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PARAGUAY

BERKE REPORT OCTOBER 1998

LAW NO. 1328/98 COPYRIGHT AND RELATED RIGHTS

I. INTRODUCTION

The new Copyrights and Related Rights Law brings Paraguayan legislation in line with the international conventions on the topic, introducing considerable modifications to the current legal status.

The proposed legislation has the approval of both chambers of Congress (August 27, 1998) and is currently awaiting the President's approval. It shall cover all aspects concerning copyrights and related rights, using comparative law as its main source, as well as the most modern legislation and conventions on the topic.

Following international conventions on the subject, the aim of a copyright is the protection of all kinds of creative works regardless of its class, means of expression, merits or purpose, author's nationality, author's domicile or that of the title holder, or site where work was published.

Exclusive protection shall be granted to means of expression by which an author's ideas are described, explained, illustrated, or incorporated to the work.

The enjoyment or exercise of the rights recognized in this law is not subject to the requirement of registration or compliance with any other type of formality. The author of a work, by the sole fact of having created, enjoys the legal entitlement derived from the right, which may be held against everyone, and includes the patrimonial and moral rights which are set forth in this law.

II. SPECIAL PROVISIONS APPLICABLE TO CERTAIN WORKS

A. *Software Programs Protection*

Software programs shall be protected in equal terms as literary works. Such protection shall extend to all forms of expression including operative as well as applicative programs, either in form of source code or object code. The program producer is the natural or juridical person that has undertaken the initiative and has the responsibility.

B. *Other*

The said law contemplates the protection of audiovisual works, radiophonic [works], architectural works, art works and journalistic articles.

Likewise, it sets forth the right of radiobroadcast organizations to authorize and forbid the retransmission of their broadcast emissions through any means or procedure, as well as the right of phonogram producers, their interpreters or performers.

Law No. 1328 contains a section [designed] to protect folklore, stating that the published or unpublished folklore expressions shall be permanently protected from inadequate [sic] exploitation, suppressions, and alterations.

C. *Contracts*

The present law contains norms that regulate the following contracts:

- *Publishing contract*
- *Publishing contract of musical works*
- *Contract regulating theatrical representation and musical performance*
- *Phonographic inclusion contract*
- *Broadcasting contract*

D. Rights Granted

The author enjoys the exclusive right to exploit his work under any form or procedure and obtain a profit thereof. During the author's lifetime a portion amounting to three-fourths of the produce corresponding to the exploitation of his work shall remain free from attachment.

Patrimonial right includes the exclusivity to carry out, authorize and prohibit:

- The reproduction of the work by any means or procedure.
- The public communication of the work by any means.
- The public distribution of copies of the work.
- The importation into national territory of the work's copies, independently of the fact that the author has or has not authorized the realization of such copies in the country of origin.
- Translation, adaptation, and arrangements or any other transformation of the work.
- Any other kind of use of the work not contemplated in the law.

E. Duration

"Patrimonial" rights, in general, enjoy a lifelong duration, including seventy years after the author's death. It is transmissible to heirs in accordance with the Paraguayan Civil Code.

III. REGISTRY OF COPYRIGHTS AND RELATED RIGHTS

According to Law No. 1328/98, the National Copyrights Department (Dirección Nacional del Derecho de Autor), dependent of the Ministry of Industry and Commerce, shall manage the national registry of protected works stated herein. In addition, conventions and contracts implying a modification, transmission, or waiver of patrimonial rights may also register.

Registry's effect is merely declaratory and not constitutive, and consequently, its omission does not prejudice the enjoyment or exercise of the rights recognized in the present law.

A. *Judicial Actions*

Title holders of any of the rights set out in the law, their representatives or entities in charge of the collective management, without prejudice to other activities they are entitled to, may request the discontinuance of the offender's illegal activity and demand damages for material loss and moral wrong caused by the breach or the recovery of the utilities obtained in the commission of the illegal act.

Offenses, misdemeanors and felonies included in the law are private penal action offenses and consequently the measure proposed to obtain the discontinuance of such offense may not be initiated *ex-officio*.

Furthermore, the law establishes sanctions according to the seriousness of the violation or offense committed.

