

Copyright

in 28 jurisdictions worldwide

Contributing editors: Stuart Sinder,
Jonathan Reichman and James Rosini

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Chile

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Legislation and enforcement

1 What is the relevant legislation?

The relevant legislation is Law No. 17.336 on Intellectual Property (the 'Law'). The Law regulates (among various other matters) the nature, duration, ownership and exceptions of copyrights works, permitted acts in relation to such works, including moral rights, and provides for civil remedies for copyright infringement and sets out certain criminal offences. The Law also regulates the neighbouring rights of artists, interpreters and performers, of phonogram producers and broadcasters.

2 Who enforces it?

Civil and criminal courts are in charge of copyright enforcement, depending on the nature of the infringement.

Agency

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

There is a Department of Intellectual Rights with fairly limited competencies. It is mainly limited to managing the Intellectual Property Registry, which is a public registry where copyrights and neighbouring rights are recorded, in addition to the assignment of said rights.

Subject matter and scope of copyright

4 What types of works are copyrightable?

The Law protects the rights that the authors of intellectual works of the literary, artistic and scientific domain acquire through the sole fact of their creation, whatever their form of expression, and the neighbouring rights it establishes.

The following, among others, are especially protected:

- books, brochures, articles and written documents, whatever their form and nature, including encyclopaedias, guidebooks, dictionaries, anthologies and compilations of all kinds;
- conferences, speeches, lectures, memoirs, comments and works of the same kind, both in their oral as well as in their written or recorded versions;
- dramatic, dramatic-musical and theatrical work in general, and likewise choreographic and pantomimic works, whose development has been set down in writing or in another form;
- musical compositions, with or without lyrics;
- radio or television adaptations of any literary production, the works originally produced by radio or television, and also the corresponding librettos and scripts;
- newspapers, magazines or other publications of the same kind;
- photographs, engravings and lithography;
- cinematographic works;
- architectural projects, sketches and models and mapping systems;

- geographical or armillary spheres, as also plastic works related to geography, topography or any other science, and in general, audiovisual material;
- paintings, drawings, illustrations and similar works;
- sculptures and similar figurative works of art, even though they may be applied to industry, provided their art value may be assessed separately from the industrial character of the object to which they are incorporated;
- scenographic sketches and the respective sceneries if the author is the sketch artist;
- adaptations, translations and other transformations, if they have been authorised by the author of the original work if it does not belong to the public domain;
- videograms and slide shows;
- computer programs, whatever their mode or form of expression, and source programs or object programs, including their preparatory documents, technical descriptions and user's manuals;
- data collection or collection of other materials, in a typewritten form or any other form, which due to the selection or disposition of their contents, constitute creations of an intellectual nature. This protection does not include the data or materials themselves, and is to be understood as notwithstanding any subsisting copyright in connection with the data or material included in the collection; and
- textile designs or models.

5 What types of rights are covered by copyright?

Copyright comprises patrimonial and moral rights, which protect the use, authorship and integrity of the work.

Moral rights

The author, as the exclusive holder of the moral right, has for life the following powers:

- to claim the authorship of the work, associating to it his name or known pen name;
- to oppose to any deformation, mutilation or any other modification performed without his express and previous consent. Works of preservation, reconstitution or restoration of the works that have suffered damages that may alter or reduce their artistic value will not be considered as such;
- to maintain the work unpublished;
- to authorise third parties to finish the unfinished work, with the prior consent of the publisher or cessionaire, should there be one; and
- to demand that his will of maintaining the creator of the work remains anonymous or under a pen name is respected, provided it does not belong to the public domain.

Patrimonial rights

The copyright holder or whoever is expressly authorised by him or her, will be entitled to use the work in any of the following forms:

- to publish it (public offer of a work) by editing, recording or broadcasting it on radio or television, performing, executing, reading, reciting, exhibiting and, generally, through any other public communication means which is currently known or may be known in the future;
- to reproduce it through any means;
- to adapt it to another genre, or to use it in any other way implying a variation, adaptation or transformation of the original work, including its translation;
- to perform it publicly by means of radio or television broadcasting, phonographic records, films, tape recordings or any other material support which may be used on sound and voice reproduction apparatus, with or without images, or through any other means; and
- to distribute it (tangible copies) to the public by means of its sale, or any other property transfer of the original work or the copies that have not been object of a sale or any other property transfer authorised by him or pursuant to this law.

