

# Newsletter

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## NEW COPYRIGHT LAW OF THE DOMINICAN REPUBLIC

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A new copyright law, law No. 65-00, came into force last August 23 after more than two years of discussion in Congress. This law substitutes Law 32-86 of 1986, which was considered to be one of the most advanced copyright laws in Latin America.

The objective of this law is to adapt the old legislation to the obligations contracted by the Dominican Republic with the signing of international agreements in the last few years, particularly those provisions contemplated in the Trade Related Intellectual Property Aspects Agreement (TRIPs).

The law also takes into account the new technological advances related to computer software and audiovisual work among others.

Finally, the law includes broader provisions regarding publishing and assignment contracts, it establishes the right from the resale of artistic works and eliminates the need for foreigners to post a bond when initiating a lawsuit.

### Protected rights

Contrary to other legislations which only contemplate protection of literary and artistic creations, our legislation allows the inclusion of incorporeal rights such as artistic, literary scientific, industrial, commercial and technical property.

Without limitation, the new law contemplates the protection of:

- 1) Written work in the form of books, magazines, pamphlets or other writings;

- 2) Conferences, speeches, sermons and other similar work;
- 3) Theatrical or musical plays and similar works;
- 4) Choreographic works and pantomimes;
- 5) Musical compositions with or without letters;
- 6) Audiovisual work in any type of support;
- 7) Drawings, paintings, architectural work, sculptures, engravings, lithography, and other artistic works;
- 8) Photographic works;
- 9) Works of applied arts;
- 10) Illustrations, maps, plans, sketches and other works related to geography, topography, architecture or sciences;
- 11) Computer software, in the same terms as literary works, whether operating or application programs;
- 12) Data bases or compilations of data or other material that by the selection or disposition of their contents constitute intellectual creations;
- 13) Any production of the literary or artistic domain or literary or artistic expressions of the scientific domain, susceptible of being published or reproduced by any means or proceedings, known or to be known.

### Object of Copyright

The protection of copyright has the following characteristics:

1. It protects formal creations and not ideas, which must result from the creative talent of men.
2. Protection is recognized notwithstanding the genre of the work, its form of expression, merits or destination.

3. The protected work must be original.
4. Protection is not subject to any registration formalities.

The author or original holder of the copyright is the person who creates the work. It is not possible for a legal person to be an author (but it can be derivative holder of some copyright). In the case of collective work, the law presumes that the patrimonial rights belong to the person publishing or disclosing the work under its own name.

### **Protected by Copyright**

Copyright can apply to original work as well as to derived work. Original work refers to work originally and independently created by a given author. Derived work refers to work that results from the adaptation, translation, arrangement and other transformation of an original work.

### **Rights, Obligations and Limitations of Copyright**

The right granted to the author of a work is effective during his lifetime and transferred to his successors for a period of 50 years after his death. This right is non-transferable, non-waivable and non barable.

However, the law contemplates exceptions to the duration of copyright. In case of collective works, software programs, photographs and phonograms, the duration of the protection is limited to 50 years from its publishing or disclosure date. Audiovisual work is protected for 70 years.

These rights are of a double nature: moral and patrimonial. Moral rights can be summarized as:

- a) The right to publish and to withdraw from publication;
- b) The right to demand respect to its condition of creator and the integrity of its creation;

Patrimonial rights are rights of reproduction, translation, modification, distribution, communication and exploitation of the work.

The limitations on copyright must be restrictively understood. The law allows, under certain

conditions and to specific ends, the use of fragments of the protected work, its reproduction for conservation purposes and for strictly personal or academic use.

Also, the law grants the State the power to use a particular work considered to be of great scientific or pedagogical value.

### **Protection of Foreign Work**

Works published in member countries of the international agreements to which the D.R. is a signatory, are automatically protected by our laws with the same rights as national work. In case of work published in other countries, protection shall be granted only to the same degree as national work is protected by the laws of said countries.

The State shall grant non-exclusive and non-transferable compulsory licenses for the translation and reproduction of foreign works, assigning royalties in favor of the author of said work.

### **Rights from Resale**

This “droit de suite”, put into practice in France since 1920, has been introduced in the new law. This right consists in favoring the author of a pictorial work with the granting of a 2% royalty over the resale price of his work.

The purpose of this right is to benefit the artist with the added value acquired by his work over the years.

### **Satellite Transmission**

The law fills the void left by the entering into force of the retransmission of audio or audiovisual signals without the producer’s permission. The enforcement of this right is given to the agency in charge of regulating telecommunications.

### **Computer Software**

The law establishes that licenses for the use of computer software may or may not be signed by the parties. The user is considered to be in agreement with the conditions of the printed material that accompanies the software.

There can be only one association for each literary or artistic activity.

### **Transfer of Rights**

Copyright may be transferred at death. In their patrimonial aspects, copyright may be transferred by assignment.

#### 1. Use and Assignment Contract.

In addition to assignment contracts, the author of a work may grant licenses to use his work.

Contracts for the transfer of future productions in general (unless specifically concerning works with specific characteristics) are considered null as well as those restricting future production even if for a limited period.

#### 2. Publishing contract.

The law contemplates certain provisions that would apply should the contract between the parties fail to regulate them. For example, the author is entitled to a 10% fee over the sales price of the first edition and to a 15% fee for further editions.

#### 3. Recording contracts.

It's the contract by which the author authorizes the producer to fix the work in a phonograph record for its reproduction and distribution.

#### 4. Representation contract.

It's the contract by which an author of a dramatic, choreographic or similar play, authorizes a person to show it in public. The author shall have the right to a minimum of 10% of the total amount of the tickets sold and to 15% of the total of tickets sold for the premier show.

### **Registry and Legal Filing**

Protection of copyright is independent of any formalities. Nevertheless, these rights can be registered in the National Copyright Registry as guarantee of their authenticity.

### **Collective Management Association**

These associations organize the collection and distribution and control over the rights of copyright holders, both national and foreign.

### **Legal Actions and Applicable Sanctions**

The holder of a copyright may choose between the civil, criminal or administrative actions to ensure the protection of his rights.

Sanctions for violation of copyright include prison from three months to three years and the confiscation of the materials and equipment used in the violation. Fines have been indexed to up to one thousand minimum wages notwithstanding the compensation for damages that could result.

The holder may also have the right to request preventive and protective measures when he understands that his rights are in danger of being violated. Customs have been appointed to control the import of pirated products.

This law, as did the previous, extends responsibility to the owners, and executives of the companies violating copyright.