B. *Frontier Measures*

In harmony with TRIPS [Agreement on Trade-Related Aspects of Intellectual Property Rights] (adopted by Law 444/94), Law No. 1328 states that the judge at [the] request of the National Copyright Department, the person legally entitled, his representative or entity in charge of its management may order the immediate execution of necessary precautionary measures to prevent the commission of a breach, its continuance or repetition of one already committed. The action against a breach of copyright cannot be initiated *ex-officio* since it is not considered a public criminal action offense, contrary to the previous law.

The title-holder of a right protected by this law, in possession of knowledge and well founded motives relating to the preparation of importation or exportation of products that infringe the said right, may request customs authorities to suspend the import or export operation in accordance with the conditions applicable regarding guarantees of precautionary measures.

LAW NO. 1334/98 CONSUMER AND USERS DEFENSE LAW

This long awaited and debated law has been recently enacted establishing norms that seek to protect and defend consumers and users in their dignity, health, safety and economic interests.

This law has been the product of numerous debates at the Mercosur Group Work meetings (Common Market of the South, comprised of Argentina, Brazil, Paraguay and Uruguay). Each Member State has adopted the provisions by means of protocols corresponding to different areas, following a thorough study. However, many provisions are very similar to the ones contained in the Brazilian Consumer Protection Code. The law denotes a real intention towards the harmonization of legislation between Mercosur Member States, implementing in this way the main objective of the Asunción Treaty, [the] document that established the Mercosur in 1991.

The law states that the rights recognized therein may not be waived, transacted upon or limited by any type of convention. They shall prevail over any type of legal provisions, uses, custom, practice or stipulations that provide the contrary.

All acts celebrated between suppliers and consumers related to the distribution, sale, purchase or any other form of commercial transaction of goods and services shall be subject to this law.

A. New Rights Granted to Consumers:

- (1) free choice of goods to be acquired or service contracted;
- (2) protection of life, health and safety against all risks [created] by the provision of products and the rendering of services considered harmful or dangerous;
- (3) adequate education and diffusion of the product's characteristics and services offered within the market, assuring the consumer's liberty to choose and fairness in negotiations;

(4) distinct information on the different products and services with their corresponding specification[s] on the composition, quality, price and risks that may eventually occur;

(5) adequate protections against misleading publicity and coercive or unfair commercial methods as well as abusive contractual clauses in the provision of goods and rendering of services;

(6) the constitution of consumer associations whose purpose shall be their defense and self-representation;

(7) effective prevention and redress of patrimonial and moral damages and/or referring to collective interests or collective consumers;

(8) adequate and efficient rendering of public services by their suppliers, private and public; and

(9) product or service reception at time, quantity, quality and price publicized or promised.

All rights included in this law will not exclude others contained in different international treaties and conventions to which Paraguay is party, nor any other internal legal provisions, administrative regulations and those derived from the general principles of law.

B. Authority in Charge of Application

The authority empowered to apply these provisions shall be the Ministry of Industry and Commerce at the national level, and the municipalities shall apply the provisions locally.

Leaving aside the ordinary functions that correspond to the Ministry of Industry and Commerce, the law introduces these new powers and functions: maintain a national registry of consumer associations; receive and give course to consumer claims; order the realization of inspections and expert reports by expert witnesses familiar with the application of the present law; request reports and opinions of public and private entities with respect to the areas covered in this law; at its own instance or upon party's request, order . . . hearings with the participation of the claimants, injured party or parties, presumed offender(s), witnesses and expert witnesses; and act as conciliator, seeking to settle the differences between the parties.

C. Sanctions

The aforesaid law determines various types of sanctions relating to the protection of the rights mentioned above. These sanctions shall be applied by a judge upon parties' or authority's request: prohibition of exhibition, circulation, distribution, transport or commercialization of goods that infringe the norms established in the mentioned law; seizure of the goods that infringe the norms of this law or when they represent a danger or harm to public health; discontinuance of the activities of persons or entities operating against the law; temporary closure of a business following a hearing for the effect [sic]; fines intended for the execution of a judicial judgment or precautionary measure previously ordered; publishing of judicial judgments or sections of it in newspapers, television and radiobroadcasts; nullify clauses inserted in contracts that do not comply with the terms stated in the law, e.g., abusive clauses.

Upon party's request, judges may order precautionary measures seeking to avoid the breach of provisions contained in the mentioned law.

Finally, it must be stressed that the present law has not yet entered into force. Still pending is the promulgation by the Executive Power, which is due shortly. Following this act, the Executive Power has the obligation to regulate the present law within the term of ninety days.

Berkemeyer

Asunción, Paraguay