6 What may not be protected by copyright?

The following are excluded from the Law's scope of protection:

- Ideas without formal expression. Generally, although it is not expressly indicated in the Law, said rule stems from international treaties ratified by Chile whose essential regulations are incorporated into domestic laws (see questions 44 and 45). Thus, in accordance with article 2 of the WIPO Copyright Treaty, copyright protection includes expressions but not ideas, procedures, operating methods or mathematical concepts themselves.
- Works in the public domain. Public domain works include: works where the protection term has expired; the work of an unknown author; works whose holders have disclaimed protection; works by foreign authors who live outside the country and are not protected by international treaties ratified by Chile; and works that have been expropriated by the State, unless the law specifies a beneficiary.

Public domain works may be used by anyone, provided the work's authorship and integrity are respected (moral rights).

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

Fair use or fair dealing is not contemplated in the Law, but its introduction in the copyright bill is being reviewed and is currently under debate in the Senate.

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

Please see question 7.

9 Are architectural works protected by copyright? How?

The Law provides that such works are protected by copyright. It has to be pointed out that the Law includes a series of exceptions related to these works. Thus, their reproduction and publication are permitted by means of photography, cinema, television and any other similar procedure, without the copyright holder's previous authorisation and without having to pay for it. The owner may make any modification to the works, and the architect may only himself oppose to his name being mentioned as author of the project.

10 Are performance rights covered by copyright? How?

The Law acknowledges a series of neighbouring rights to copyright to artists, interpreters or performers (actors, singers, dancers or musicians, among others), empowering them to authorise or forbid their broadcasting and to receive payment for their public use, notwithstanding copyrights.

With respect to the interpretations and performances of artists, the following acts are prohibited without their express authorisation, or that of their heirs or cessionaires:

- the recording, reproduction, transmission or re-transmission by broadcasting or television companies, or the use by any other means, for profit, of said interpretations or performances;
- non-established interpretations or performances being recorded in a phonogram and reproduction of said recordings;
- broadcasting through wireless media or public communication of their live interpretations or performances; and
- public distribution through sale or any other property transfer of the original or copies of their interpretation or performance which have not been the object of a sale or other property transfer authorised by the artist or his cessionaire in accordance with this Law.

11 Are 'neighbouring rights' recognised? How?

Together with the neighbouring rights of artists, interpreters and performers over their interpretations and performances, the Law acknowledges neighbouring rights to phonogram producers and to broadcasters, over their respective productions.

Phonogram producers are entitled to authorise or prohibit the reproduction, renting, loan and other uses of their phonograms, including their broadcasting through wireless media or on demand modalities. With regard to broadcasters, radio or television companies have the exclusive right to authorise or prohibit the recording of their broadcasts and their reproduction, and likewise the right to fees for the re-transmission of said broadcasts or their public communication in places of free access.

Likewise, broadcasters may perform ephemeral recordings of interpretations or performances of an artist to simplify their transmission, which constitutes a right, from the point of view of the broadcaster, and from the point of view of the artist, of an exception or limitation of his or her exclusive right to authorise the reproduction of his or her interpretation or performance.

12 Are moral rights recognised?

See question 5.

Copyright formalities

13 Is there a requirement of copyright notice?

Copyright notice is not a requirement for copyright holders to enjoy protection. As has been previously stated (see question 4), copyright holders enjoy protection through the sole fact of having created the work.

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

There are no consequences for failure to display a copyright notice.

15 Is there a requirement of copyright deposit?

The deposit of a copy of the work is likewise not necessary for the holders to enjoy the protection assigned by the Law. However, it is a requirement for the recording of the work, exclusively for the purposes stated in question 17.

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

The Department of Intellectual Property Rights will not process the registration according to the terms indicated in question 17.

