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Legislation and enforcement

1. What is the relevant legislation?

The relevant legislation concerning copyright in the Dominican Republic is Law No. 65-00, issued on 21 August 2000 (the Copyright Law). The Copyright Law provides protection for authors and owners of literary, artistic and scientific work and protects performers, producers and other neighbouring rightholders.

2. Who enforces it?

The National Office of Copyright (ONDA) is in charge of enforcing the Copyright Law in the Dominican Republic. The Association of Authors, Composers and Editors of Dominican Music (SGACEDOM) is also active in copyright enforcement. In addition, civil and criminal courts decide on the infringement of copyright cases. The intellectual property attorney at the Office of the District Attorney represents the national interest in copyright issues.

Agency

3. Is there a centralised copyright agency? What does this agency do?

The National Office of Copyright (ONDA) is the national authority responsible for guarding and protecting copyright and neighbouring rights in our country. The ONDA decides on administrative matters at the request of an interested party, or on its own, depending on the case. Also, the ONDA is in charge of the registration of copyrights.

Subject matter and scope of copyright

4. What types of works are copyrightable?

The Copyright Law provides a list of works that are copyrightable. Such list includes:
- books, brochures and other written material;
- conferences, allocutions, sermons and works of the same nature;
- dramatic or musical-dramatic plays;
- choreographic and pantomime plays;
- musical compositions with or without lyrics;
- audiovisual work such as films adapting classical novels, films from an original screenplay (fiction), novels, documentaries, video clips, news, television shows, cartoons, advertisements;
- drawings, paintings, architecture, sculpture, engravings, and lithographic work;
- photographic work;
- works of art;
- illustrations, maps, plans, sketches, and plastic works related to geography, topography, architecture or science; and
- computer programs and databases, if original enough.

5. What types of rights are covered by copyright?

The following economic rights are covered:
- reproduction;
- modification;
- translation;
- adaptation;
- communication to the public by any means or procedure; and
- any form of using the work, known or to be known, with the exceptions provided by the law, or contractual provisions.

The following moral rights are covered:
- paternity (attribution) right;
- integrity right (the right to oppose a deformation of the work that would harm the author's reputation); and
- revealing right (the right to keep the work unpublished).

Please note that the withdrawal right was actually abrogated by the implementation of the DR-CAFTA in the Dominican Republic.

6. What may not be protected by copyright?

The following may not be protected by copyright:
- ideas;
- procedures;
- medical procedures;
- mathematical methods; and
- industrial property work such as trademarks, industrial designs, or patents, already protected otherwise.

7. Do the doctrines of 'fair use' or 'fair dealing' exist?

Fair use is defined by the Copyright Law as the use of copyrighted work that does not interfere with the normal exploitation of the work, nor causes unjustified damage to the legal interests of the author, or the owner of such right.

Fair dealing is considered to be the reproduction, or other ways of use, of a third party's copyrighted work, in a single copy and exclusively for the use of a legitimate owner.

8. What are the standards used in determining whether a particular use is fair?

According to the legislation, the standards used are the following:
- the case must be provided by the law;
- such use should not interfere with the normal exploitation of the work; and
- the same does not cause unjustified damages to the legal interest of the author, or the owner of the work.
9 Are architectural works protected by copyright? How?

Architectural works are protected by copyright. Such protection includes the projects, plans, sketches, reports, or written material of technical use executed personally by the professional in charge, or under his or her direction.

10 Are performance rights covered by copyright? How?

Performance rights, as neighbouring rights, are covered by copyright and the same are protected by mainly the same limitations and exceptions provided by the law for literary, artistic and scientific works, once they have been applied.

11 Are other 'neighbouring rights' recognised? How?

Other neighbouring rights (besides performers’ rights) protected by the Copyright Law are the rights of the producers (phonograms, videograms, databases, etc) and broadcasters. The protection of integrated circuit layouts doesn’t have specific protection; but, by its nature, it may be protected as a (micro) architectural work.

12 Are moral rights recognised?

As stated above, moral rights are recognised by copyright. According to the Copyright Law, the author of the work will have perpetual moral right over his work, and the same is non-transferable (except, partially, to his or her heirs), imprescriptible and indispensable.

Copyright formalities

13 Is there a requirement of copyright notice?

There is no requirement to use a copyright notice in the local laws and practice.

14 What are the consequences for failure to display a copyright notice?

Not applicable.

