

LAW ON AMENDMENTS AND ADDITIONS TO LAW No. 312,

LAW ON COPYRIGHT AND RELATED RIGHTS

LAW No. 577, Adopted on March 16, 2006

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THE PRESIDENT OF THE REPUBLIC OF NICARAGUA

Hereby informs the Nicaraguan people as follows.

THE NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA

WHEREAS

I

The Political Constitution of Nicaragua, in Articles 125 to 128, promotes and protects intellectual property and makes it an obligation for the State of Nicaragua to support the national culture in all of its expressions, whether collective or individual; moreover, the State of Nicaragua shall provide the necessary means to create and disseminate works and protect copyright.

II

The National Assembly, in accordance with the powers set out in Article 138.12 of the Political Constitution, adopted the Free Trade Agreement between Central America, the United States of America and the Dominican Republic (CAFTA-DR) through Decree A.N. No. 4371, published in “La Gaceta” (the Official Gazette) No. 199 of October 14, 2005.

III

The President of the Republic ratified the Free Trade Agreement between Central America, the United States of America and the Dominican Republic (CAFTA-DR) through Executive Decree No. 77-2005, published in “La Gaceta” of November 20, 2005, in accordance with the powers set out in Article 150 of the Political Constitution.

IV

The National Assembly adopted, through Decree A.N. No. 3288, published in “la Gaceta” No. 92 of May 20, 2002, the 1996 World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), known as the Internet Treaties, in force since March 6, 2003.

V

It is necessary with regard to aspects of intellectual property to guarantee the implementation of the immediate undertakings laid down in Chapter Fifteen, Intellectual Property Rights derived from CAFTA-DR, WCT and WPPT.

In the exercise of its powers,

HAS ISSUED

the following:

**Law on Amendments and Additions to Law No. 312,
Law on Copyright and Related Rights**

Article 1.- Amend subparagraphs 2.5, 2.12, 2.27, 2.28 and 2.29 of Article 2 to read as follows:

“2.5. Communication to the public means any act including transmission or broadcasting whereby a plurality of persons can have access to the work, performance, phonogram or broadcast, including the making available to the public, in such a way that members of the public may access them from a place and at a time individually chosen by them. The communication shall not be considered public when it goes into effect within the ordinary family circle of a natural person for non-profit-making purposes.”

“2.12. Phonogram means any fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work. The rights of a phonogram shall not be affected in any way by their incorporation in a cinematographic or other audiovisual work.”

“2.27. Publication means any act whereby a work or phonogram is offered to the public, with the consent of the author when a work is involved, with the consent of the producer in the case of a phonogram, for its sale, rental, public loan or any other transfer of property or possession, and provided that sufficient copies are offered to the public. In the case of a performance this means offering the public copies of the fixed performance or of the phonogram with the consent of the right holder and provided that sufficient copies are offered to the public.”

“2.28. Broadcasting means the transmission by wireless means or by satellite for public reception of sounds or of images and sounds or the representations of sounds, including the wireless transmission of encrypted signals, where the means for decrypting are provided to the public by the broadcasting organization or with its consent. Transmissions in which the time and place of reception may be individually selected by the public shall not be considered broadcasting.”

“2.29. Reproduction means making one or more copies of a work, performance, phonogram or broadcast, directly or indirectly, in any medium or form, including the printing, photocopying, recording or permanent or temporary storage in electronic form.”

Article 2.- Reword Article 23 to read as follows:

“Article 23.- Economic rights are inalienable, temporary and, without prejudice to other arrangements, shall comprise the following:

- (1) Complete or partial right of reproduction of the work, permanent or temporary, on any type of medium;
- (2) Right of transformation;
- (3) Right of translation;
- (4) Right of adaptation;

(5) Right of communication to the public, such as:

(a) Declamation;

(b) Representation or performance, directly or indirectly;

(c) Showing, display or public exhibition;

(d) Remote digital or analog transmission, or transmission by any means, in wire or wireless form, of sounds, images and words, including the reception, in public places, of protected works and productions, including the making available to the public of works in such a way that members of the public may access them from a place and at a time individually chosen by them;

(e) Public access to computerized databases via telecommunication media;

(f) Broadcasting;

(6) Public distribution rights;

(7) Rental rights;

(8) Import rights.”

