

International Workshop on Digital Preservation and Copyright

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First of all, I want to thank the World Intellectual Property Organization for inviting me to this workshop.

I am in charge of the Virtual Library of the Central Banks's Cultural Area in Colombia. This Area consists of a Web of Libraries and Cultural Centers in the Country, and a series of Heritage Collections and Museums (including de Gold Museum).

The Main Library (Biblioteca Luis Ángel Arango) and the most important museums are in Bogotá. This library is the most visited and recognized public library in the country.

Since 1998, it has maintained a Virtual Library on the Internet, with a continuous program of digitization of its collections.

Until now, there have not been any problems with the works' copyright. The way of handling the legal issues has been the following:

In case of the artworks:

- When a work of art is bought, the contract implies that the Central Bank acquires its rights of reproduction and making it public.

In case of the material of the Virtual Library:

- When the work that will be digitized is not in the Public Domain, we contact the right's owner and he signs a document allowing us to publish his work in the Virtual Library.

I will begin referring the main **National Digitization programs**.

The Biblioteca Luis Ángel Arango has been a pioneer of this kind of enterprise in the country. In the last years, there have been many different initiatives of digital preservation, but not a unified national program.

This year there are two important national initiatives that will coordinate the different institutions with digitization programs:

The first one is: **The Bicentennial Digitization Program:**

In 2010, Colombia celebrates 200 years of independence. Having that in mind, the Ministry of Culture has organized a common program in order to digitize and publish on the web the most important documents of the time.

The main institutions that take part in this program are: The National Library, The National Archives, The National Museum and The Central Bank's Library.

From there, it will establish standards and best practices that will give form to: **The National Digitization Plan**. It will be coordinated by the National Archives and will take into account all types of digital objects and contents. And will begin with a inventory of the different institutions with important digitization programs.

The second one is the: **Colombian Digital Library:**

It is a joint program of the main Colombian Universities. Until now thirteen Universities have joined the program and they are working together with Colciencias (The National Science Committee) and RENATA (The National Academic Web of Hight Technology). In this moment, they are defining the standards and mechanisms.

The other media with a public preservation policy are the **Cinema** and the **Sound Archives**. For both of them there exists a public institution in charge, but there are many economic and legal issues that make very difficult their preservation and its access to the public and to the researchers.

Now, with respect to the **New Media Heritage Material**, although there are some good intentions and projects, the audiovisual and digital materials are the ones in most danger of being lost. Aside from particular initiatives, there is not a public policy for preservation. Most of the material has to be preserved by its creator or rights owner. In case of the television material, it is known that most of the episodes of some of major series of the early age of television are already lost.

Partly because of the difficulty and delay of official initiatives with respect to this material, there have been some particular little artistic projects with the goal of preservation:

Popular de lujo: a collection of photographs of popular graphics.

Museo Vintage: collection of radio and television fragments.

Now I will present the legislation related to preservation. It is rather old and it does not mention in particular any concepts with relationship with the digital.

There are two main legal norms, developed from the Berne Convention:

1. The Law 23 of 1983
2. The Andean Decision 351 of 1993 (“Decisión Andina”). A treaty of the Andean Pact: Perú, Ecuador, Bolivia, Venezuela and Colombia.
Being a Regional Treaty it has preference above the first one.

I will read now the limitation to the law of copyright with respect to preservation in public libraries, as is stated in the Andean Decision:

Article 22. Without detriment to what was disposed in the Chapter V and the previous article, it will be licit to engage in the following acts, without the author’s authorization and without any remuneration: [...]

c) Reproduce in individual form, one work, by a library or archive whose activities don’t have direct or indirect profit, when the corresponding item is found in the permanent collection of the library or archive, and the reproduction is made with the following means:

- 1) To preserve the item and substitute it in case of it being lost, destructed or damaged; or,
- 2) To substitute, in the permanent collection or archive, an item that has been lost, destroyed or damaged.

When I spoke with the expert of the Author’s Rights Office in Colombia, the only question that was raised was if this article could be applied in order to allow the digitization of the material in the library. His first answer was to say that it didn’t allow it, because it only contemplated “analogous” copies of the material.

The key issue here is the way the term “reproduction” is to be interpreted. It is important to underline that the limitations are of a particular juridical nature and have a restrictive interpretation: they don’t allow analogies.

Therefore the definition of reproduction (Article 14) is also very important.

Article 14. It is understood by **reproduction**, the fixation of the work in a media that allows its communication or obtaining copies from the whole or part of it, by any media or procedure.

When it says “by any media or procedure”, ¿doesn't it cover the digitization?

With respect to the duration of the copyright for authors,

The Andean Decision:

Article 18. The duration of the protection of the rights recognized in this Decision, will not be inferior to the life of the author and 50 years after his death. When the right owner is a **corporation**, the time of protection will not be inferior to 50 years after the realization, divulgation or publication of the work.

The Colombian **Law 23 of 1983**:

Article 21. The authors' rights correspond during his lifetime. And after his death whoever legitimately acquired them will enjoy them for the term of 80 years.

Article 27. In any case in which a literary, scientific or artistic work has for right holder a corporation or an official entity or any institution of public right, it will be considered that the terms of protection will be of 30 years counting from the publication.

Now, it is in process a Free Trade Agreement being negotiated with the United States. Part of the agreement includes that the duration of the copyright for corporations would be minimum for 70 years.

