

CHILE
Chilean Law 20,430 - Modifying Law 17,336 on Intellectual Property

BILL:

"Article 1. The following amendments are hereby made to Law N° 17,336:

1) Article 5 is amended to read as follows:

a) In subparagraph u) of Article 5, the expression "permanent or temporary" is inserted before the word "fixation", and the conjunction "and" is replaced by "or".

b) The following subparagraph y) is added:

"y) Service provider means, for purposes of the provisions in Chapter III of Title III hereof, a company providing transmission, routing or connections for digital online communications, without modification of their content, between or among points specified by the user of material of the user's choosing, or a company providing online services or network access or operating facilities for such purpose."

2) Paragraph 3 of Article 8 is substituted to read as follows:

"As concerns computer programs produced by a third

party's order, copyrights shall be deemed assigned to such third party, unless otherwise provided for in writing."

3) Current paragraphs 1 and 2 of Article 10 are substituted to read as follows:

"The term of the protection granted by this Law shall be not less than the life of the author and 70 years after the author's death."

4) The following phrase is deleted from paragraph 2 of Article 12: "Notwithstanding the spouse's rights specified in Article 10,", and the word "if" that follows will be in initial capital letter.

5) The following new paragraph 2 is incorporated to Article 37 bis:

"This right shall not be applicable to computer programs whenever these are not the essential subject matter of the rental."

6) Current Paragraph III (Articles 38 to 45 bis) and Paragraph IV (Articles 46 to 47) of Chapter V, Title I, are repealed.

7) The following paragraph 3 is added to Article

65:

"Whenever authorization is required from the author of a work embodied in a phonogram and from the artist, interpreter or performer and from the producer of the phonogram, these shall concur and no one of them shall exclude the others."

8) The following is inserted as new Title III, and current Title III is renumbered as Title IV:

"Title III
Limitations and Exceptions to Copyright and Related
Rights

Article 71 A. Whenever applicable, the limitations and exceptions set forth in this Title shall apply to copyrights and related rights.

Article 71 B. The inclusion in a work of fragments of a protected work, which has been lawfully made available and where the inclusion is made as a quotation or with a critical, illustration, teaching or research purpose, is lawful, without any payment having to be made or authorization obtained from its owner, provided that its source, title and author are mentioned.

Article 71 C. The reproduction, adaptation, distribution or public communication of a work which has been lawfully published is lawful, without any payment or authorization of its owner, if for the benefit of visually, hearing or other impaired persons prevented from normal access to such work, provided that such use is directly related to the corresponding impairment, is carried out using a procedure or means suitable to overcome such impairment, and without a profit-making purpose.

These copies shall expressly state that they have been made under the exception provided for in this Article, and that distribution and availability thereof, for any title whatsoever, to anyone other than such specifically impaired persons is prohibited.

Article 71 D. Lessons given at higher education institutions, colleges and schools may be written down or recorded in any manner by those to which they are addressed but may not be published, either in whole or in part, without the authorization of their author.

Conferences, political speeches, pleadings and other works of the same nature that have been given or made in public may be used freely and without any payment, for information purposes, and their author shall reserve the right to publish them in a separate collection.

Article 71 E. Works or phonograms may be used freely and without any payment in stores displaying and selling musical instruments, radio, television or any other equipment allowing the transmission of images or sounds, for the sole purpose of making demonstrations to customers, provided that these are carried out within the facility or in the facility area intended for such purpose, and in conditions preventing their broadcasting outside the facility.

In the case of stores selling computer programs or equipment, the use of protected works lawfully obtained shall be free and without any payment, for the sole purpose of making demonstrations to customers and in such conditions as those stated in the foregoing paragraph.

Article 71 F. The reproduction of architectural works by means of photography, cinema, television and any other similar means, as well as the publication of their photographs in newspapers, magazines and school texts, are free and not subject to payment, provided that they are not contained, either in whole or in part, in a separate collection without the authorization of their author.

Likewise, the reproduction, by means of photography, drawing or any other means, of monuments, statues and in general any art work permanently located in squares, avenues and public

places is free and not subject to payment, and the publication and sale of these reproductions is lawful.

Article 71 G. In architectural works, the author may not prevent any modifications which the owner may decide to make, but may determine not to be mentioned as the author of the project.

Article 71 H. The obligation set forth in Article 30 shall not apply to publicity or advertising films. Likewise, the author's name need not be mentioned in advertising photographs.

In addition, the provisions of Article 37 bis shall not apply to computer programs whenever these are not the essential subject matter of the rental.