17 Is there a system for copyright registration?

There is a registration system managed by the Department of Intellectual Property Rights where copyrights and neighbouring rights can be registered. Registration is performed by simply supplying a deposit copy of the work without involving third parties – there are no publication or opposition proceedings – and its function is an essentially probative one and administrative acknowledgement of the creative fact. Notwithstanding the aforesaid, the Registration Administrator – head of the Department of Intellectual Property Rights – may oppose the registering a work when, due to its nature, it is not, in his or her opinion, within the framework of the works protected by copyright, notwithstanding the right of the affected party to file a claim before the competent civil court.

18 Is copyright registration mandatory?

Copyright registration is not mandatory. However, the work's registration establishes a presumption of ownership of the rights with respect of the person to whom, according to the respective registration, the copy being registered belongs to, and it is therefore, advisable to register it and to make reference to the number assigned by the Department of Intellectual Property Rights when making the work known to the public.

19 How do you apply for a copyright registration?

Registration is carried out by simply supplying a deposit copy of the work and it is automatic, no publication or a period of opposition by third parties being required. The application may be filed through the form maintained for said purpose by the Department of Intellectual Property Rights, in accordance with the Law and its regulations.

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

The registration of a work is subject to payment of a fee calculated in percentages of a monthly tax unit (UTM), which is an account unit used for tax payments, as well as for certain administrative fines and its value is updated according to inflation levels. Its value, to date, is around US\$50. The following fees are applied according to each work:

- engineering and architecture projects and computer programs: 35 per cent UTM (approximately US\$17.50);
- films: 40 per cent UTM (approximately US\$20); and
- any other registration: 10 per cent UTM (approximately US\$5).

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

Failure to register a copyrighted work does not deprive the holder of the acknowledgement of his or her rights.

Ownership and transfer

22 Who is the owner of a copyrighted work?

The author of the work is the primary owner of the copyrights and the person acquiring said rights, in any capacity, is the secondary owner. Notwithstanding the aforesaid, the Law has certain special rules about rights' ownership regarding certain works, some of which are:

- Anthologies and compilations: the organiser is the copyright holder but he or she is obligated to obtain authorisation and to pay copyright holders of the works being used.

- Films: the producer is considered the holder of the copyright of the film itself and the authors of the plot, music, lyrics of the songs and dubbing are holders of the rights over the literal elements of said work, which are independently considered for protection purposes, maintaining the right to use, separately, their respective contributions, provided they have not agreed their exclusive use for the film's production, in which case, the rights are considered as assigned to the producer (see question 24).
- Public entities: works produced by public officials while performing their duties belong, accordingly, to the State, municipalities, official corporations, semi-public or autonomous institutions and other government entities for which they are working.
- Computer programs. There are special regulations concerning their ownership stated in question 23.

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

There is no work for hire regulation in Chile. Rights over the works created by employees while performing the duties resulting from a work relationship, belong to the employees.

Only in special circumstances will the employer own a copyright work made by an employee:

- in the case of computer programs, the Law sets an exception, by stating that the holders of the respective copyright are the natural persons or legal entities whose employees, while performing their duties, have produced them, unless it is otherwise stipulated in writing; and
- the works produced by public officials while performing their duties which belong, accordingly, to the State, municipalities, official corporations, semi-public or autonomous institutions and other government entities for which they are working.

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

Both the Law as general provisions concerning contracts say nothing with respect to works commissioned by a third party and, therefore, following general rules, the respective rights are not considered as assigned to the party commissioning the works.

Notwithstanding the aforesaid, there are some presumptions of transfer of rights established in the Law:

- Films: the contract between the authors of the literal elements of the film and the producer, provided they have agreed on their exclusive use for the film production, entails the assignment to the producer of all the rights over the work, including all of its elements, and authorises him to broadcast it to the public, show it on television, reproduce it in copies, rent and transfer it.
- Computer programs: in the case of software produced by commission of a third party to market it at its own risk and expense, the rights of the developer to whom the work has been commissioned are considered as assigned.
- Photographs: the photographer has the exclusive right to reproduce, exhibit, publish and sell his photographs, except those done by virtue of a contract, in which case the right belongs to the party commissioning said work.