Article 3.- Reword Article 39.1 to read as follows:

“1. Need to use the computer program for the purposes for which it was designed; or”

Article 4.- Reword Article 40 to read as follows:

“**Article 40.-** Portions of articles on current economic, political or religious topics disseminated by social communication media may be reproduced, distributed and communicated publicly by any other medium in the same class without the author’s authorization, in cases where such reproduction, distribution or communication is not expressly reserved and as long as the source, including the author’s name, is clearly indicated, if they form part of the works or articles.”

Article 5.- Reword Article 43 to read as follows:

“**Article 43.-** Works located permanently in parks, streets, squares or other thoroughfares may be reproduced, without the author’s authorization, by means of painting, sketching, photographs and audiovisual recordings for personal use. In respect of works of architecture, the previous article shall only apply to their external aspect.”

Article 6.- Reword the first paragraph of Article 52 to read as follows:

“**Article 52.-** Without prejudice to the provisions of Article 49, in the case of a work executed by an author for a natural person or legal entity (hereinafter “employer”) in conjunction with a work contract and its use, unless otherwise provided in the contract, the primary owner of the moral and economic rights shall be the author, but the economic rights in the said work shall be considered to have been transmitted to the employer to the extent justified by the usual activities of the employer at the time the work was created. The employer may sue for infringements of the rights transferred.”

Article 7.- Insert an Article 54 bis to read as follows:

“Article 54 bis.- Articles 55 to 85 of this Law shall apply solely to contracts signed in Nicaragua, unless the Parties stipulate otherwise.”

Article 8.- Reword Article 86 to read as follows:

“Article 86.- Performers shall enjoy exclusive rights to authorize or prohibit, in respect of their unfixed performances, the broadcasting and communication to the public of their performances, unless such performance has already been broadcast; they shall also enjoy the right to fix their performances.”

Article 9.- Reword Article 87 to read as follows:

“Article 87.- Performers shall have the exclusive right to authorize, complete or prohibit their fixed performances:

1. The direct or indirect, total or partial, temporary or permanent reproduction, including temporary electronic storage, of their performances fixed by any means or procedure, as well as their exploitation in any form whatsoever.
2. The distribution of these same fixed performances, as originals or copies, through sale or another form of transmission of property, including their distribution through signals or broadcasting; or rental.
3. Communication to the public of performances fixed by any means or procedure, in wire or wireless form, including via broadcasting.
4. Rental and public loan of the fixed performances, or the transmission of possession in any form permitted by law.
5. The making available to the public of these fixed performances in wire or wireless form in such a way that members of the public may access them from a place and at a time individually chosen by them.
6. The adaptation or transformation of fixed performances.”

Article 10.- Reword Article 90 to read as follows:

“Article 90.- The rights covered by this Chapter shall be protected for a term of 70 years, computed from the end of the year in which the fixed performance was first published, or failing such publication, 70 years from the end of the year of the first performance.”

Article 11.- Reword Article 92 to read as follows:

“Article 92.- Producers of phonograms shall enjoy the exclusive right to authorize, execute or prohibit:

1. the direct or indirect, total or partial, temporary or permanent reproduction, including the temporary electronic storage of their phonograms by any means or procedure, as well as their exploitation in any form whatsoever.
2. the distribution of their phonograms, as originals or copies, through sale or another form of transmission of property, including distribution through signals or broadcasting; or rental.

3. the communication to the public of their phonograms by any means or procedures, in wire or wireless form, including through broadcasting.
4. the import of their phonograms or copies or reproductions thereof.
5. the synchronization of their phonograms.
6. the rental or public loan of their phonograms, or the transmission of possession by any form permitted by the law.
7. the making available to the public of the phonograms, in wire or wireless form, in such a way that members of the public may access them from a place or at a time individually chosen by them.
8. the adaptation or transformation of their phonograms.”

Article 12.- Reword Article 93 to read as follows:

“**Article 93.-** The duration of the rights mentioned in the previous article shall be 70 years, computed from the end of the year in which the phonogram was first published, or failing such publication, 70 years from the end of the year in which the fixation was made or the work was first performed. Economic rights shall be transmitted in any of the ways admitted by legislation.”