Article 71 I. Nonprofit libraries and archives may, without any payment or authorization of the author or owner, reproduce a work that is not available in the market, in the following cases:

a) Whenever the copy is in their permanent collection and this is necessary for purposes of preservation or replacement in case of loss or wear and tear, up to a maximum of two copies.

b) To substitute a lost, destroyed or otherwise rendered useless copy in another library or archive, up to a maximum of two copies.

c) To incorporate a copy to their permanent collection.

For purposes of this Article, the copy of the applicable work shall not have been available for public sale in the domestic or international market within the last three years.

Article 71 J. Nonprofit libraries and archives may, without any payment or authorization of the author or owner, make copies of fragments of works in their collections, at the request of a user exclusively for his/her personal use.

The copies referred to in the foregoing paragraph may only be made by the respective library or archive.

Article 71 K. Nonprofit libraries and archives may, without any payment or authorization of the author or owner, electronically reproduce any works from their collections to be simultaneously consulted without charge by a reasonable number of users, only in the library or archive networks, and in conditions ensuring that no digital copies can be made of those reproductions.

Article 71 L. Nonprofit libraries and archives may, without any payment or authorization of the owner, translate works originally written in a foreign

language and lawfully acquired, if after a period of three years from their first publication, or one year in the case of periodical publications, their Spanish translation has not been published in Chile by the right holder thereof.

Such translation shall be done for research or study purposes by the users of the corresponding libraries or archives, and may only be partially reproduced in any publications arising from such translations.

Article 71 M. It is lawful, without any payment or authorization of the author, to reproduce and translate for educational purposes, within the formal educational framework or that authorized by the Ministry of Education, fragments of works or isolated works of an artistic, photographic or figurative nature, excluding school texts and university manuals, whenever this is done solely to illustrate educational activities, as deemed reasonable and without a profit-making purpose, provided that such works have already been made available and their author's name and source are mentioned, unless this is rendered impossible.

Article 71 N. The use of a work, including phonograms, within the family group, educational facilities, charitable organizations, libraries, archives and museums, is not considered a public communication or performance of the work, provided that such use is not made for commercial purposes.

In these cases no payment or authorization from the author or owner shall be required.

Article 71 Ñ. The following computer program activities are allowed, without any payment or authorization of the author or owner:

a) The adaptation or copy of a computer program by its holder, provided that such adaptation or copy is essential for its use or for archive or backup purposes and not used otherwise.

Any such adaptation may not be transferred for any title whatsoever, without the prior authorization of the respective copyright holder; likewise, any such copy may not be transferred for any title whatsoever, unless transferred together with its master computer program.

b) Reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out for the sole purpose of achieving interoperability between or among computer programs or for research and development purposes. The information so obtained may not be used to produce or market a similar computer program in violation of the provisions hereof or for any other copyright infringing acts.

c) Activities with regard to a lawfully obtained copy of a computer program, carried out for the sole purpose of testing, investigating or correcting the operation or security of that

program or other programs, of the network or the computer in which it is applied. Information derived from these activities may only be used for the above mentioned purposes.

Article 71 O. Temporary reproduction of a work is lawful, without any payment to or authorization of its owner. Such temporary reproduction shall be transient or incidental, and an integral and essential part of a technological process, and its sole purpose shall be to enable the lawful transmission in a network between third parties by an intermediary, or the lawful use of a protected work or other material, and shall have no independent economic significance.

Article 71 P. A satire or parody that constitutes an artistic contribution different from the work subject to the satire or parody, its interpretation or an interpreter's characterization shall be lawful.

Article 71 Q. The incidental and exceptional use of a protected work for critical review, commentary, caricature, teaching, academic interest or research purposes is lawful, provided that such use is not a covert exploitation of the protected work. The exception established in this Article is not applicable to audiovisual works of a documentary nature.

Article 71 R. Works originally written in a foreign language and lawfully acquired may be translated for personal use, without any payment or authorization of their author or owner.

Article 71 S. A work may, without any payment or authorization of its author or owner, be reproduced or communicated to the public to carry out any judicial, administrative and legislative proceedings.

9) The following Article 72 bis is added:

"Article 72 Bis. The holder of a property right in a work may use the symbol "©" in its copy by placing it before the year of the first publication and the right holder's name.

Copies of phonograms may bear on them or on their packaging, a symbol "(p)" before the year of their first publication and the producer's name.

Natural persons or legal entities whose name is shown as indicated in the foregoing paragraphs shall be assumed to be the holders of their respective rights."

10) Current Chapter II of Title III, which has been renumbered as Title IV, is substituted by the following:

"Chapter II
On Actions and Procedures

Paragraph I
On Violations of the Provisions of this Law

Article 78. Any violation of this Law and its regulation not expressly provided for in Articles 79 et seq. shall be subject to a fine of 5 to 50 monthly tax units.

