 2.- Each Member Country shall grant the nationals of other countries protection no less favorable than that accorded to its own nationals in matters of copyright and neighboring rights.

Article 3.- For the purposes of this Decision:

- (1) “author”
means the natural person who achieves the intellectual creation;
- (2) “performer”
means the person who performs, sings, reads, recites, interprets or in any way executes a work;
- (3) “competent national authority”
means the body appointed for the purpose by the relevant national legislation;
- (4) “copy”
means the physical medium in which the work is embodied as a result of an act of reproduction;
- (5) “owner of rights”

means the person, whether natural person or legal entity, to whom rights accorded by this Decision are transferred for any reason;

(6) “distribution to the public”
means the making available to the public of the original or copies of the work by sale, rental or lending or in any other way;

(7) “disclosure”
means the fact of making the work available to the public by any means or process;

(8) “transmission”
means the sending of sounds or images and sounds over a distance for reception by the public;

(9) “fixation”
means the incorporation of signs, sounds or images in a physical material that enables them to be perceived, reproduced or communicated;

(10) “phonogram”
means any fixation exclusively of the sounds of a performance or of other sounds; phonographic and magnetic recordings shall be considered copies of phonograms;

(11) “ephemeral recording”
means the sound or audiovisual fixation of a performance or broadcast made for a finite period by a broadcasting organization by means of its own facilities and used for the transmission of its own broadcasts;

(12) “work”
means any original intellectual creation of artistic, scientific or literary character susceptible of disclosure or reproduction in any form;

(13) “audiovisual work”
means any creation expressed by a series of linked images, with or without the incorporation of sound, which is intended essentially for showing by means of projection apparatus or any other means of communicating images and sounds, regardless of the characteristics of the

physical medium in which the said work is embodied;

(14) “work of applied art” means an artistic creation with utilitarian functions or incorporated in a useful article, whether a work of handicraft or one produced on an industrial scale;

(15) “three-dimensional work” or “work of fine art” means an artistic creation intended to appeal to the aesthetic sense of the person perceiving it, such as a painting, drawing, engraving or lithograph; this definition does not, for the purposes of this Decision, include photographs, architectural works and audiovisual works;

(16) “competent national office” means the administrative body responsible for the protection and application of copyright and neighboring rights;

(17) “broadcasting organization” means the radio or television company that transmits programs to the public;

(18) “producer” means the person, whether natural person or legal entity, who takes upon himself the initiative and coordination of and responsibility for producing the work, for instance an audiovisual work or a computer program;

(19) “producer of phonograms” means the person, whether natural person or legal entity, on whose initiative and responsibility and under whose coordination the sounds of a performance or other sounds are first fixed;

(20) “computer program (software)” means the expression in words, codes, plans or any other form of a set of instructions which, on being incorporated in automated reading apparatus, is capable of causing a computer an electronic or similar device

capable of processing information to execute a particular task or produce a particular result; the computer program shall likewise include technical documentation and users' manuals;

(21) “publication” means the production of copies which are then made accessible to the public with the consent of the owner of the corresponding rights, provided that the supply of such copies is such as to meet the reasonable needs of the public, due account being taken of the nature of the work;

(22) “retransmission” means the relaying of a signal or program received from another source, effected by the distribution of signs, sounds or images by wireless means or by wire, cable, optic fiber or other comparable medium;

(23) “ownership” means the status of owner of rights recognized by this Decision;

(24) “fair use” means use that does not interfere with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the author;

(25) “personal use” means the reproduction or other use of the work of another person, in a single copy, exclusively for an individual's own purposes, in cases such as research and personal entertainment.