Article 13.- Insert Article 97 bis 1, to read as follows:

“**Article 97 bis 1.-** It shall be assumed, in the absence of evidence to the contrary, that the person whose name is indicated as the author, producer, performer or publisher of the work, performance or phonogram in the usual manner, is the designated owner of the rights in the said work, performance or phonogram.

It shall be assumed, in the absence of evidence to the contrary, that the copyright or related rights shall subsist in this respect.”

Article 14.- Insert Article 97 bis 2 to read as follows:

“**Article 97 bis 2.-** Final legal judgments and generally applicable administrative decisions or resolutions concerning the observance of intellectual property rights shall be formulated in writing and shall contain the pertinent de facto elements and the legal grounds on which the judgments, decisions or resolutions are based, in accordance with the Code of Civil Procedure. The said judgments, decisions or resolutions shall be published or made available to the public in some other manner, if such publication is not feasible.”

Article 15.- Reword Article 98 to read as follows:

“**Article 98.-** The cessation of the illicit activity may include:

1. A prohibition on carrying out the acts of which it consists, including among others, prohibiting the illicit imported goods from entering commercial channels, immediately after such goods are released from customs, or preventing their export.
2. Withdrawal from circulation of the illicit copies or their destruction, or with the consent of the holder of the right, donations for charitable purposes.
3. The seizure and destruction of the materials and tools used in the production, creation or marketing

of the illicit goods, except in cases of donation for charitable purposes and with the consent of the rights owner. The destruction or donation for charitable purposes of the materials and equipment shall take place without any compensation. When considering requests for the destruction of equipment, the judicial authorities may take into consideration inter alia the seriousness of the infringement, as well as the interests of third parties, holders of real rights, of possession, or of a contractual or guaranteed interest;

4. The seizure of the documentary proof relating to the infringement.

With a view to handing down the best possible ruling, the civil judicial authority may order the respondent to provide any information he possesses with regard to any persons involved in any aspect of the facts and with regard to the means of production or channels of distribution for the goods or services which form the subject matter of the infringement, including the identification of third parties involved in their production or distribution and their channels of distribution, and to provide the right holder with such information.”

Article 16.- Reword Article 100 to read as follows:

“**Article 100.-** Infringers of copyright or related rights shall be obliged to compensate the right holder for economic damages, as follows:

1. Adequate indemnization to compensate for the damage that the right holder has suffered as a result of the infringement; and
2. The infringer’s earnings that can be attributed to the infringement and that were not considered when calculating the amount of the damages referred to in subparagraph (1) of this Article.

When determining damages caused by infringements of intellectual property rights, the judges shall have to consider, inter alia, the value of the good or service that forms the subject matter of the infringement, based on the suggested retail price or another legitimate means of valuation presented by the rights holder.

In cases where the judge appoints technical or other experts in civil proceedings relating to the enforcement of the rights laid down in this Law and requires the parties to bear the costs of the experts, such costs shall be closely related, inter alia, to the quantity and nature of the work to be done and shall not constitute an unreasonable deterrent to appealing against such proceedings.”

Article 17.- Reword Article 101 to read as follows:

“**Article 101.-** Regardless of the nature of the recoverable damages and barring exceptional circumstances, the judge may order the infringer to pay the court costs and the reasonable fees of the attorneys who have pleaded for the injured party.”

Article 18.- Insert an Article 103.8 to read as follows:

“**8.** The judge shall be empowered to order the claimant to present reasonably available evidence, with a view to establishing to his satisfaction, with a sufficient degree of certainty, that the infringement of the plaintiff’s right is ongoing or imminent.”

Article 19.- Insert an Article 107.5 to read as follows:

“**5.** Seriously infringes copyright or related rights with a view to securing an advantage for himself and/or for another, or private economic gain, as well as someone who seriously infringes even though

he is not directly or indirectly motivated by economic gain, provided that substantive economic damage is done.”

Article 20.- Reword the second paragraph of Article 108 to read as follows:

“In addition to the sanctions laid down in Article 107, the judge shall impose on the infringer a fine ranging from 3,000 to 25,000 córdobas, in accordance with the seriousness of the infringement; if the infringer is a trader, he shall order the suspension of commercial activities for the duration of the sanction, without prejudice to his civil liabilities.”