Paragraph II
On Offenses against Intellectual Property

Article 79. A fault or offense is committed against intellectual property by:

a) Any person who, without being expressly empowered for such purpose, uses somebody else's works protected by this Law, either unpublished or published, in any of the forms or by any of the means established in Article 18.

b) Any person who, without being expressly empowered for such purpose, uses the protected performances, productions and broadcasts of the holders of related rights, for any of the purposes or by any of the means established in Title II.

c) Any person who falsifies or forges a list of works performed.

d) Any person who falsifies data in the rendering of accounts referred to in Article 50.

e) Any person who, without authorization of the right holder or the law, collects royalties or grants licenses in respect of any protected works or interpretations or performances or phonograms.

Any such persons shall be subject to the following penalties:

1. Whenever the amount of damages is lower than 4 monthly tax units, the penalty shall be imprisonment in any degree or a fine of 5 to 100 monthly tax units.

2. Whenever the amount of damages is equal to or higher than 4 monthly tax units and is lower than 40 monthly tax units, the penalty shall be short-term imprisonment of minimum length and a fine of 20 to 500 monthly tax units.

3. Whenever the amount of damages is equal to or higher than 40 monthly tax units, the penalty shall be short-term imprisonment of minimum length and a fine of 50 to 1,000 monthly tax units.

Article 79 bis. Any person who forges a work protected by this Law, or whoever edits, reproduces

or distributes it by falsely showing the name of the authorized editor, by deleting or changing the name of the author or the title of the work, or by maliciously altering its text, shall be subject to the penalties of short-term imprisonment of minimum length and a fine of 10 to 1,000 monthly tax units.

Article 80. An offense against intellectual property, punishable by a fine of 25 to 500 monthly tax units, is committed by:

a) Any person who knowingly reproduces, distributes, makes available or communicates to the public a work that is in the public domain or belongs to the common cultural heritage under a name other than that of its actual author;

b) Any person who assumes to hold or claims property rights over works in the public domain or belonging to the common cultural heritage;

c) Any person who, being obliged to pay in compensation for the performance or communication to the public of protected works, fails to prepare the corresponding lists of works performed.

Article 81. Any person who keeps for marketing purposes, markets or rents out directly to the public copies of works, performances or phonograms, in whatever support, reproduced in violation of the provisions hereof, is committing an offense against intellectual property and shall be subject

to a penalty of short-term imprisonment of minimum length and a fine of 50 to 800 monthly tax units.

Any person who, for profit purposes, manufactures, imports, brings into the country, has or acquires for their commercial distribution such copies as referred to in the foregoing paragraph shall be subject to the penalties of short-term imprisonment of medium to maximum length and a fine of 100 to 1,000 monthly tax units.

Article 82. In case of recidivism of the offenses provided for herein, the maximum penalties contemplated for each of them shall apply. In these cases, the fine may not be lower than twice the prior fine, and for an amount of up to 2,000 monthly tax units.

Article 83. In the case of the offenses contemplated in Article 81, the penalty shall be increased by one degree if the liable person is a member of an association or group of persons engaged in committing such offenses, without incurring in illegal association offenses.

In the case of Section 293 of the Criminal Code, a fine of 100 to 1,000 monthly tax units shall also be applied; and a fine of 50 to 500 monthly tax units shall be applied in the case of Section 294 of the Criminal Code.

Article 84. Any person who, without authorization

of the right holder or the law, and who knows or should know that it will induce, enable, facilitate or conceal an infringement of any copyright or related rights, shall incur in civil liability upon committing any of the following acts:

a) Removing or altering any rights management information.

b) Distributing, importing for distribution, broadcasting, communicating or making available to the public copies of works or phonograms, knowing that the rights management information has been removed or altered without authorization.

c) Distributing, or importing for distribution, rights management information, knowing that such information has been altered without authorization.

Whoever commits any of the acts described in the foregoing subparagraphs shall be subject to a fine of 25 to 150 monthly tax units.

Article 85. For purposes of the provisions of the foregoing Article, rights management information shall mean:

a) Information which identifies a work, interpretation or performance, or phonogram; the author of the work, the artist, interpreter or performer of the performance, or the producer of the phonogram; or the owner of any right in the work, interpretation or performance, or phonogram.

b) Information about the terms and conditions of the use of the work, interpretation or performance, or phonogram.

c) Any numbers or codes that represent such information, when any of these items is attached to a copy of the work, interpretation or performance or phonogram, or appears in conjunction with the communication or making available of the work, interpretation or performance or phonogram to the public.

