Venezuela

Protecting digital literary works: a challenge for consumer rights

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In the cultural and artistic world, literary works represent the sentimental, experimental and creative expressions of human beings.

The huge numbers of works published since the classical era, along with Gutenberg's 1450 creation of the printing press (which allowed for the mass publication of literary works for the first time), created the need for authors to enforce the legal protection of their works. As these authors had the right to claim their own creations, a strong legal framework had to be created to allow them to feel protected against third parties which attempted to distort, alter or steal their ideas and creations.

In 1709 copyrights were formally legalised, with the aim of achieving governmental protection of these rights. Later on, such legal protection was gradually applied in many countries around the world, until in turn Latin America took steps to protect the literary works of its authors.

However, these well-established protection mechanisms face an uphill battle against the growing modern phenomenon digitalisation.

Artistic works and the rights of their respective authors are essential elements of the Venezuelan IP protection framework, and such rights face an important challenge in terms of the regulation of digital goods. The Copyright Law 1993 was passed in order to protect artistic works. However, potential technological advancements were completely overlooked by the law — in particular, the digitalisation of literary works.

Legal framework

Copyright regulation was first introduced in Venezuela in 1839, under the Property of Literary Creations Act. This act was modified several times (in 1887, 1928, 1963 and 1988). The 1982 amendment was due to Venezuela's accession to the Berne Convention. In 1988 another amendment was proposed, but this experienced considerable delay and, after several revisions intended to confirm that the bill would reflect ongoing technological advancements, it was again filed before the Senate. The Copyright Law 1993 was approved and published in the *Official Gazette* in October 1993.

According to Article 1 of the law, it is intended to "protect the rights of the authors over all intellectual works with a creative character; of literary, scientific or artistic type, whichever its genre, form of expression, merit or destiny".

Such protection encompasses both proprietary and moral rights over 'intellectual works', which are defined as artistic expressions derived directly from the human intellect. Moral rights are taken into consideration because literary, scientific or artistic works are directly related to the intellectual sphere. Therefore, the creator has exclusive rights over the work.

Taking into account these basic principles, the Copyright Law is designed to protect physical expressions of the author's ideas. Hence, the law is not particularly well suited to today, especially in case of literary works.

Since the invention of the printing press, literary works have taken physical form. Today, printed works are still available. However, thanks to new technologies, environmental concerns and financial and time-saving considerations that have emerged

during the past decade, literary works are being transformed into easy-to-access digital products.

The development of science and technology, and more specifically the phenomenon of digitalisation (ie, the representation of an object, image, sound, document or signal that can be processed by microprocessors through electronic means), has brought about global changes in terms of commercialisation.

Disputes and digitalisation

The major disputes in this area originate from the commercial sphere. The existing Copyright Law does not expressly protect electronic works, so it must be determined how literary works shall be protected. In connection with the Copyright Treaty, the World Intellectual Property Organisation highlighted the "profound impact it has had in the development and convergence of information and communication technologies in the creation and utilization of artistic and literary works". Due to the outcome of the digitalisation process, there is a need to create forms of protection at the international level, which would allow for different solutions for this issue to be considered.

The digitalisation phenomenon has had a major impact. Developments in science and technology have determined that the use, benefit and ownership of literary works contained in digital goods can be transferred through a simple click. Thus, the commercialisation of digital goods through the Internet has partially, or in some cases completely, done away with the production, distribution and commercialisation chain. Instead, such goods or services can be obtained quickly online and access to information can be obtained directly. In some cases there is even direct contact between the author and the consumer. As a result, advances in technology have brought about a myriad of problems related to artistic works (specifically within the literary scope).

Thanks to the ease of access to technological means, a literary work can be held in a computer's memory and distributed to third parties. Although there have always been issues relating to the unauthorised duplication and reproduction of works, the situation has worsened since literary works became available through digital means. The Copyright Law 1993 includes no specific provisions to fill this gap. Therefore, it is necessary to apply the general rules that were set down to protect physical intellectual works.