CHAPTER II SUBJECT MATTER OF PROTECTION

Article 4.- The protection granted by this Decision shall accrue to all literary, artistic and scientific works that may be reproduced or disclosed by any known or future means, including the following in particular:

- (a) works expressed in writing, that is, books, pamphlets and any other kind of work expressed in letters, signs or conventional marks;
- (b) lectures, addresses, sermons and other works of the same nature;
- (c) musical compositions with or without words;
- (d) dramatic and dramatico-musical works;
- (e) choreographic and mimed works;
- (f) cinematographic works and other audiovisual works expressed by any process;
- (g) works of fine art, including drawings, paintings, sculptures, engravings and lithographs;
- (h) works of architecture;
- (i) photographic works and works expressed by processes analogous to photography;
- (j) works of applied art;
- (k) illustrations, maps, sketches, plans, diagrams and three-dimensional works relating to geography, topography, architecture or science;
- (l) computer programs;
- (ll) anthologies or compilations of assorted works and also data bases, which, by the selection and arrangement of their contents, constitute personal creations.

Article 5.- Without prejudice to the rights of the author of the preexisting work and subject to his prior authorization, translations, adaptations, transformations or arrangements of other works shall be intellectual works distinct from the originals.

Article 6.- The rights recognized by this Decision shall be independent of the ownership of the material medium in which the work is embodied.

Article 7.- Only the form in which the ideas of the author are described, explained, illustrated or incorporated in the works shall be protected.

Neither the ideas contained in literary and artistic works, or the ideological or technical content of scientific works, nor the industrial or commercial exploitation thereof shall be eligible for protection.

CHAPTER III: OWNERS OF RIGHTS

Article 8.- In the absence of proof to the contrary, the person whose name, pseudonym or other identifying mark is visibly shown on the work shall be presumed to be the author thereof.

Article 9.- A person other than the author, whether natural person or legal entity, may advertise ownership of the economic rights in the work in accordance with the provisions of the domestic legislation of the Member Countries.

Article 10.- Natural persons or legal entities shall exercise original or derived ownership, according to national legislation, of economic rights in works created for them on commission or by virtue of employment relations, in the absence of proof to the contrary.

CHAPTER IV: MORAL RIGHTS

Article 11.- The author shall have the inalienable, unattachable, imprescriptible and unrenounceable right:

- (a) to keep the work unpublished or to disclose it;

(b) to claim authorship of the work at any time;

(c) to object to any distortion, mutilation or alteration of the work that is prejudicial to the integrity thereof or to the reputation of the author.

On the author's death, the exercise of moral rights shall pass to his successors in title for the period referred to in Chapter VI of this Decision. Once the economic rights have lapsed, the State or designated agencies shall assume the defense of the authorship and integrity of the work.

Article 12.- The domestic legislation of the Member Countries may grant other rights of moral character.

CHAPTER V: ECONOMIC RIGHTS

Article 13.- The author, or his successors in title where applicable, shall have the exclusive right to carry out, authorize or prohibit:

(a) the reproduction of the work by any means or process;

(b) the communication of the work to the public by any means serving to convey the words, signs, sounds or images thereof;

(c) the distribution of copies of the work to the public by means of sale, lending or hiring;

(d) the importation into the territory of any Member Country of copies made without the authorization of the owner of rights;

(e) the translation, adaptation, arrangement or other transformation of the work.

Article 14.- Reproduction shall be understood to mean the fixing of the work on a medium that permits it to be communicated or copies of all or part of it to be made by any means or process.

Article 15.- Communication to the public shall be understood to mean any act by which two or more persons, whether or not they are gathered together in the same place, may have access to the work without the prior distribution of copies to each one of them, and especially the following:

(a) stage presentations, recitals, dissertations and public performances of dramatic, dramatico-musical, literary and musical works by any means or process;

(b) the public projection or showing of cinematographic and other audiovisual works;

(c) the transmission of any work by broadcasting or any other means of wireless distribution of signs, sounds or images;

the concept of transmission shall likewise include the sending of signals from a ground station to a broadcasting or telecommunication satellite;

(d) the transmission of works to the public by wire, cable, optic fiber or other comparable process, whether free or on subscription;

(e) the retransmission, by any of the means specified in the foregoing subparagraphs and by a broadcasting organization different from the original one, of the work broadcast by radio or television;

(f) the emission or transmission in or to a place accessible to the public and by means of any appropriate apparatus, of a work broadcast by radio or television;

(g) the public display of works of art or reproductions thereof;

(h) public access to computer data bases by means of telecommunication, insofar as the said data bases incorporate or constitute protected works;

(i) in general, the dissemination of signs, words, sounds or images by any known or future process.