Article 85 A. The amount of damages referred to in this Title shall be assessed on the basis of the legitimate retail value of protected material.

In the case of protected material without a legitimate retail value, the judge shall reasonably assess the amount of damages for application of the penalty.

Paragraph III
On Rules Applicable to Civil and Criminal Judicial
Proceedings

Article 85 B. Holders of any rights acknowledged herein may, notwithstanding any other actions to which they might be entitled, demand for:

a) Discontinuation by the infringer of the illegal activity.

b) Compensation for property and moral damages.

c) Publication of an abstract of the judgment, at defendant's expense, in a commercial newspaper of the relevant Region, at the option of the injured person.

Article 85 C. The court, at the request of the injured person, shall order that any copies that may have resulted from any infringement or offense set forth herein be destroyed or no longer marketed.

The charitable donation of these copies may only be ordered by the court with the authorization of the right holder. In this case, the court may order the required measures to ensure that such copies will not be returned to the market, by ordering to have such copies marked and prohibiting the beneficiary to dispose of them.

Article 85 D. The court may, at any stage during the proceedings, order the following provisional relief:

a) To immediately suspend the sale, circulation, display, performance, representation or any other form of allegedly infringing exploitation.

b) To prohibit executing or performing any acts and contracts on certain properties, including the prohibition to advertise or promote the products or services that are the subject matter of the alleged infringement.

c) To retain allegedly unlawful copies.

d) To retain or seize any materials, machinery and implements that have been used for the production of allegedly unlawful copies or for the allegedly infringing activity, where necessary to prevent further infringement.

e) To remove or dispose of any devices used in the unauthorized public communication, unless the alleged infringer guarantees that he/she shall not resume the infringing activity.

f) To appoint one or more inspectors.

g) To attach the product of recitation, representation, reproduction or performance, until reaching such applicable copyright amount as reasonably established by the court.

For any matters not regulated by the foregoing paragraph, the application of these measures shall be governed by the general provisions set forth in Title V, Book II, of the Code of Civil Procedure.

The measures established in this Article may be requested for application as preliminary injunctions (i.e. before the lawsuit is served),

notwithstanding any and all preliminary measures contemplated in Title IV and Title V, Book II, of the Code of Civil Procedure, provided that appropriate evidence is furnished to reasonably prove the existence of the asserted right and the risk of imminent infringement, and provided that a bond is posted in a sufficient amount, in accordance with the provisions of Section 279 of the Code of Civil Procedure.

Article 85 E. In determining property damages, the court shall consider, among other factors, the legitimate retail value of the goods that are the subject matter of the infringement.

The court may, likewise, order the infringer to pay any profits that are attributable to the infringement and not already taken into account in determining the damages.

Notwithstanding the existence of property damage, for purposes of assessing moral damage, the court shall consider the circumstances of the infringement, the gravity of the injury, the impairment caused to the author's reputation and the extent to which the work has been unlawfully made available, from an objective point of view.

Article 85 F. In making compensation for damages effective, the court may order, at any party's request and notwithstanding any rights that may be asserted by third parties, the attachment

and delivery to the right holder of the product of recitation, representation, reproduction, performance or any other form of unlawful exploitation.

Article 85 G. A legal action ex officio shall be exercised without the need for a formal complaint by a person or right holder in respect of any offenses sanctioned herein.

Article 85 H. It shall be presumed, in the absence of proof to the contrary, that copyright and related rights subsist in a work or phonogram that is less than seventy years from the date of its first publication.

However, the provisions of the foregoing paragraph shall not apply in respect of those works and related materials that have come into the public domain due to expiration of the protection term pursuant to this Law or prior statutes.

Paragraph IV
On Special Rules Applicable to Civil Judicial
Proceedings

Article 85 I. In civil judicial proceedings, the court shall have the authority to order alleged infringers of this Law to provide any information

they may have regarding other persons involved in the infringement, and regarding the production and distribution channels of infringing material. The court shall also have the authority to impose fines from 1 to 20 monthly tax units on infringers who refuse to provide such information.

Article 85 J. The judge of first instance in civil matters who, in accordance with the general rules hears cases under this Law, shall hear such cases based on a brief and summary procedure.

Article 85 K. Any right holder shall be entitled to request, once the relevant infringement has been proved judicially, that the compensation for property and moral damages caused be substituted by a lump sum compensation payment to be determined by the court in relation to the gravity of the infringement, and not in excess of 2,000 monthly tax units per infringement.".