However, in order to confront the issues related to the duplication and/or unauthorised reproduction of works, a digital rights management framework has been established. This includes, for example, serial copy management systems (eg, DiscGuard, LaserLock and CD Cops). In addition, publishers can use watermarks and biometrical processors. These tools are used in order to limit — in one way or another — the use or reproduction of the product. However, they could conflict with the tools designed to protect consumers, since the clauses contained in licence contracts that restrict the use of literary works or that authorise the use of any of these mechanisms could constitute abusive clauses. The latter may not respect the boundaries established by the Venezuelan legislation on such issues — specifically, the Protection of the Consumer and the Access of Goods and Services Act 2010.

This sector also faces a new challenge: the conclusion of a remote contract between the author of a literary work and the consumer, made possible by the phenomenon of dematerialisation. Nowadays, this phenomenon corresponds to one of the evolutionary processes of upscale technology, allowing the quick and easy transmission and storage of information for multiple purposes. There is significant evidence that the classic paper system used to control physical documents, signatures and seals has been progressively replaced with a digital system. The aim is to provide an accurate and secure method that helps to reduce costs for the commercialisation of different goods, titles and products, ultimately leading to an efficient, dynamic and fast-growing market.

In view of market behaviour and the evolution of the aforementioned phenomenon, the legislature has inserted a new clause into the Protection of the Consumer and Access of Goods and Services Act, aimed at regulating e-commerce. The law now defines

'e-commerce' as: "Any type of business, commercial transaction or exchange of information with commercial, banking, insurance purposes or any other purpose related to its nature; which shall be executed through the usage of information and communications technologies of any type. The scope of the present law are applicable between the supplier and the consumer, without prejudice to the special laws" (*Official Gazette* 39.358, February 1 2010).

Even though the current law has filled some of the legal gaps, some issues have been overlooked by the Venezuelan legislature. As a result, in the contractual and commercial spheres, interested parties have adopted conventional solutions to the legal issues, applying the principle of autonomy.

The concept of self-regulation generally applies, based on the economic system. Markets that demonstrate a certain capacity allowing appropriate equilibrium to be achieved without direct government intervention are considered to be self-regulated markets. Some doctrines consider the auto-regulation process to be an alternative to state regulation. According to Bundell & Robinson (2000): "The rules are an essential part of life. But their preparation is not necessarily a governmental task. They could (and usually are) performed as a voluntary action."

This type of conventional ruling is usually adopted due to mistrust of the existing political system, or because of a lack of legal standards aimed at regulating specific matters. According to Mejías (2010): "Auto-regulation is a different form of regulation from the one exerted by the State. It is not coercive since it does not adopt different mechanisms as those that involve social disapproval towards incorrect actions; deriving from the personal commitment, and it seeks the agreements of the parties on the way their activities will be regulated, without completely disregarding the intervention of the State."

Nowadays, it is common for licence agreements to regulate the use, reproduction, distribution and modification of a literary work, and such agreements are classified as contracts of adhesion. Such contracts are suggested by one of the parties, with the other having the option to accept or reject the contract. In order to acquire a literary work by electronic means, a licence to use must be considered. The latter is basically a contract of adhesion submitted by the author, and users must accept or reject the terms and conditions of the agreement.

From the standpoint of the consumer, he or she is forced to accept the clauses included in the contract of adhesion – even those that limit the use and reproduction of the work being purchased. On the other hand, on the side of the supplier or the author, several restrictions are imposed in terms of the use and reproduction of the work:

- awareness of the lack of regulations in the digital sphere;
- avoidance of illegal copying or plagiarism; and
- protection of copyright.

On top of this, the consumer (in this case, the reader of the book) is ultimately considered to be a 'weak' juridical figure under the Venezuelan legal framework.

Comment

Copyright protection cannot be divorced from reality and developments in science and technology – particularly those made in terms of computer networks and information technology. These expedited mechanisms enable authors to make their literary works available to the public quickly and easily. Moreover, these modern systems allow literary creators to earn a better income and ensure effective distribution on the market. Nevertheless, there is a higher risk of the rapid distribution of a work, which may end up being detrimental to the author's rights. It is vital to achieve appropriate equilibrium between copyright and the rights of consumers of intellectual works available in digital format. Therefore, the laws regulating these matters must be updated. Unfortunately, the Copyright Law has not been amended since it was implemented in the 1990s. Changes would be welcome, based on ongoing technological advancements in terms of digital literary works. Even though everyone should be able to use the Internet, it also needs to be safe for its users. Thus, the real challenge is to find a balance between copyright and the rights of consumers within the legal spectrum. *iam*

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