Article 16.- The authors of works of art and, on their death, their successors in title shall have the inalienable right to be granted a share in the successive sales of the work by public auction or through a professional art dealer. The Member Countries shall enact provisions on the said right.

Article 17.- The domestic legislation of the Member Countries may grant other rights of economic character.

CHAPTER VI: TERM OF PROTECTION

Article 18.- Without prejudice to the provisions of Article 59, the term of protection of the rights provided for in this Decision shall be not less than the life of the author and 50 years after his death.

Where the ownership of the rights accrues to a legal entity, the term of protection shall not be less than 50 years counted from the making, disclosure or publication of the work, as the case may be.

Article 19.- The Member Countries may provide, in accordance with the Berne Convention for the Protection of Literary and Artistic Works, that the term of protection for particular works shall be counted from the date of the making, disclosure or publication thereof.

Article 20.- The term of protection shall be counted from January 1 of the year

following that of the death of the author or that of the making, disclosure or publication of the work, as appropriate.

CHAPTER VII: LIMITATIONS AND EXCEPTIONS

Article 21.- The limitations and exceptions to which copyright is made subject by the domestic legislation of the Member Countries shall be confined to those cases that do not adversely affect the normal exploitation of the works or unjustifiably prejudice the legitimate interests of the owner or owners of the rights.

Article 22.- Without prejudice to the provisions of Chapter V and those of the foregoing Article, it shall be lawful, without the authorization of the author and without payment of any remuneration, to do the following:

(a) quote published works in another work, provided that the source and the name of the author are given, and on condition that the quotations are made in accordance with fair practice and to the extent justified by the purpose;

(b) reproduce by reprographic means for teaching or for the holding of examinations in educational establishments, to the extent justified by the purpose, articles lawfully published in newspapers or magazines, or brief extracts from lawfully published works, on condition that such use is made in accordance with fair practice, that it does not entail sale or any other transaction for payment and that no profit-making purposes are directly or indirectly pursued thereby;

(c) reproduce a work in single copies on behalf of a library or for archives whose activities are not conducted for any direct or indirect profit-making purposes, provided that the original forms part of the permanent stocks of the said library or archives and the

reproduction is made for the following purposes:

(i) to preserve the original and replace it in the event of loss, destruction or irreparable damage;

(ii) to replace, in the permanent stocks of another library or archives, of an original that has been lost, destroyed or irreparably damaged;

(d) reproduce a work for the purposes of judicial or administrative proceedings, to the extent justified by the purpose;

(e) reproduce and distribute through the press, or transmit by broadcasting or public cable distribution, articles on topical subjects and commentaries on economic, political or religious subjects published in newspapers or magazines, or broadcast works of the same nature, insofar as reproduction, broadcasting or distribution to the public have not been expressly reserved;

(f) reproduce and make accessible to the public, in connection with the reporting of current events by means of photography, cinematography, broadcasting or cable distribution to the public, works seen or heard in the course of such events, to the extent justified by the informatory purpose;

(g) reproduce in the press or by broadcasting or transmission to the public political speeches and also dissertations, addresses, sermons, speeches delivered in the course of judicial proceedings or other works of similar character presented in public, for the purpose of reporting current events, to the extent justified by the purpose and subject to the right of the authors to publish collections of such works;

(h) undertake the reproduction, transmission by broadcasting or cable distribution to the

public of the image of an architectural work, work of fine art, photographic work or work of applied art located permanently in a place open to the public;

(i) in the case of broadcasting organizations, make ephemeral recordings using their own facilities and for use in their own broadcasts of a work in respect of which they have the right of broadcasting; the broadcasting organization shall be obliged to destroy the recording within the time or under the circumstances provided for in national legislation;

(j) effect the performance or execution of a work in the course of the activities of an educational institution, by the staff and students of the said institution, provided that no charge is made for admission and no direct or indirect profit-making purpose is pursued, and that the audience consists solely of the staff and students of the institution or relations or guardians of pupils and other persons directly associated with the activities of the institution;

(k) in the case of a broadcasting organization, make a transmission or retransmission of a work originally broadcast by it, provided that the public transmission or retransmission occurs at the same time as the original broadcast and the work is broadcast or transmitted publicly without any alteration.