Article 21.- Insert Articles 108 bis 1 and 108 bis 2, to read as follows:

“**Article 108 bis 1:** The criminal judicial authority shall be empowered to order the seizure of the following:

1. The merchandise that forms the subject matter of the presumed infringement.
2. Any material or tools used to commit the offence.
3. The assets related to the infringing activity.
4. Any proof relating to the offence, including the documentary evidence.

It shall not be necessary to identify individually the materials subject to seizure under the said judicial order, provided that and when they fall under the general categories specified in the order.”

“**Article 108 bis 2:** In any criminal proceedings brought under this Law, the criminal judicial authorities shall also be empowered to order the following:

- (1) The seizure of any assets relating to the infringing activity.
- (2) The seizure and destruction of any merchandise that forms the subject matter of the infringement, without any compensation for the defendant, with a view to preventing the merchandise from entering commercial channels.
- (3) The seizure and destruction of the materials and tools used to create the merchandise that forms the subject matter of the infringement.”

Article 22.- Reword Article 111 to read as follows:

“**Article 111.-** Any person who does the following shall commit the offense of circumvention of technological measures and shall be punishable by two to three years’ imprisonment and payment of a fine of no more than twenty-five thousand córdobas (C\$ 25,000.00):

- (1) circumvents, without the authorization of the rights owner, any effective technological measure controlling access to a protected work, performance or phonogram and other materials forming the subject matter of protection;
- (2) manufactures, imports, distributes, offers to the public, provides or in other ways trafficks in devices, products or components; and offers to the public or provides services to the public which:
 - 2.1 are promoted, advertised or marketed with the intent to circumvent an effective technological measure;

2.2 have only limited commercially significant purpose or use other than to circumvent an effective technological measure;

2.3 Are primarily designed or produced for the purpose of circumventing an effective technological measure.

The injured party shall be entitled to have recourse to the criminal proceedings laid down in Title IV of this Law. However, the illicit acts referred to in this Article shall constitute an offense that is separate from and independent of any violation that may occur of the copyright and related rights contained in this Law.

The provisions in subparagraph 2 of this Article shall not apply to an activity if the same is linked to the effective technological measures controlling access to protected works, performances or phonograms; and if the activity falls under one or more of the following categories:

(a) Non-infringing reverse engineering in respect of the lawfully obtained copy of a computer program, carried out in good faith, in respect of the specific elements of the said computer program that were not made available to the person involved in such activities, solely for the purpose of enabling interoperability of an independently created computer program with other programs;

(b) Non-infringing activities in good faith, carried out by a duly qualified researcher who has lawfully obtained a copy, performance or sample of an unfixated work, performance or phonogram and who has made a good faith effort to obtain authorization to carry out the said activities, as necessary, for the sole purpose of identifying and analyzing faults and vulnerabilities in the technologies to encrypt and decrypt the information;

(c) The inclusion of a component or part for the sole purpose of preventing minors from accessing inappropriate content online in a technology, product, service or device that is not itself prohibited under the measures implemented in subparagraph 2 of this Article.

(d) The non-infringing activities in good faith authorized by the owner of a computer or computer system or network, carried out for the sole purpose of testing, researching or remedying the security of this computer or computer system or network.

The activities described in subparagraph 2 shall not be considered illicit if:

(i) they are connected to an effective technological measure that protects any of the exclusive copyright or related rights in a work, performance or phonogram; and

(ii) the action falls under the following category: non-infringing reverse engineering in respect of a lawfully obtained copy of a computer program, carried out in good faith, in respect of the specific elements of the said computer program that have not previously been readily available to the person engaging in the circumvention, solely for the purpose of allowing interoperability of an independently created computer program with other programs.

The provisions of subparagraph 1 of this Article shall not apply to activities covered by the foregoing categories, or to one or more of the following categories:

First: access by a library, archive or non-profit educational institution to a work, performance or phonogram which they would not have been able to access otherwise, for the sole purpose of taking decisions regarding acquisitions.

Second: non-infringing activities for the sole purpose of identifying and disabling the capacity to

compile or disseminate undisclosed personal identification data reflecting the online activities of a natural person in a manner that does not in any way affect a person's ability to access a work.

The provisions of subparagraphs 1 and 2 of this Article shall not apply to activities related to one or more of the following activities: lawfully authorized activities carried out by government employees, agents or subcontractors to implement the law, intelligence, essential security or similar governmental purposes.