11) The following is inserted as new Chapter III in current Title III, which has been renumbered as Title IV, and current Chapter III has been renumbered as Chapter IV.

"Chapter III
Limitations on Liability of Internet Service
Providers

Article 85 L. Notwithstanding the general rules on civil liability that are applicable, in the event of infringement of rights protected under this Law, committed by third parties through systems or networks controlled or operated by a natural person or legal entity providing any of the services described in the following Articles, such service providers shall not be obligated to compensate the damage, provided that they comply with the conditions set forth in the following Articles to limit such liability, based on the nature of the service provided. In such cases, service providers may only be subject to preliminary and permanent injunctions as referred to in Article 85 R.

Article 85 M. The providers of data transmission, routing or connections services shall not be considered liable for the data transmitted on condition that the provider:

a) Does not modify or select the content of the transmission. For these purposes, modification of the content shall not include technological manipulation of material for the purpose of facilitating network transmission, such as division into packets;

b) Does not initiate the transmission itself; and

c) Does not select the recipients of the information.

This liability limitation comprises the automatic storage or automatic copy, on a temporary basis, of the data that is being transmitted, technically necessary to perform the transmission, provided that such automatic storage or copy is not of general public access and is not stored beyond a reasonable amount of time needed to perform the communication.

Article 85 N. The providers of data storage services of a temporary nature that are carried out through an automatic storage process shall not be considered liable for the cached data on condition that the provider:

a) Complies with conditions on user access and rules regarding the updating of the cached material imposed by the supplier of the originating site, except when those rules are used by such supplier to prevent or impair without any cause the temporary storage referred to herein;

b) Does not interfere with compatible and standardized technology used at the originating site to obtain information about the online use of the cached material, when such technology is lawfully used and consistent with widely accepted industry standards;

c) Does not modify its content in transmission to subsequent users; and

d) Expeditiously removes or disables access, upon

receipt of a notification in accordance with the procedure set forth in Article 85 Q, to cached material that has been removed or access to which has been disabled at the originating site.

Article 85 Ñ. The service providers who, at the request of a user or on behalf of third parties, store data in their network or system, or who perform searches or link and/or refer users to an online site by using information location tools, including hyperlinks and directories, shall not be considered liable for the stored or referred data on condition that the provider:

- a) Has no actual knowledge of the unlawful nature of the data;
- b) Does not receive a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;
- c) Publicly designates a representative to receive the notifications referred to in the last paragraph, as set forth in the regulation; and
- d) Expeditiously removes or disables access to the stored material in accordance with the following paragraph.

The service provider shall be deemed to have actual knowledge when a competent court of justice, in conformity with the procedure set forth in Article

85 Q, has ordered that the data be removed or access to it be disabled and the service provider, legally served, does not comply expeditiously with such order.

Article 85 O. Eligibility for application of the limitations in the foregoing Articles shall be conditioned on the service provider:

a) Having adopted a general public policy that provides that it has the authority to terminate the agreements entered into with content providers declared repeat infringers of the rights protected under this Law by court resolutions;

b) Not interfering with technological and rights management measures relating to copyrighted material, that are widely accepted and lawfully used;

c) Not having initiated the transmission, nor having selected the material or its recipients.

Providers of services who perform searches or link or refer users to an online site by using information location tools are exempted from this obligation.

Article 85 P. The service providers referred to in the foregoing Articles shall not be obligated, for purposes hereof, to supervise the data they transmit, store or refer to or to perform active

searches of facts or circumstances indicating illegal activities.

The foregoing provision shall apply notwithstanding any activity that the ordinary courts of justice may order to investigate, detect and prosecute offenses or abusive practices in relation to copyright or related rights acknowledged in this Law.

Article 85 Q. For those infringements of rights acknowledged in this Law committed on or through networks or systems controlled or operated by or on behalf of service providers, the right holder or his/her representative may request as preliminary or permanent injunctions those measures contemplated in Article 85 R. When the injunctions are requested before the lawsuit is served (preliminary injunctions), and provided there are serious motives for it, such injunctions may be ordered by the court without hearing the content provider, but in this case the petitioner must post a bond at the court's satisfaction. The judge of first instance in civil matters with seat at the service provider's domicile shall hear the petition, without prejudice to the criminal proceedings that may be brought.

For these purposes, the petition, in addition to complying with the requirements set forth in subsections 1, 2 and 3 of Section 254 of the Code of Civil Procedure, shall clearly indicate:

a) The rights allegedly infringed, with clear

indication of the holder thereof and the kind of infringement;

b) The infringing material; and

c) The location of the infringing material in the networks or systems of the relevant service provider.