CHAPTER VIII: COMPUTER PROGRAMS AND DATA BASES

Article 23.- Computer programs are protected on the same terms as literary works. That protection shall extend not only to operating programs but also to application programs, in the form of either source codes or object codes.

In such cases the provisions of Article 6bis of the Berne Convention for the Protection

of Literary and Artistic Works on moral rights shall be applicable.

Without prejudice to the foregoing, the authors or owners of the computer programs may authorize such modifications as are necessary for the correct use of programs.

Article 24.- The owner of a lawfully circulating copy of a computer program may make a copy or adaptation of the said program insofar as:

(a) it is essential for the use of the program;

(b) it is made for archiving purposes, that is, for the sole purpose of replacing the lawfully acquired copy where damage or loss has rendered that copy unusable.

Article 25.- Reproduction of a computer program, including for personal use, shall require authorization by the owner of the rights, with the exception of a backup copy.

Article 26.- The introduction of a computer program in the memory of the computer concerned for the purposes of exclusive personal use shall not constitute unlawful reproduction of the said program.

It is consequently not lawful, without the consent of the owner of the rights, for two or more persons to make use of the program by means of the installation of networks, workstations or other comparable facilities.

Article 27.- The adaptation of a program created by the user for his sole use shall not constitute transformation within the meaning of this Decision.

Article 28.- Data bases shall be protected insofar as the selection or arrangement of the contents constitute an intellectual creation. The protection granted shall not extend to compiled data or information, but

it shall not affect any rights subsisting in the works or material constituting the said data base.

CHAPTER IX: TRANSFER AND ASSIGNMENT OF RIGHTS

Article 29.- Copyright may be transferred by succession in accordance with the provisions of the applicable national legislation.

Article 30.- The provisions on the transfer or assignment of economic rights and on licenses for the use of protected works shall be governed by the provisions of the domestic legislation of the Member Countries.

Article 31.- Any transfer of the economic rights, and also authorizations or licenses for use, shall be understood to be limited to the forms of exploitation and other procedures expressly agreed upon in the relevant contract.

Article 32.- In no case may the legal or compulsory licenses provided for in the domestic legislation of Member Countries exceed the limits permitted by the Berne Convention for the Protection of Literary and Artistic Works or by the Universal Copyright Convention.

CHAPTER X: NEIGHBORING RIGHTS

Article 33.- The protection provided for neighboring rights shall in no way affect the protection of the copyright in scientific, artistic or literary works. Consequently, none of the provisions contained in this Chapter may be interpreted in such a manner as would diminish the said protection. In the event of conflict, the author's best interests shall always prevail.

Article 34.- Performers shall have the right to authorize or prohibit the communication to the public of their live performances in

any form and the fixing and reproduction of their performances.

Nevertheless, performers may not object to the communication to the public of their performances where they in themselves are broadcast performances or are made from a previously authorized fixation.

Article 35.- In addition to the rights recognized in the foregoing Article, performers shall have the right to:

(a) demand that their names be mentioned at or associated with every performance that takes place;

(b) object to any distortion or mutilation of their performances or other act prejudicial thereto that might adversely affect their prestige or reputation.

Article 36.- The term of protection of the economic rights of performers may not be less than 50 years counted from January 1 of the year following that in which the performance took place or in which the fixation, if any, was made.

Article 37.- The producers of phonograms shall have the right to:

(a) authorize or prohibit the direct or indirect reproduction of their phonograms;

(b) prevent the importation of copies of the phonogram made without the authorization of the owner of rights;

(c) authorize or prohibit the public distribution of the original and every copy thereof to the public by sale, rental or any other means;

(d) charge remuneration for every use of the phonogram or copies thereof for commercial purposes, which remuneration may be shared among the performers on conditions laid down by the domestic legislation of the Member Countries.

Article 38.- The term of protection of the rights of producers of phonograms may not be less than 50 years, counted from January 1 of the year following that in which the fixation occurred.