For the purposes of this Article, "effective technological measure" means any technology, device or component which, in the normal course of its operation, controls access to a work, performance, phonogram or other protected material, or which protects any copyright or related right.

The penal provisions of this Article shall not apply to the specific activities of libraries, archives, educational institutions or non-profit non-commercial public broadcasting bodies."

Article 23.- Insert an Article 111 bis to read as follows:

"Article 111 bis.- Any person who does the following shall commit the offense of violating protection of rights management information, and shall be punishable by two to three years' imprisonment and payment of a fine of not more than twenty-five thousand córdobas (C\$25,000.00):

1. Deliberately removes or alters any rights management information;
2. Distributes or imports for distribution rights management information, if he is aware that such information has been removed or altered without authority;
3. Distributes, imports for distribution, transmits, communicates or makes available to the public copies of works, performances or phonograms, if he is aware that the rights management information has been removed or altered without authority.

The injured party shall be entitled to have recourse to the criminal proceedings laid down in Title IV of this Law. However, the illicit acts referred to in this Article shall constitute an offense that is separate from and independent of any violation that may occur of the copyright and related rights contained in this Law. Likewise, this Article shall not apply to lawfully authorized activities carried out by government employees, agents or subcontractors to implement the law, intelligence, essential security or similar governmental purposes.

For the purposes of this Article, "rights management information" means the following:

- (1) Information identifying the work, performance or phonogram, the author of the work, the artist or performer of the performance or the producer of the phonogram, or the owner of any right in the work, performance or phonogram.
- (2) Information on the terms and conditions for the use of the work, performance or phonogram.
- (3) Any number or code representing the said information.

When any of these elements are attached to a copy of the work, performance or phonogram, or figure in connection with the communication or making available to the public of the work, performance or phonogram.

The sanction-related provisions in this Article shall not apply to the specific activities of non-commercial and non-profit-making libraries, archives, educational institutions or public broadcasting bodies."

Article 24.- Reword Article 112 to read as follows:

“**Article 112.-** The offenses covered by this Law shall be prosecutable *ex officio* by the Public Prosecutor’s Office, with no need for a formal denunciation by an individual or a rights owner or by denunciation of an interested party, including any body or organization representing a sector of production or consumers, unless it is for the purpose of preserving evidence and preventing the infringement from continuing.

Penal action to prosecute these offenses shall be public and shall be barred six years after the offense was last committed.”

Article 25.- Insert two paragraphs in Article 118 to read as follows:

“The documents issued by the management society for purposes of collection for the use of artistic and/or musical, literary or scientific works from natural persons or legal entities shall constitute enforceable title and shall be upheld by enforcement procedure. The only exceptions are exemption from payment and non-use of protected works.

The management society shall be empowered to ask the competent judicial authority to suspend the public communication or presentation of protected artistic and/or musical works in accordance with this Law, while payment of the corresponding duties is pending.”

Article 26.- Transitional provision. Actions which were taken before this Law came into force shall continue until they are concluded in conformity with the provisions under which they were initiated.

Article 27.- Repeal. Repeal Article 110 and amend Article 50 to read as follows:

If the assignment of exclusivity produces a clear imbalance between the author’s remuneration and the benefits obtained by the assignee, the latter may petition the judicial authority to ensure the fixing of equitable remuneration, given the circumstances of the case. This faculty may be exercised within the five years following the signing of the contract. Given the economic nature of this right, the provisions of this Article are negotiable and still renounceable by the parties. This Article shall apply to contracts concluded in Nicaragua, unless otherwise agreed.

Article 28.- Entry into force. This Law shall enter into force after its publication in La Gaceta, the Official Gazette.

Done at the city of Managua, in the meeting room of the National Assembly, on the sixteenth of March of the year two thousand six. **EDUARDO GÓMEZ LÓPEZ**, President of the National Assembly. **JOSÉ SANTOS FIGUEROA AGUILAR**, Acting Secretary at the National Assembly.

In witness thereof: Held as a Law of the Republic. Published and enforced. Managua, the twenty-second of March of the year two thousand six. **ENRIQUE BOLAÑOS GEYER**, President of the Republic of Nicaragua.