Once the foregoing has been complied with, the court shall order without further delay to remove or disable access to the infringing contents. The resolution shall be notified to the respective service provider by official notice, and to the petitioner through the publication board at the court.

The affected content provider may, notwithstanding other rights, request the court issuing the order to disregard the measure of disabling access or removing the material. For this purpose, it shall file a petition meeting the same requirements as those set forth in paragraph 2, and shall furnish any additional information supporting such petition, which shall imply express acknowledgment of the jurisdiction of the court hearing the case.

The above shall be a brief and summary procedure, and appeals shall be granted with no stay of execution, with priority for being heard by the court of appeals.

Article 85 R. In those cases in which the general

requirements set forth in Article 85 O and the requirements in Article 85 M have been complied with, in respect of transmission, routing or providing connections functions, the court may only order, as preliminary or permanent injunctions, the adoption of reasonable measures to block access to a particular infringing content clearly identified by the petitioner, provided that the blocking does not disable access to other legal content, as set forth in paragraph 2 of the foregoing Article.

In those cases in which the general requirements in Article 85 O and the special requirements in Articles 85 N and 85 Ñ have been complied with, in respect of the functions mentioned in those Articles, the court may only order, as preliminary or permanent injunctions, the following measures:

a) Removing or disabling access to the infringing material clearly identified by the petitioner, as set forth in paragraph 2 of Article 85 Q;

b) Terminating specified accounts of repeater infringers with the service provider, clearly identified by the petitioner, as set forth in paragraph 2 of Article 85 Q, and whose holder is using the system or network to perform an activity infringing copyrights and related rights.

Any such relief measures shall be issued with due regard for the relative burden to the service provider, to users and subscribers, the potential harm to the holders of copyright or related rights, the technical feasibility and effectiveness of

the remedy, and whether less burdensome enforcement methods are available.

These measures shall be ordered after due notice has been given to the service provider, pursuant to paragraphs 3, 4 and 5 of Article 85 Q, except for orders ensuring the preservation of evidence or other orders that are not expected to have an effect on the operation of the service provider's system or network.

Article 85 S. The competent court may, at the request of the right holders who have brought the proceedings described in the foregoing Article, order the delivery of the information allowing the identification of the alleged infringer by the relevant service provider. Processing of the data so obtained shall be subject to the provisions of Law No. 19,628 on privacy protection.

Article 85 T. Any person who knowingly provides false information in connection with alleged infringements of rights acknowledged in this Law must compensate the damages caused to any interested party, if such damages are the result of actions taken by the network service provider based on such information. The provisions in Section 197 of the Criminal Code shall apply.

Article 85 U. Notwithstanding the above provisions contained in this Chapter, Internet service

providers must communicate to their users in writing the notices of alleged infringement they receive, provided that the communication meets the following requirements:

a) The notice of the alleged infringement must be received from the right holder or his/her representative, in electronic or any other written form;

b) The right holder or his/her representative must have his/her domicile or residence in Chile, and the latter must hold sufficient power to be summoned to court, on behalf of the holder;

c) The allegedly infringed rights must be identified, with a precise indication of their ownership and the kind of infringement;

d) The infringing material must be identified together with its location in the networks or systems of the service provider to whom the communication is sent, through the URL or its equivalents; and

e) It must contain data to allow the service provider to identify the user providing the allegedly infringing material.

Once a communication is received pursuant to the foregoing paragraph, Internet service providers must communicate this situation to the allegedly infringing user, accompanying the information provided by the right holder or his/

her representative, within a period of five working days as from the receipt of such communication.".

12) The following is added as new paragraph 2 in Article 88:

"However, by resolution of the owner, any such works may be released so that they become part of the common cultural heritage. This exception shall not apply to those works developed as part of the specific activities conducted by a public or state-owned company, when the work has a strategic meaning for their purposes, or as expressly provided by the law creating and governing it.".

13) In paragraph 2 of Article 92, the following phrase is inserted between the expressions "that" and "the remaining": "up to 10% of the proceeds and".

14) Paragraphs 4, 5 and 6 of Article 100 are substituted by the following:

"Rights management organizations may differentiate general rates according to the user category, and also set alternative rate plans or special rates by agreement with users' associations, which may be elected by any user within the same category. Rates agreed pursuant to this provision shall be published in the Official Gazette.

The rates payable to users that are required to prepare lists, pursuant to the law or under their corresponding license agreements, shall be structured so that their application relates to the use of the works, performances or phonograms of copyright holders represented by the relevant collective management organization.

In the event such list is not prepared or is incomplete or contains false information, the provisions in the foregoing paragraph shall not apply.