Article 39.- Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit:

(a) the retransmission of their broadcasts by any means or process;

(b) the fixing of their broadcasts on a physical medium;

(c) the reproduction of a fixation of their broadcasts.

Article 40.- The broadcast referred to in the foregoing Article shall include the production of program-carrying signals intended for a broadcasting or telecommunication satellite, and also distribution to the public by a body that broadcasts or disseminates the transmissions of others received by means of such a satellite.

Article 41.- The term of protection of the rights of broadcasting organizations may not be less than 50 years, counted from January 1 of the year following that in which the broadcast occurred.

Article 42.- In the cases allowed by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the domestic

legislation of the Member Countries may set limits on the rights recognized in this Chapter.

CHAPTER XI: COLLECTIVE ADMINISTRATION

Article 43.- Societies for the collective administration of copyright and neighboring rights shall be subject to inspection and supervision by the State, and shall be required to obtain the appropriate operating license from the competent national office.

Article 44.- The affiliation of owners of rights to a society for the collective administration of copyright or neighboring rights shall be voluntary, unless expressly provided otherwise in the domestic legislation of the Member Countries.

Article 45.- The license referred to in Article 44 shall be granted subject to compliance with the following requirements:

- (a) the collective administration societies must be constituted in conformity with the laws governing such societies in each of the Member Countries;
- (b) the societies must have as their corporate objective the administration of copyright or neighboring rights;
- (c) they must undertake to agree to administer the copyright or neighboring rights entrusted to them in accordance with their aims and objectives;
- (d) the members of the society must be accorded appropriate rights of participation in the decisions thereof;
- (e) the rules of distribution, after deduction of administrative costs up to the maximum percentage allowed in legal or statutory provisions, must guarantee equitable apportionment among the owners of rights

according to the actual use of the works, artistic performances or phonograms, as the case may be;

(f) it must be deduced from the data supplied and information procured that the society in question meets the conditions necessary for ensuring the observance of legal provisions and efficient administration of the rights whose management it is soliciting;

(g) they must have rules on membership, tariffs and distribution;

(h) they must undertake to publish at least annually, in a medium with a wide national circulation, their balance sheets and accounts, and also the general tariffs for the use of the rights that they represent;

(i) they must circulate to their members complete and detailed periodical information on all those of their activities of the society that may have a bearing on the exercise of the rights of the said members;

(j) they must undertake, except where expressly authorized by the General Assembly, to ensure that remuneration collected is not assigned to purposes other than the covering of the actual cost of administering the rights concerned and the distribution of the balance of remuneration after deduction of such costs;

(k) they must undertake not to admit members of other collective administration societies of the same type, whether national or foreign, that have not first expressly renounced such membership;

(l) they must comply with the other requirements laid down in the domestic legislation of the Member Countries.

Article 46.- In the event of failure to comply with the provisions of this Chapter, the license of the collective administration

society concerned may be revoked in accordance with the provisions of the domestic legislation of the Member Countries.

Article 47.- The competent national authority may impose the following sanctions on collective administration societies:

- (a) a warning;
- (b) a fine;
- (c) suspension;
- (d) any other sanction provided for in the domestic legislation of the Member Countries.

Article 48.- The royalties to be collected by the collective administration societies shall be proportional to the income derived from the use of works, artistic performances or phonographic productions, as the case may be, except where expressly provided otherwise in the domestic legislation of the Member Countries.

Article 49.- Collective administration societies shall be empowered, in terms specified in their own statutes and in the contracts that they conclude with foreign societies, to exercise the rights entrusted to them for administration and to assert those rights in administrative and judicial proceedings of any kind.

Article 50.- For their action to be enforceable against third parties, collective administration societies shall be obliged to register with the competent national office, in terms specified by the domestic legislation of the Member Countries, the names and titles of the members of their governing bodies, and also the instruments evidencing the mandates that they exercise

on behalf of foreign associations or organizations.

