

INTELLECTUAL PROPERTY LAW
(Codification No. 2006-13)

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Note:

The pre-codification version of the Intellectual Property Law may be consulted in our historical section.

INTRODUCTION

The Legislation and Codification Commission of the Honorable National Congress, in accordance with the Political Constitution of the Republic, has considered the Codification of the Intellectual Property Law, in observance of the provisions of the Political Constitution of the Republic, and the express amendments made pursuant to laws amending this Law: the Higher Education Law, the Code of Civil Procedure, the Law for the Economic Transformation of Ecuador, the Code of Penal Procedure, the Fundamental Customs Law and Decision No. 161-2000-TP of the Constitutional Court.

During the codification process, formal observations were made by Deputy Miguel López Moreno, in accordance with constitutional provisions.

In this context, the Legislation and Codification Commission hereby codifies the provisions of this Law, highlighting the following: references to the *unidad de valor constante* (UVC) shall be replaced by dollars, in accordance with Article 12 of the Law for the Economic Transformation of Ecuador, which provides that, in all laws in force that refer to UVCs, one UVC shall be understood to have a fixed and invariable value of two point six two eight nine (2.6289) United States dollars, and in accordance with the repealing provision set out in Article 100 e) of that Law; references to the Code of Civil Procedure shall be updated; "polytechnic schools and higher technical and technological institutes" shall be included, in accordance with Art. 74 (352) of the Political Constitution of the Republic; the National Council of Universities and Polytechnic Schools (CONUEP) shall be replaced by the National Higher Education Council (CONESUP), in light of the fact that the Higher Education Law repealed the Law on Universities and Polytechnic Schools; and references to Articles 184 and 198, and the numbering of Chapter VII and subsequent chapters of Law No. 83, shall be corrected.

CODIFICATION NO. 2006-013

HONORABLE NATIONAL CONGRESS

THE LEGISLATION AND CODIFICATION COMMISSION

Hereby decides:

TO ISSUE THE FOLLOWING CODIFICATION OF THE INTELLECTUAL
PROPERTY LAW

Preliminary Title

Art. 1. – The State shall recognize, regulate and safeguard intellectual property acquired in accordance with the law, the decisions of the Commission of the Andean Community and the international conventions in force in Ecuador.

Intellectual property shall include:

1. copyright and related rights;
2. industrial property, which shall include, *inter alia*, the following:
 - a. inventions;
 - b. industrial designs;
 - c. layout-designs (topographies) of integrated circuits;
 - d. undisclosed information and business and manufacturing secrets;
 - e. factory marks, trademarks, service marks and commercial slogans;
 - f. the distinctive appearance of businesses and commercial establishments;
 - g. trade names;
 - h. geographical indications; and
 - i. any other intellectual creation intended for agricultural, industrial or commercial use;
3. plant varieties.

The provisions of this Law shall not limit or impinge upon the rights set out in the Convention on Biological Diversity or in relevant laws promulgated by Ecuador.

Art. 2. – The rights conferred by this Law shall apply equally to Ecuadorian nationals and foreigners, whether or not they are resident in Ecuador.

Art. 3. - The Ecuadorian Intellectual Property Institute (IEPI) shall be the competent administrative body for encouraging, promoting, fostering, safeguarding, protecting and defending, on behalf of the Ecuadorian State, the intellectual property rights conferred under the present Law and under international treaties and conventions, without prejudice to the relevant civil and criminal proceedings, which shall be heard by the Judiciary.

Book I

Title I

COPYRIGHT AND RELATED RIGHTS

Chapter I

COPYRIGHT

Section I

GENERAL PROVISIONS

Art. 4. – The rights of authors and the rights of other right holders in their works shall be recognized and safeguarded.

Art. 5. – Copyright shall derive from and be protected on account of the sole fact that the work is created, regardless of its merit, purpose or mode of expression.

All works, performances, productions or radio broadcasts, whatever the country of origin of the work or the nationality or domicile of the author or right holder, shall be protected. Such protection shall also be conferred regardless of the place of publication or disclosure.

Conferral of copyright and related rights shall not be dependent on registration, deposit or the fulfillment of any formality.