Unless otherwise agreed, entertainment companies whose activity is based on the use of musical works and broadcasting organizations shall be obligated to prepare lists of works performed or used. The other users shall be exempted from the obligation to prepare such lists.

This Article shall not apply in respect of the management of literary, dramatic, dramatic musical, choreographic or pantomimic works, nor in relation to those uses referred to in paragraph 2 of Article 21, unless the relevant organization performs the collective management of the rights in such works."

15) The following new Articles 100 bis and 100 ter are hereby added:

"Article 100 bis.- Notwithstanding the provisions

in paragraph 3 of the foregoing Article, associations with legal standing representing copyright or related rights users who have not reached an agreement with a collective management organization on the amount of the royalty rate, shall submit their controversy to mediation, which shall be mandatory for both parties.

The mediation shall be a non-adversarial procedure aimed at seeking an extrajudicial solution of the controversy through direct communication between the parties and with involvement of a mediator. Mediators must register with a Public Registry of Mediators and Arbitrators of Intellectual Property maintained by the National Council for Culture and the Arts. Mediators and arbitrators referred to in the following Article must hold a professional degree, with at least five years of professional practice and qualified experience in the field of intellectual property or in the area of economic activity. The registration procedures, the form and characteristics of the Registry, and the fees to be received by mediators and arbitrators shall be determined by a regulation issued, within six months as from the publication of this Law in the Official Gazette, by the Ministry of Education and signed, additionally, by the Ministry of Economy, Development and Reconstruction. The publication of the notice referred to in paragraph 4 of this Article shall be paid by the party contesting the royalty rate.

The mediator shall be appointed by mutual agreement between the parties and, in the absence of mutual

agreement, by the judge of first instance in civil matters of the relevant management organization's domicile, at the request of the users' association or the management organization, among those registered in the Public Registry of Mediators and Arbitrators of Intellectual Property, pursuant to the procedure for the appointment of expert witnesses set forth in the Code of Civil Procedure. The appointment made by the court may not be appealed. To make such appointment, the judge must verify, by means of the information provided by the parties, that the relevant rate is not an effective rate determined by mutual agreement between the parties or by a final and binding arbitral award, rendered within a period of three years prior to the date of filing for mediation, and that the controversial issue is not currently subject to mediation or arbitration, or has not been submitted to mediation or arbitration during such period. If any of these circumstances is verified, the judge shall disregard the petition for mediation.

Once the mediator has been appointed, the judge shall order that a notice on the circumstance that a certain rate has been submitted to mediation be published in a newspaper of national coverage, so that interested parties may participate in the mediation process, as set forth in sub-section 2 of Section 21 of the Code of Civil Procedure.

The term of the mediation process shall not exceed sixty days as from the publication of the notice referred to in the foregoing paragraph. However, the parties may request an extension of this term

by mutual agreement.

During the procedure, the mediator may call as many hearings as necessary for the purposes of the mediation.

Within ten days as from the notification of the mediator's appointment, the parties shall submit substantiated proposals for rates and uses concerning their application, together with supporting evidence. Notwithstanding the above, during the mediation the parties may submit new rate proposals.

In the event of non-appearance of a party, non-submission by a party of a substantiated rate proposal or the abandonment by a party of the mediation process, the rate proposal of the counterparty shall be deemed to have been accepted by operation of law and to have the value of a final and binding judgment. The mediator shall state the foregoing circumstances in the record of mediation.

In the event of agreement on all or some of the issues submitted to mediation, this shall be stated in a record of mediation which, having been read to the participants in the mediation, shall be executed by the parties and the mediator, with one counterpart being retained by each of them. Such record shall have the value of a final and binding judgment. The rate agreed under this procedure, as well as that determined in accordance with the foregoing paragraph, may not be changed by the

relevant management organization, or be submitted to a new mediation, within a term of three years as from the date of the record of mediation.

If within the original or extended term no agreement is reached, the process shall be deemed to have failed and a record shall be drawn up and executed by both parties. In the event that any party does not or can not sign, the mediator shall put this circumstance on record, acting as authenticating officer. Thereafter, the parties may submit the controversy to arbitration as set forth in the following Article.

Article 100 ter.- In the event the mediation fails, either in whole or in part, the controversial issue(s) shall be submitted to arbitration, at the request of any party. To such end, any party may appear within thirty days as from the date of the record referred to in the final paragraph of the foregoing Article, before the judge of first instance in civil matters of the relevant management organization's domicile to initiate the procedure of designation of the arbitration tribunal, accompanying the record of mediation previously executed.

Once the above term has expired, the contested rates may not be submitted to a new mediation process until three years have elapsed since the date of the relevant record of mediation.