CHAPTER XII: COMPETENT NATIONAL COPYRIGHT AND NEIGHBORING RIGHTS OFFICES

Article 51.- National copyright and neighboring rights offices shall be competent to:

- (a) organize and manage National Registers of Copyright and Neighboring Rights;
- (b) perform the function of licensing, inspecting and supervising collective administration societies or organizations;
- (c) intervene by conciliation or arbitration in disputes arising from the enjoyment or exercise of copyright or neighboring rights, in conformity with the provisions of the domestic legislation of the Member Countries;
- (d) impose, ex officio or at the request of a party, the sanctions provided for in this Decision or in the domestic legislation of the Member Countries;
- (e) conduct awareness campaigns and education and training programs in the fields of copyright and neighboring rights;
- (f) carry out, ex officio or at the request of a party, monitoring and inspection of activities liable to entail the exercise of copyright or neighboring rights, in the manner laid down by domestic legislation;
- (g) take such other action as the domestic legislation of the Member Countries may specify.

Article 52.- The protection afforded to literary and artistic works, performances and other productions covered by copyright and

neighboring rights in accordance with this Decision shall not be subject to any kind of formality. Consequently, failure to register shall not prevent the enjoyment or exercise of the rights recognized in this Decision.

Article 53.- Registration shall be merely declaratory and shall not itself confer rights. Nevertheless, entry in the Register shall constitute a presumption that the facts and acts recorded in it are true, in the absence of proof to the contrary. Any entry shall be without prejudice to the rights of third parties.

Article 54.- No authority or person, whether natural person or legal entity, may authorize the use of a work, performance, phonographic production or broadcast, or lend his support to such use, if the user does not have the express prior authorization of the owner of the rights or his representative. In the event of non-compliance, that authority or person shall be jointly liable.

CHAPTER XIII: PROCEDURAL ASPECTS

Article 55.- The procedures to be conducted before the competent national authorities shall observe due and adequate legal process, according to the principles of procedural economy, speed, equality of the parties before the law, efficiency and impartiality. They shall likewise permit the parties to have knowledge of all the procedural acts, except where specially provided to the contrary.

Article 56.- The competent national authority may order the following precautionary measures:

- (a) immediate cessation of the unlawful activities;
- (b) the attachment, sequestration, confiscation or preventive seizure, as

appropriate, of copies produced in violation of any of the rights recognized by this Decision;

(c) the attachment, seizure, confiscation or sequestration of the apparatus or materials used for the commission of the unlawful act.

Precautionary measures shall not be applicable to a copy acquired in good faith for exclusively personal use.

Article 57.- The competent national authority may likewise order the following:

(a) payment, to the owner of the infringed rights, of adequate compensation or indemnification for damages sustained as a result of the infringement;

(b) that the offender shall bear the cost of the proceedings that he has caused the owner of the infringed right to institute;

(c) the permanent removal from distribution channels of the copies constituting the infringement of rights;

(d) criminal sanctions equivalent to those applicable to offenses of comparable gravity.

CHAPTER XIV: COMPLEMENTARY PROVISIONS

Article 58.- Computer programs, being works expressed in writing, and data bases, having the character of compilations, shall enjoy protection by copyright even where they have been created prior to the date of entry into force of this Decision.

Article 59.- Shorter terms of protection that are still current by virtue of the domestic legislation of the Member Countries shall be

automatically extended to the expiration of the terms provided for in this Decision.

Nevertheless, the terms of protection specified in the domestic legislation of the Member Countries shall be applied where those terms are longer than the terms provided for in this Decision.

Article 60.- The rights in works that did not enjoy protection under national legal provisions prior to this Decision, owing to their not having been registered, shall automatically enjoy the protection recognized by this Decision without prejudice to rights acquired by third parties prior to the entry into force thereof, provided that it concerns use that has already been or is being made on the said date.

Article 61.- The Member Countries undertake, with a view to the consolidation of a system of communal administration, to ensure the best application of the provisions contained in this Decision, and to promote the autonomy and modernization of the competent national offices and of information systems and services.

CHAPTER XV: TRANSITIONAL PROVISIONS

Provision 1.- Existing collective administration societies shall conform to the provisions in Chapter XI within a period not exceeding three months counted from the date of entry into force of this Decision.

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