A related right shall derive from the need to protect the rights of performers and producers of phonograms.

Art. 6. – Copyright shall be independent of and compatible with and may be combined with:

- (a) ownership of, and other rights in, the physical medium in which the work is embodied;
- (b) such industrial property rights as may subsist in the work; and
- (c) other intellectual property rights conferred by law.

Art. 7. – For the purposes of this Title, the terms set out below shall have the following meanings:

author: natural person who makes an intellectual creation;

performer: person who presents, sings, reads, recites or in any way performs a work;

domestic environment: the context of family gatherings held in the dwelling house that serves as the natural location of the home;

database: compilation of works, facts or data in printed form, in the storage unit of a computer or in any other form;

successor in title: natural or legal person who or which, in any capacity, has acquired rights conferred under this Title;

collection: set of items, generally of the same class or type;

compilation: the grouping, in a single scientific or literary volume, of individual laws, news or subjects;

copy: physical medium in which a work or production is embodied, including both as a result of the original fixation and as a result of an act of reproduction;

related rights: economic rights of communication to the public held by performers, producers of phonograms and broadcasting organizations;

distribution: the making available to the public of the original or copies of a work, by sale, rental, public lending, or any other means, known or as yet unknown, of transferring the ownership, possession or holding of such original or copy;

disclosure: the act of making a work accessible to the public for the first time, with the author's consent, by any means or process known or as yet unknown;

publisher: natural or legal person who or which, under a written contract with the author or his successor in title, is obliged to publish and disclose a work at his own expense;

transmission: the diffusion of sounds and/or images, by any means or process known or as yet unknown, with or without the use of satellites, over a distance for reception by the public. Transmission shall also include the sending of signals from a ground station to a broadcasting or telecommunications satellite;

expressions of folklore: productions of characteristic elements of traditional cultural heritage that consist of all literary and artistic works created in the national territory by unknown or unidentified authors presumed to be nationals of the country or members of its ethnic communities and that are passed from generation to generation in such a way as to reflect the traditional artistic or literary aspirations of a community;

fixation: embodiment of signs, sounds or images or the digital representation thereof in a physical medium that enables them to be read, perceived, reproduced, communicated or used;

phonogram: any exclusively aural fixation of sounds of a performance or of other sounds or of digital representations thereof. Phonographic, magnetic and digital recordings shall be considered copies of phonograms;

ephemeral recording: temporary aural or audiovisual fixation of a performance or broadcast made by a broadcasting organization by means of its own facilities and used in its own broadcasts;

license: authorization or permit, granted by the right holder to the user of a work or other protected production, to use the work in the specified form and in accordance with the terms agreed in the contract. This shall not transfer ownership of the rights;

work: any original intellectual creation that can be disclosed or reproduced in any form known or as yet unknown;

anonymous work: a work in which the identity of the author is not mentioned, in accordance with his wishes;

audiovisual work: any creation expressed by a series of linked images, with or without the incorporation of sound, that is intended essentially to be shown by means of projection apparatus or any other means of communicating images and sounds, regardless of the characteristics of the physical medium in which said work is embodied;

work of applied art: an artistic creation with utilitarian functions or embodied in a useful article, whether a work of handicraft or one produced on an industrial scale;

work of joint authorship: a work produced jointly by two or more natural persons;

collective work: a work created by two or more authors, on the initiative and under the responsibility of a natural or legal person who or which publishes or discloses the work in his own name, and in which it is not possible to identify the authors or to distinguish their contributions from each other;

commissioned work: the result of a contract for the creation of a specified work, where there is no employment or work relationship between the author and the person commissioning the work;

unpublished work: a work that has not been disclosed, with the consent of the author or his successors in title;

work of three-dimensional art or work of fine art: an artistic creation intended to appeal to the aesthetic sense of the person perceiving it, such as paintings, drawings, engravings or lithograph. This definition shall not, for the purposes of the present Law, include photographs, architectural works or audiovisual works;

posthumous work: in addition to works not published during the author's lifetime, works that have been published during his lifetime if, at the time of his death, the same author leaves them revised, supplemented, annotated or corrected in such a manner that they are worthy of being considered new works;