Conclusions

1. In Colombia there is now a big effort being put on the possibilities of the new technologies. In the last few years there has been a rapid growth of internet access in the country, but still there are many differences between the big cities and the rest of the country, and between the rich quarters and the main of the population. There are many programs and projects to increase the access to the internet and to make use of these technologies to a better distribution of the information and knowledge. **It makes very important to clarify the possible uses of the digital materials in educational institutions and public libraries.**

Being a poor country, there is a very big business of illegal copies and in many places they are the only copies available. So the only institutions being controlled about the legality of their collections are the big and important ones, mainly public institutions (libraries, museums and educational institutions). **There should be a way of creating licenses (or legal exceptions) for digital content for these institutions.**

The contradiction is critical, when the digital has made possible for many people to have access to content that did not even dream before to have access to. There is the big question if there are not radical changes that should be made to the legal framework to answer to the digital challenges (different from proposing particular limitations). Specially, when considering national heritage material.

Also there has been lately some individual and independent movement for developing and publicizing Free Content and the Creative Commons licenses. But until now they have not had any support from the public administration and or from the Author's Rights Office.

2. The legislation that applies to the digitization of material is rather old (1983 / 1993). In this moment, the decisions about digitization have to be taken from a legislation that was made in a time where digitization was not taken into consideration. There should be made the precision about the notion of "reproduction" and its implications in relation to digitization. It is necessary to elaborate exceptions written exclusively for the new media: web pages, videos, etc. It has to be taken into account that with respect to them

the actual limitations do not apply, because it speaks only of reproductions. And most of this material is not produced in order to be sold (there are no legal copies), but to be transmitted or published on the web.

3. All the decisions and questions about Copyright in Colombia are taken and answered by the Author's Rights Office, and their position is always to defend the most restrictive interpretation of the law. It is urgent that the Ministry of Culture and the Ministry of Education have a corresponding Office with the main objective of proposing limitations of the law, and counseling the institutions with interpretations of the law that take also in consideration the other rights consigned in the Constitution of the country: the right to education, culture and to information.

4. Now, to mention a particular case: in our library we are in a process of digitization of an important radio archive of a little town, with a very important music collection. The rights of the material that was done by the radio station was given to the library. But it also contains very different material from very different authors, many of them unreachable. ¿How should be treated cases like these?

6. To end my presentation, and considering that we have to take into account also the ways in which the libraries will allow the public (or in that case, the researchers) to access the material, I want to put into consideration a case of study for Public Libraries and Net of Public Libraries, like the one I work with. (The Central Bank Net of Libraries has 28 Libraries in different cities of the country.):

In a near future an interesting way (possibly the most common one) of handling the material in a net of libraries is by digital copies that can be hold in a common server with intranet. ¿How should be treated this "copy" in terms of copyright? ¿How should be interpreted the access to it?

Thank you very much. Being here has been a very important opportunity for me, and what I will learn from your will be very important in this particular moment in Colombia.

Extras: Colombian Legislation with respect to the Preservation

The Andean Decision 351 of 1993

Article 22

Without detriment to what was disposed in the Chapter V and the previous article, it will be licit to do the following acts, without the author's authorization and without any remuneration:

a) To cite in a work, other published works, as long as the source and the author's name is cited, with the condition that those citations be made with conformity to the fair use and that its extent is justified by the end that is followed;

b) Reproduce by reprographic means for teaching or examinations [...]

c) Reproduce in individual form, one work, by a library or archive whose activities don't have direct or indirect profit, when the corresponding unit is found in the permanent collection of the library or archive, and the reproduction is made with the following means:

1) To preserve the unit and substitute it in case of it being lost, destructed or damaged (not functioning); or,

2) To substitute, in the permanent collection o archive, an exemplar that has been lost, destroyed or damaged.

[...]

h) To reproduce, emit by radio or public transmission by cable, of an image of an architectonic work, or the arts, a photographic work o one of the practical arts, that is in permanent way in a public place.

Article 13

The author, or in its case, the right owners, has the exclusive right to realize, authorize or prohibit:

a) The reproduction of the work in any way or procedure;

b) The public communication o the work in any way that allows to spread the words, the signs, sounds or images

c) The public distribution of exemplars or copies of the work through sale or rent;

d) The import to the territory of any Country Member of copies made without the authorization of the right owner.

e. The translation, adaptation, fixing o any other transformation of the work.

Article 14

It is understood by **reproduction**, the fixation of the work in a media that allows its communication or obtaining copies from the whole or part of it, by any media or procedure.

Article 18

The duration of the protection of the rights recognized in this Decision, will not be inferior to the life of the author and 50 years after his death.

When the right owner is a **corporation**, the time of protection will not be inferior to 50 years after the realization, divulgation or publication of the work.

Article 19

The Country Members can establish - with conformity to the Berna Agreement for the protection of the Artistic and Literary Works -, that the time of protection, for certain works, may be taken from the time of realization, divulgation or publication.

Article 21

The limitations and exceptions to the Autor's Right established by the internal legislations of the **State Parts**, will be restricted to those cases that do not threaten the normal exploitation of the works or do not cause unjustified perjury to the legitimate interests of the right owner.

Colombian Law 23 of 1983**Article 38**

The public libraries can reproduce, for the exclusive use of its readers and when it is necessary for its preservation, o for the service of loan to other libraries, also public, one copy of the protected works deposited in its collections o archives that are sold out in the local market. These copies can also be reproduced, in only one copy, by the library that receives it, in case that it would be necessary for its preservation, and with the only means that they can be used by its readers.

Article 21

The authors' rights correspond during his lifetime, and after his death whoever legitimate acquired them, will enjoy them for the term of 80 years.

Article 27

In any case in wich a literary, scientific o artistic work has for right holder a juridical person or an official entity o any institution of public right, it will be considered that the terms of protection will be of 30 years counting from the publication.

Links

Biblioteca Luis Ángel Arango: <http://www.labaa.org>

Biblioteca Digital Colombiana: <http://www.bdc.org:8080/>

Renata: <http://www.renata.edu.co>