25 May a copyrighted work be co-owned?

The Law considers the existence of 'works in collaboration' ie, jointly produced by two or more natural persons whose contributions may not be separated. The powers inherent to proprietary equity and pecuniary benefits of the work in collaboration correspond to their co-authors as a whole, and may be published at the request of any one of them.

Concerning films, notwithstanding the producer's rights, to whom the respective rights have been assigned (see question 22), the authors of the plot, staging, adaptation, script and music

especially composed for the work, and the director, are considered as co-authors of the film done in collaboration.

26 May rights be transferred?

The Law expressly authorises the authors and copyright and neighbouring right holders to transfer totally or a part of their rights over the work. The party acquiring said rights, in any capacity, is called 'secondary holder' of the copyright. Transfer is only possible in the case of patrimonial rights (reproduction, publication, etc), but is not possible in the case of moral rights (authorship, rights over unpublished material, etc), which are only transferable through succession in case of death.

The total or partial transfer of copyrights or neighbouring rights, in any capacity, must be done through a contract recorded in a public instrument or private instrument authorised by a notary public, which must be registered in the Intellectual Property Registry within a term of 60 days, as of the date of execution of said act or contract.

27 May rights be licensed?

Yes. The permit granted by the copyright holder is the authorisation granted by him, in any contractual manner, to use the work in accordance with the manner and through the media established by law.

The authorisation or licence must specify the rights granted to the authorised party, stating the period of duration, the remuneration and form of payment, the minimum or maximum number of authorised shows or copies, or if they are unlimited, the territory of application and all other limiting clauses imposed by the copyright holder. The licence holder is not granted any rights other than those stated in the authorisation, except for those inherent to the same according to their nature.

28 Are there compulsory licences? What are they?

The Law considers the existence of certain licences of a mandatory nature in matters of collective management. Please see question 29.

29 Are licences administered by performing rights societies? How?

Collective management of copyrights and neighbouring rights may only be conducted in Chile by non-profit corporations, which have the sole purpose of managing collectively copyrights and neighbouring rights and have obtained authorisation to operate from the Ministry of Education. Said entities are obliged to accept the management of copyrights and other intellectual property rights that have been entrusted to them.

There are a series of licences of a mandatory nature associated with the work carried out by performing right societies, which must always be granted by said entities. The licence holder may also receive the respective authorisation directly from the copyright holder.

Thus, every owner, concessionaire, user, entrepreneur, lessee or person operating any showroom, public premises or broadcasting or television station in which plays, films or musical shows are performed or represented, or phonograms or videograms containing said works, of national or foreign authors, may obtain the authorisation through the corresponding performing right society, through a non-exclusive licence. Performing right societies are obliged to contract, with whoever requests it, the concession of non-exclusive authorisations of copyrights and related rights they manage and may only refuse granting said authorisations if the applicant does not offer sufficient guarantees for the payment of the corresponding fee.

In the case of use of phonograms or their reproduction for radio or television broadcasts or any other public form of communication, the user is obliged to pay a remuneration to the artists, interpreters or performers and to the producers of phonograms and the

collection of the phonogram performance rights must be carried out by the performing right society representing them, but in no event may the authorisations granted by said performing right society limit the power of the copyright holders to manage their works individually in the case of single uses.

The Law establishes that the fees for licences granted by performing right societies are established by the entities through the management body envisaged in their by-laws and will govern as of the date of its publication in the Official Gazette. Notwithstanding the aforesaid, performing right societies may enter into contracts of special fees with user associations, which will be applicable to the members of said organisations, and any user requesting it may be entitled to said special fees.

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

No, there is no provision for the termination of transfer of rights.

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

As has been previously mentioned (see questions 26 and 30), total or partial transfer of copyrights or related rights, in any capacity, must be recorded in the Registry of the Department of Intellectual Property, within a term of 60 days, as of the date of execution of the respective act or contract. The resolution of the contract that gave rise to the transfer must also be recorded within the same period.