broadcasting organization: natural or legal person who or which makes decisions on broadcasts and determines the terms of transmission of radio or television broadcasts;

producer: natural or legal person who or which takes the initiative for, coordination of and responsibility for the production of a work, for instance an audiovisual work or a computer program;

producer of phonograms: natural or legal person on whose initiative and under whose responsibility and coordination the sounds of a performance or other sounds, or digital representations thereof, are first fixed;

computer program (software): any sequence of instructions or guidelines intended to be used, directly or indirectly, in an automated reading device, computer or electronic or similar device capable of processing information in order to perform a function or task or to obtain a particular result, whatever the form of expression or fixation thereof. "Computer program" shall also include preparatory documentation, plans and designs, technical documentation and user manuals;

publication: production of copies which are made available to the public with the consent of the holder of the relevant right, provided that the supply of such copies is such as to meet the reasonable needs of the public, due account being taken of the nature of the work;

broadcasting: communication to the public by wireless transmission. Broadcasting shall include that effected by satellite, from the transmission of the signal, including both the uplink and the downlink in the transmission, until the program contained in the signal is made available to the public;

reproduction: the fixation of a work in any medium or by any process known or as yet unknown, including the temporary or permanent digital storage thereof and the making of copies of all or part of the work;

retransmission: the relaying of a signal or program received from another source, effected by the distribution of signs, sounds or images, whether by wireless means or by cable, wire, optic fiber or any other medium known or as yet unknown;

ownership: the status, conferred on a natural or legal person, of holder of rights conferred under the present Book;

fair use: use that does not interfere with the normal exploitation of the work or prejudice the legitimate interests of the author;

videogram: fixation of an audiovisual work.

Section II SUBJECT MATTER OF COPYRIGHT

Art. 8. – Copyright protection shall apply to all intellectual works in the literary or artistic field, whatever their type, form of expression, merit or purpose. The rights conferred under the present Title shall be independent of ownership of the physical medium in which a work is embodied, and the enjoyment or exercise thereof shall not be subject to a registration requirement or the fulfillment of any other formality.

Protected works shall include, *inter alia*, the following:

(a) books, pamphlets, printed matter, letters, articles, novels, tales, poems, chronicles, reviews, essays, correspondence, scripts for the theater, cinema or television, lectures, speeches, lessons, sermons, legal arguments, memoirs and other works of a similar nature, expressed in any form;

(b) collections of works, such as anthologies or compilations and databases of any kind, which by reason of the selection or arrangement of their contents constitute intellectual creations, without prejudice to the copyright in the material or data;

(c) dramatic and dramatico-musical works, choreography, entertainments in dumb show and theatrical works in general;

(d) musical compositions with or without lyrics;

(e) cinematographic works and any other audiovisual works;

(f) sculptures and works of painting, drawing, engraving and lithography, cartoon strips and comics, and also trial versions or sketches thereof and other three-dimensional works;

(g) projects, plans, models and designs of works of architecture and engineering;

(h) illustrations, diagrams, maps and designs relative to geography, topography and science in general;

(i) photographic works and those expressed by processes analogous to photography;

(j) works of applied art, even if their artistic value cannot be dissociated from the industrial nature of the media in which they are embodied;

(k) computer programs; and

(l) adaptations, translations, arrangements, amendments, updates and annotations; compendiums, summaries and extracts; and other alterations of a work carried out with the express authorization of the authors of the original works and without prejudice to their rights.

Without prejudice to industrial property rights, the titles of radio or television programs and news bulletins, and of newspapers, magazines and other periodical publications, shall be protected for one year after the release of the last issue or the communication to the public of the last program, except in the case of annual publications or productions, where the term of protection shall be extended to three years.

Art. 9. – Without prejudice to the rights in the original work and the relevant authorization, the following shall also be protected as derivative works, provided that they have characteristics of originality:

- (a) translations and adaptations;
- (b) amendments, updates and annotations;
- (c) summaries and extracts;
- (d) musical arrangements; and
- (e) other alterations of a literary or artistic work.