15 Is there a requirement of copyright deposit?

The rights upon an intellectual work – and the eventual corresponding neighbouring rights – are protected by the mere fact of its creation, performance or execution, production or issuance (as corresponds in each case). Their use and exercise does not require any type of official procedure. Therefore, there is no requirement of copyright deposit.

16 What are the consequences for failure to make a copyright deposit?

Not applicable.

17 Is there a system for copyright registration?

The system for copyright registration starts by filing an application at the Copyright Registry at ONDA. Such application must include the following information and documentation:

- the name, nationality, address, identity and pseudonyms, if applicable, of the author or the owner of the rights;
- the date of the decease of the author, when the inscription is regarding a posthumous work;
- the identification data of the editor, when the work has been published anonymously;
- the title of the work in its original language, and, if applicable, its translation to Spanish;
- the information regarding whether the work has been published, if it's original or adapted, if it was made individually or as a collaboration, as well as other information that could ease its identification;
- the country of origin of the work, the year it was made, and, if applicable, the date of its first publication;
- the name, nationality, address, identity, if applicable, the trade name of the applicant when the same is acting in the name of the owner of the rights or in virtue of a transfer contract, as well as the evidence of the representation or the assignment of the rights, if applicable; and
- a short description of the work, according to its nature and its characteristics.

Once the inscription has been made, the Copyright Registry will assign a number to the registration, and the same will be published in the Official Gazette.

18 Is copyright registration mandatory?

Copyright registration is not mandatory and the lack of the same does not damage the acquisition and the exercise of the right granted by the law. Registration is only made for publicity and probationary purposes.

19 How do you apply for a copyright registration?

In order to obtain a copyright registration it is required to file an application with the Copyright Registry (see question 17).

20 What are the fees to apply for a copyright registration?

The fee for applying for a copyright registration is 200 Dominican pesos.

21 What are the consequences for failure to register a copyrighted work?

There are no consequences for the failure to register a copyrighted work since registration is not mandatory.

Ownership and transfer

22 Who is the owner of a copyrighted work?

The owner of the moral rights is always the author and this right is non-transferable. The economic rights belong to the original author, but in this case, if these rights have been transferred, the same correspond to the (new) owner of the work.

23 May an employer own a copyrighted work made by an employee?

An employer can own a copyrighted work made by an employee if expressly agreed by both parties. This agreement must be written in order to have legal effect.

24 May a hiring party own a copyrighted work made by an independent contractor?

A fortiori, an independent contractor's work will remain his property too, failing written agreement. A hiring party may own the rights to an independent contractor’s work if a very specific and detailed agreement is contracted (see question 26).

However, economic rights are automatically transferred to the hiring party in special cases: collective works (to the director), civil servants’ works (to the state), software and databases (to the producer), etc.

Even then, moral rights will always belong to and remain with the independent contractor.

Besides, it is very important to differentiate between the work...
support and the work itself: a hiring party ordering a painting will have the canvas, but the painter will keep his IP rights upon the work.

25 May a copyrighted work be co-owned?

Collective works are not co-owned: the work is published under the director’s name, which will have all the economic rights upon it. The same thing applies for producers.

Thus, a copyrighted work can be co-owned in two cases: for collaborative works (if the plurality of co-authors shares all the rights), or when some of the economic rights have been transferred to more than one person or entity. In both cases, different persons may then own different rights of a work.

In the case of a collaborative work, all co-authors work closely together, without hierarchy or subordination relationships: everybody has the same status. As a result: • if each author contribution can be isolated, each author will keep his rights upon his own work; • if the works of each author can’t be properly isolated (as is usually the case), the rights are then the common property of all co-authors, and its exploitation implies the consent of each one, apart from according otherwise.

This true to the extent that the Copyright Law specifically presumed a co-authoring status for audiovisual and cinematographic works. The following are presumed to be co-authors of an audiovisual work: • directors; • script and dialogue writers; • music composers (if a score is especially created for the audiovisual work); and • cartoonists, if applicable.

In the case of multiple transfers, please see question 26.

26 May rights be transferred?

Authors’ economic rights on a work can be transferred via written contract, specifying which right will be transferred, on which work, where, start and end date (licence), and for which purpose. The transfer of a right and the way to use it doesn’t extend to the other ways it can be used; for instance, the publication of the same article in a newspaper and on the internet will be two different publications.

However, nobody can globally contract for future works; although the publishing contract may be considered to infringe this rule.