The arbitration tribunal shall be composed of three

arbitrators in law, governed by Section 222 et seq. of the Organic Code of Courts, appointed as follows: one arbitrator shall be appointed by the users' association, another one by the collective management organization and the third one by mutual agreement between the parties and, in the absence of mutual agreement or appointment by one of the parties, by the judge of first instance in civil matters of the relevant collective management organization's domicile. Such appointment shall be subject to the procedure applicable to the appointment of expert witnesses set forth in the Code of Civil Procedure, and the parties may not object to such appointment. The arbitrators must be registered in the Registry of Mediators and Arbitrators of Intellectual Property.

The tribunal shall set the hearing date, and establish the method to be used to give notice to the parties of its decisions and rulings as well as its rules and procedures, contemplating the hearing of the parties, the way in which evidence and information shall be submitted, and the way in which petitions shall be filed.

During the hearing set for such purpose, the parties shall submit in a sealed envelope substantiated proposals for final rates and their related uses, together with supporting evidence and information.

The unjustified non-appearance of a party shall result in the acceptance of the counterparty's proposal, and the tribunal shall issue a ruling

within ten days. To this effect, the non-appearing party shall provide, within three days, an explanation satisfactory to the tribunal of the reason for its non-appearance.

To solve the controversy submitted to arbitration, the tribunal shall consider, among other criteria, the user's category, the pecuniary profit obtained by the users of said category when operating the organization's record or repertoire, the importance of the record or repertoire in the business of users of said category, and prior rates agreed upon by the parties or established in a previous process.

During the process, the tribunal may call upon the parties to settle the controversy. Likewise, the parties may agree to end the arbitration process, for which purpose the submission of their agreement on rates shall suffice. In the latter case, such agreement shall have the value of a final and binding judgment.

When issuing its ruling, the tribunal may only choose the proposal of one of the parties submitted in a sealed envelope. The tribunal's ruling shall have the value of a final and binding judgment and shall constitute an alternative rate plan, and any users requesting it shall be able to avail themselves of such special rates. To this effect, the collective management organization shall make the award or agreement, as appropriate, available to the public. Likewise, the tribunal shall send a copy thereof to the National Council for Culture

and the Arts, which shall maintain a public registry of such awards and agreements.

The rate established under this procedure may not be modified by the relevant management organization, nor be submitted to a new mediation or arbitration, within a term of three years.

The ruling shall be issued within sixty days from the constitution of the tribunal. The only remedies available against the arbitral award shall be an appeal based on procedural defects (*recurso de casación en la forma*), as provided for in Section 239 of the Organic Code of Courts, and a disciplinary remedy (*recurso de queja*), pursuant to Section 545 et seq. of the same Code.

A further remedy of review, clarification or amendment is available (*recurso de rectificación, aclaración o enmienda*), for the sole purpose of specifying the necessary conditions for a better application of the rate chosen by the tribunal, without altering its substantive conditions. This remedy may be filed within a term of fifteen days as from the notification of the award.

Process costs shall be paid by the party whose rate proposal is rejected by the tribunal.

During the arbitration process, users may use the collective management organization's record or repertoire involving the rates that caused the controversy, paying the rates in force prior to the arbitration, and should there be no such

rates, those fixed by the management organization pursuant to the law. The difference between the rate paid and the final rate shall give rise to recalculations to be determined in the arbitral award."

Article 2°.- The following amendments are hereby made to Law No. 19,227, which creates the National Books and Reading Promotion Fund:

a) Current paragraphs 2 and 3 of Article 11 are substituted by the following paragraph 2:

"Likewise, any person who uses deceitful or fraudulent methods to unduly avail itself of the benefits granted by this Law shall be subject to the penalties set forth in Article 79 of Law No. 17,336."

b) Article 12 is hereby repealed.

Provisional Articles

Article one.- The provisions of Articles 100 bis and 100 ter shall not apply to management organizations that, as of the date of publication of this Law, have not published their rates in the Official Gazette, and the collective management

organizations protected by Law No. 20,243, until three years have elapsed since the publication of this Law in the Official Gazette.

Article two.- The President of the Republic is hereby empowered to establish a newly consolidated, coordinated and systematically codified text of Law No. 17,336 through a decree with effect of law issued within the term of one year as from the publication of this Law. "

Attached is a copy of the aforementioned judgment.
May God protect You.

ALEJANDRA SEPÚLVEDA ÓRBENES
President of the House of Representatives

ADRIÁN ÁLVAREZ ÁLVAREZ
Provisional General Secretary of the House of
Representatives