Creations or adaptations that are based on tradition as expressed in a group of individuals and that reflect expressions of the community, its identity, its values transmitted orally, by imitation or by other means, whether they use literary language, music, games, mythology, rituals, customs, handicrafts, architecture or other arts, shall respect the rights of communities in accordance with the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the instruments concluded under the auspices of the World Intellectual Property Organization (WIPO) for the protection of expressions against illicit exploitation.

Art. 10. – Copyright shall also protect the form of expression in which the author's ideas are described, explained, illustrated or incorporated in works.

The following shall not be protected:

- (a) the ideas contained in works; procedures, methods of operation or mathematical concepts as such; systems or the ideological or technical content of scientific works or the industrial or commercial exploitation thereof; and
- (b) legal and regulatory provisions, judicial decisions, and instruments, agreements, deliberations and rulings of public bodies, and also the official translations thereof.

Section III RIGHT HOLDERS

Art. 11. – Only a natural person may be an author. Legal persons may be copyright holders, in accordance with the present Book.

Ownership shall be determined pursuant to the law of the country of origin of the work, in accordance with the criteria set out in the Berne Convention, Paris Act of 1971.

Art. 12. – In the absence of proof to the contrary, the person whose name, pseudonym, initials, abbreviated name or any other sign identifying him appears on the work shall be presumed to be the author of or holder of rights in the work.

Art. 13. - In the case of works of joint authorship that are divisible, each joint author shall be the holder of the rights in the part of which he is the author, unless otherwise agreed.

In the case of works of joint authorship that are indivisible, the rights shall accrue jointly *pro indiviso* to the joint authors, unless they have agreed otherwise.

Art. 14. – Copyright shall not form part of a communal marital estate and may be administered freely by the spouse who is the author or the author's successor in title. However, the economic benefits deriving from the exploitation of the work shall form part of the communal marital estate or joint property, as the case may be.

Art. 15. – Unless otherwise agreed, the natural or legal person who or which has organized, coordinated and directed a collective work shall be deemed to be the holder of copyright in the work and may exercise the moral rights to exploit the work in his own name.

It shall be presumed that the holder of rights in a collective work is the natural or legal person whose name appears as such on the work.

Art. 16. – Unless otherwise agreed or specially provided in the present Book, ownership of copyright in works created in the context of an employment relationship shall accrue to the employer, who shall be authorized to exercise the moral rights to exploit the work.

In the case of commissioned works, ownership shall accrue non-exclusively to the commissioning party; the author shall therefore retain the right to exploit them in ways other than those covered by the contract, provided that this does not entail unfair competition.

Art. 17. – In the case of an anonymous work, the publisher whose name appears on the work shall be deemed to represent the author and shall be authorized to exercise and enforce his moral and economic rights until the author reveals his identity and proves his authorship of the work.

Section IV CONTENT OF COPYRIGHT

Part One MORAL RIGHTS

Art. 18. – An author shall have unrenounceable, inalienable, unattachable and imprescriptible rights to:

(a) claim authorship of his work;

(b) keep the work unpublished or anonymous or require that his name or pseudonym be mentioned whenever the work is used;

(c) object to any distortion, mutilation, alteration or other modification of the work that may be prejudicial to his honor or professional reputation;

(d) access a single or rare copy of the work that is in a third party's possession, with a view to exercising the right of disclosure or any other right accruing to him; and

(e) where any of the rights set out in the foregoing subparagraphs is infringed, compensation for injury shall be due, regardless of other proceedings provided for in this Law.

The author may not, as a result of this right, require the work to be moved, and the work shall be accessed in the place and manner that cause least inconvenience to the owner, who shall be compensated, where appropriate, for any injury caused to him.

On the author's death, the exercise of the rights referred to in subparagraphs (a) and (c) shall pass, without any time limit, to his successors in title.

Successors in title may exercise the right set out in subparagraph (b) for a period of 70 years after the author's death.

Part Two ECONOMIC RIGHTS

Art. 19. – The author shall enjoy the exclusive right to exploit his work in any manner and to obtain profits therefrom, subject to the limitations set out in the present Book.