27 May rights be licensed?

Authors’ rights may be licensed in the same conditions mentioned in question 26.

28 Are there compulsory licences? What are they?

There are two legal compulsory licences: one for translations and reproductions of foreign works, complying with the international treaties the Dominican Republic signed or will sign; the other for works decreed of public utility, necessity or interest, with the following cumulative requirements: • the work has already been published; • the work is out of print; • three years has passed since the last publication; • it looks unlikely it will be published again; and • the price of a copy is considered too high for most of the students who must use it for their studies.

Both licences will grant ‘an equitable and reasonable remuneration’ to the respective rightholder.

29 Are licences administered by performing rights societies? How?

Licences can be managed through collective administration societies if an author or a rightholder wants them to manage his economic rights (as is usually the case). There is one society for each of the four recognised branches of intellectual property. They mainly collect royalties from end users and share them with rightholders, as well as representing them in administrative or judicial procedures.

30 Is there any provision for the termination of transfers of rights?

No, apart from licences, where the rights are never actually transferred. Yet, until Law No. 424-06 implementing the DR-CAFTA in the Dominican Republic came into force on 1 March 2007, an author had the possibility to use the moral right of withdrawal, allowing him or her to withdraw all copies of the work still available on the market, and forbidding any exploitation of it. Nonetheless, this would be a drastic option, as the author would be civilly responsible for all its consequences (reimbursing all the parties involved, their investments and expected profits, buying the remaining stocks, etc). This measure was actually never used and, since the implementation of the DR-CAFTA, is no longer a possibility.

31 Can documents evidencing transfers and other transactions be recorded with a government agency?

Yes, such documents may be registered in the Author Rights National Register (RNDA) in Santo Domingo: it registers contracts and acts related to authors’ and neighbouring rights. Registration is not mandatory to provide authors’ rights protection; it is done for publicity, probationary and opposability purposes.

Duration of copyright

32 When does copyright protection begin?

Authors’ rights protection starts with the creation of the work, without formalities. Once again, the registration of any authors’ rights only has a publicity, probationary and effectiveness purpose.

33 How long does copyright protection last?

Normally, the protection of authors’ economic rights lasts for 70 years after the death of the author. For collaborative (ie, co-authored) works, the 70-year after-life period will then start with the last co-author’s death.

Regarding collective works, works published anonymously or under a pseudonym (since nobody knows who the author is, the 70-year period naturally can’t begin with the author’s death), computer programs, photos, audiovisual works and all performers’ neighbouring rights, the 70-year protection will then start as follows: • from the date of publication; or • if the work isn’t published in the 50 years following its creation, from the date of its creation.

In the case of an anonymous or pseudonymous work where the author’s identity is subsequently revealed, the normal system is reverted to (ie, 70 years after author’s death) if the work has not in the meantime entered the public domain.

Finally, for neighbouring rights, the same system applies: • for performers’ rights, 70 years after the death of the performer (but if it implies an artist group (orchestra, choirs), the 70-year period will then begin with the performance or recording);
for producers (phonograms, audiovisual works, databases, etc), 70 years from the date of publication (but if the work isn’t published in the 50 years following its recording, from the date of its recording); and,

• for broadcasting companies, 70 years since it was originally aired.

The aforementioned periods will always begin on 1 January of the year following the respective event (author’s death, publication, recording, airing, etc).

Finally, moral rights (besides the right to have the work published) last forever. They are naturally transferred to the authors’ assignees or heirs.

34 Does copyright duration depend on when a particular work was created or published?

Normally not, as long as the copyright duration relies on the last surviving co-author’s life, not on when the work was created or published. Regarding anonymous and pseudonymous works, as well as neighbouring rights, the creation and publication date does matter (see question 33).

35 Do terms of copyright have to be renewed? How?

The protection term regarding economic rights cannot be renewed; once expired, the work enters the public domain.

Copyright infringement and remedies

36 What constitutes copyright infringement?

Regarding authors’ and related economic rights, any unauthorised reproduction, distribution, performance, communication, modification or exploitation of a work of the mind by any means whatsoever in violation of its author’s rights will constitute a copyright infringement. The abuse of authorised copyright limitations and exceptions (private copy, public interest, etc) also constitute a copyright infringement.

Furthermore, any violation of the moral rights of an author or a neighbouring rightholder is also an infringement. Therefore, any unauthorised modification, communication, reproduction or fraudulent paternity attribution of the work is forbidden. The omission of legal mentions (author’s name, etc) is also punished.