Duration of copyright

32 When does copyright protection begin?

As previously stated, the protection assigned by copyright begins with the sole fact of the work's creation. There are special rules concerning computer programs and related rights of phonogram producers, and also those of artists and interpreters, which will be analysed in question 34.

33 How long does copyright protection last?

The protection granted by the Law lasts for the life of the author and extends itself for another 70 years, from the date of his or her death. In the case of works in collaboration, the term of 70 years is to be counted from the death of the last co-author.

With respect of the following works, certain special rules have been established regarding the beginning of the terms of duration of the protection:

- Anonymous or pen name works: 70 years from the first publication and in the event of there being no such publication, within a term of 50 years from its creation; the term is of 70 years following the end of the civil year in which the work was created.
- Computer programs: if the holder is a legal entity, the protection lasts 70 years as of the first publication.
- Phonograms: 70 years starting from 31 December of the year of its publication and should there be no such publication, within a term of 50 years since its recording; the protection is for 70 years following the end of the civil year of its recording.
- Interpretations and performances: 70 years from its publication and should there be no such publication, within a term of 50 years since its recording; the protection will be of 70 years following the end of the civil year of its recording. In the case of non-recorded interpretations or performances, the term of 70 years will start to count from the date of said performance.
- Radio and television broadcasts: 50 years from 31 December of the year of the broadcast.

Update and trends

The Chilean government introduced Bill No. 5012-03 into Congress on 2 May 2007, with the stated purpose of amending Law No. 17.336 on Intellectual Property. The Bill was passed by the House of Representatives on 10 October 2007 and now the approved text is being reviewed by the Senate.

The Bill introduces new regulations on:

- civil and criminal enforcement of intellectual property rights;
- exceptions and limitations of intellectual property rights (including fair use exception); and
- ISP limitation of liability, with the purpose of implementing the USA–Chile FTA provisions of article 17.11, section 23, chapter 17.

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

Duration rules are very straightforward without transitory rules to apply. Any extension of time applies automatically to copyright works that are not already in the public domain.

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

No.

Copyright infringement and remedies

36 What constitutes copyright infringement?

Copyright infringement is the public use of a work belonging to the private domain, without having obtained the express authorisation of the copyright holder, giving rise to civil liability and, in certain cases, criminal liability. Copyright infringements are currently penalised with fines from 5 to 50 monthly tax units (US\$246 to US\$ 2,460). Infringement may likewise be, in certain cases, the use of works belonging to public domain, whenever they are published or exhibited under a name that is not that of the real author.

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

There is no secondary liability.

38 What remedies are available against a copyright infringer?

Within the framework of proceedings for copyright infringement, the court may, at the plaintiff's request, decree one of the following measures:

- precautionary measures (injunctions): during the process, the court may order, at the request of the party, immediate suspension of sales, circulation, exhibition, performance or representation, under infringement;
- damages: the court may sentence the infringer to pay damages;
- additional penalties: the court, upon making effective the payment for damages, may order, at the request of the affected party, the delivery, sale or destruction of the copies of the work which have been manufactured or put into circulation infringing his rights, as likewise that of the material which serves exclusively for the illegal manufacture of copies of the work and the seizure of the product of the recitation, representation, reproduction or performance;
- publication: the court may order, at the request of the affected party, the publication of the decision, with or without stating the grounds for it, in a newspaper of the affected party's choice, at the expense of the infringer; and
- criminal actions: copyright infringement can be pursued also with criminal actions sanctioned with imprisonment and fines.

39 Is there a time limit for seeking remedies?

The exercise of the respective actions prescribes, according to general proceedings rules, five years, in the case of civil action for damages. The exercise of the criminal action (see question 41) according to the penalty established for copyright crimes, prescribes five years in case of simple offences (the majority of the cases) and in 10 years in the case of crimes (only with respect to fraud committed in connection with the publishing contract).

40 Are monetary damages available for copyright infringement?

Yes, there are monetary damages available for copyright infringement but not statutory damages. Thus, once the infringement has been proved, the court will set the due amount of damages payment, for general damage, loss of profit and moral damage. The affected party must prove the amount and nature of the damages.