37 Does secondary liability exist for indirect copyright infringement? What actions incur such liability?

Please note that copyright infringement can be sued on either a civil or criminal basis. Criminal procedures are often more appealing, since it always looks better to rely on the public prosecutor’s help and resources.

Regarding liability, the liability (civil or criminal) for all facts described above is extended to anyone ordering or helping an infringement, natural person or body corporate, as well as anyone who, knowing the illegality of the facts, takes part, facilitates or covers them up. Complicity in infringement is a crime and incurs the same penalties as the principal infringer.

Furthermore, the owner or manager of a property be equally liable other infringers for any infringements carried out in this property.

38 What remedies are available against a copyright infringer?

Several remedies exist. Rightholders can:

• have infringing works and related documentations, earnings or assets seized;

• have infringing goods destroyed, as well as the material used to produce them;

• forbid any publication or exploitation of infringing goods; and

• obtain monetary damages. Damages should be calculated by taking into account not only the economic loss and moral prejudice incurred by the plaintiff but also the defendant’s illegal earnings.

According to Law No. 424-06, if the real damage is impossible to evaluate, a fine from 20,000 to 2 million Dominican pesos per work can be granted by the judge, with not only the purpose to compensate the plaintiff, but also to prevent future infringements (although the mix up with criminal sanctions might indeed sound confusing).

39 Is there a time limit for seeking remedies?

The time limit to seek civil damages is 30 years since the last infringing act, and three years to seek criminal sentences for the infringer.

40 Are monetary damages available for copyright infringement?

Yes, please see question 38.

41 Can attorneys’ fees and costs be claimed in an action for copyright infringement?

Attorneys’ fees and costs can always be claimed by successful litigants in authors’ and neighbouring rights infringement lawsuits. The courts usually order the losing party to pay the legal costs incurred by the successful litigant. Nonetheless, regarding attorneys’ fees and costs, judges normally grant a lump sum that hardly covers real expenses.

42 Are there criminal copyright provisions? What are they?

Articles 169 and 170 of the Copyright Law provide for the punishment for violation of authors’ rights and neighbouring rights. The infringers may be fined from 10 to 1000 (guaranteed) minimum wages, and sentenced from six months to three years’ imprisonment. Article 172 provides for the tripling of the fine when the infringement actually threatens the right holder’s subsistence. In the case of an infringer’s insolvency, the infringer will spend one day in prison per peso unpaid, not exceeding two years in prison in total.

It is important to remember that violation of authors’ rights, in opposition to normal criminal infractions, is one of the rare offences where bad faith is always presumed.

43 Are there any specific liabilities, remedies or defences for online copyright infringement?

Unfortunately, there are no specific liabilities, remedies or legal defences for online copyright infringement yet. Online infringements are actionable the normal way.

44 How may copyright infringement be prevented?

Infringement of authors’ rights mainly consists in plagiarism or piracy. Nothing can prevent plagiarism, but some probationary measures, such as registering documents at the RNDA, may help an author prove his or her paternity or anteriority.

Piracy may be prevented or at least hampered through digital rights management (DRM) and other antipiracy measures. Law No. 424-06 strengthened the legal status of DRM; article 187 of said Law states the authorised exceptions to DRM:

• reverse engineering for interoperability research;

• minor unauthorised access and general security improvements; and

• privacy purposes.
Unfortunately, these measure mainly only apply to software, music and other works that are digital or digitally convertible.

Relationship to foreign rights

Which international copyright conventions does your country belong to?
The Dominican Republic has signed:
- the 1886 Berne Convention for the Protection of Literary and Artistic Works, until its last amendment;
- the 1961 Rome International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- the 1994 TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights);
- the 1996 WIPO Treaties: Performances and Phonograms Treaty (WPPT) as well as Copyright Treaty (WCT); and
- the 2006 Dominican Republic–Central America Free Trade Agreement (DR-CAFTA), implementing intellectual property rights in chapter 15.

What obligations are imposed by your country’s membership of international copyright conventions?
Each country must respect the international conventions and treaties to which they are signatory. To come into force, treaties are usually incorporated into domestic law. The Copyright Law was drafted and published in 2000; therefore, all international treaties signed before 2000 have already been taken into account. The only treaty signed after 2000 was the DR-CAFTA, coming into force through Law No. 424-06, on 1 March 2007, implementing, among others, some domestic rules for the local application of DR-CAFTA.
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