41 Are attorneys' fees and costs available for copyright infringement?

If the defendant is convicted he or she must pay the costs, both of the process (court costs) and personal ones (lawyers' fees), pursuant to general rules. The court may exempt him from said payment by means of a substantiated resolution.

42 Are there criminal copyright provisions? What are they?

The Law establishes a special framework for copyright offences, which may be grouped as follows:

- Unauthorised use: the following conduct constitute copyright offences sanctioned with a penalty of medium-term rigorous imprisonment as the minimum degree (60 days to 540 days) and a fine of 5 to 50 monthly tax units (US\$246 to US\$2,460):
 - unauthorised use of protected works, through their publication, reproduction, public performance, adaptation, distribution and any other form;
 - unauthorised use of protected interpretations, productions and broadcasts by, among other things, their public performance or broadcast;
 - forgery of protected works, whether literary, artistic or scientific, or their publishing, reproduction or sale, removing the author's name, or maliciously altering the text; and
 - omission or forgery of the performance statements, applicable to facilities making use of phonograms, which may apply for the licence before the corresponding collective management entity;
- fraud in publishing contract: those who distort the real number of copies sold when rendering accounts are sanctioned with a penalty of 60 days to five years of imprisonment, according to the amount of the fraud;
- piracy: those, who without the holder's or legal authorisation, intervene, for the sake of profit, in the reproduction, public distribution or introduction into the country, and those who acquire or have for sale purposes phonograms, videograms, phonograph records, cassettes, videocassettes, films or movies or computer programs, will be sanctioned with a penalty of imprisonment of between 60 to 540 days, with said penalty increasing in case of recidivism; and
- removal or alteration of copyright management information: the removal or alteration of copyright management information or CMI, and likewise the distribution and import of said information or material whose information is altered or removed, without authorisation, knowing full well that it will induce, allow, facilitate or conceal copyright infringement, is sanctioned with a penalty of imprisonment of 60 to 540 days or a fine of 5 to 100 UTM (US\$246 to US\$4,920).

43 Is online copyright infringement actionable?

Copyright infringement or offences in the digital or online environment are sanctioned in the same way as in the analogue environment or through material media, or both.

44 How may copyright infringement be prevented?

It is not possible to prevent copyright infringement, but the following measures may be taken to diminish or control infringement:

- clearly identifying in the works the author or copyright holder who enjoys said presumption;
- recording the works in the Intellectual Property Registry to facilitate the evidence in case of infringements;
- monitoring the market and being prepared to deliver a strong message to the market to the infringers, using and filing all available remedies against them; and
- working with the channel and supporting it.

Relationship to foreign rights

45 Which international copyright conventions does your country belong to?

The principal international treaties ratified by Chile regarding intellectual property matters are the Berne Convention, the Trade Related Aspects of Intellectual Property or TRIPs Agreement, and the World Intellectual Property Organization Treaty (WIPO), concerning Copyrights (WCC) and Performances and Phonograms Treaty (WPPT), known as the WIPO Treaties.

46 What obligations are imposed by your country's membership of international copyright conventions?

The Berne Convention mainly sets a basic framework for the protection of copyright ownership, which must be considered by member states, and also the suggestion of a regime of copyright exceptions and limitations, principally based on the three-step-rule, with respect to reproduction rights.

The TRIPs Agreement sets an updated framework of copyright protection according to the standards established for the states that become members of the World Trade Organization. Thus, for instance, it is expressly established that computer programs, both expressed in source code and in object code, will be protected by copyright (a situation which continued to be a matter for debate at the beginning of the 1990s).

Finally, the WIPO Treaties establish requirements for protection of the works, interpretations, performances and phonograms protected by copyright and neighbouring rights, in the digital and online environment, regulating for the first time the level of protection that must be provided not only to the works, but also to the technological measures of protection and digital rights management information with which the holders have endowed their works to limit their access and reproduction, and also to control their use.

Finally, we have to point out that Chile has signed several free trade agreements (FTAs), which have strengthened, to a certain point, the commitment of the country to adapt copyright regulations concerning the aforesaid matters.

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