Art. 20. – The exclusive right to exploit the work shall include, in particular, entitlement to carry out, authorize or prohibit:

(a) the reproduction of the work in any manner or form;

(b) the communication of the work to the public by any means of disseminating words, signs, sounds or images;

(c) the distribution of copies of the work to the public by sale, rental or hiring;

(d) importation; and

(e) the translation, adaptation, arrangement or other alteration of the work.

The exploitation of the work in any form, and especially through any of the acts listed in this Article, shall be unlawful without the express authorization of the copyright holder, subject to the exceptions provided for in this Law.

Art. 21. – Reproduction shall consist in the fixation or replication of a work by any means or process known or as yet unknown, including the temporary or permanent digital storage thereof, in such a way that it can be perceived or communicated or copies of all or part of it can be made.

Art. 22. – "Communication to the public" means any act by which two or more persons, whether or not they are gathered together in the same place, may have access to the work at a time individually chosen by them, without the prior distribution of copies to each one of them, such as the following:

(a) stage presentations, recitals, dissertations and public performances of dramatic, dramatico-musical, literary and musical works by any means or process;

(b) the public projection or showing of cinematographic and other audiovisual works;

(c) the broadcasting or communication to the public of any works by any means of wireless dissemination of signs, sounds or images or the digital representation thereof, whether simultaneous or not.

The transmission of encrypted program-carrying signals shall also be an act of communication to the public, provided that means of decoding are made available to the public by the broadcasting organization or with its consent.

For the purposes of the above two sub-subparagraphs, "satellite" means any satellite that operates in frequency bands reserved under telecommunications law for the sending of signals for reception by the public or for individual non-public communication, provided that, in the latter case, the circumstances in which individual reception of signals occurs are comparable to those that are applied in the former case;

(d) the transmission of works to the public by wire, cable, optic fiber or other analogous process, whether free or on subscription;

(e) the retransmission, by wire or wireless means, of a work broadcast on radio, television or any other medium, where such retransmission is carried out by an organization other than the originating organization;

(f) the emission, transmission or reception, in or to a place accessible to the public and by means of any appropriate apparatus, of a broadcast work;

(g) public presentation and display;

(h) public access to computer databases by means of telecommunication, where they incorporate or constitute protected works; and

(i) lastly, the dissemination, by any process, known or as yet unknown, of signs, words, sounds or images representing the works or other forms of expression of said works.

Any communication beyond the strictly domestic environment shall be considered public.

Art. 23. – Pursuant to the right of distribution, the copyright holder shall be entitled to make available to the public the original or copies of the work by sale, rental or public lending or in any other way.

"Rental" means the making available of originals and copies of a work for use for a limited time and with a direct or indirect economic or commercial benefit. For the purposes of this provision, the concept of rental shall exclude the making available of a work for the purpose of display or for consultation *in situ*.

"Lending" means the making available of originals and copies of a work through establishments accessible to the public for use for a limited time without direct or indirect economic or commercial benefit. The exclusions set out in the foregoing paragraph shall also apply to public lending.

The right of distribution by sale shall be exhausted with the first sale and solely with respect to subsequent resales within Ecuador, but the exclusive right to authorize or prohibit the rental and public lending of copies sold shall not be exhausted or affected.

The author of an architectural work or a work of applied art may not object to the owner's renting out the work or construction.

Art. 24. – The right of importation shall confer on the copyright holder entitlement to prohibit the original or copies of protected works from being brought into Ecuadorian territory, including by analog and digital transmission, without prejudice to obtaining the same prohibition in respect of unlawful copies. This right may be exercised both for the purpose of suspending the entry at the borders of the original and copies and for the purpose of ensuring the withdrawal or suspending the circulation of copies that have already entered the country. This right shall not affect copies contained in personal luggage.

Art. 25. – The copyright holder shall be entitled to apply or require the application of such technical protection measures as he deems appropriate, through the incorporation of facilities or devices, the encryption of signals or other tangible or intangible protection systems, with a view to impeding or preventing an infringement of his rights. The acts of importation, manufacture, sale, rental, offering of services, placing in circulation or any other manner of supplying apparatus or facilities intended for deciphering or decoding encrypted signals or in any other way circumventing or breaking the protection facilities applied by the copyright holder, where they are carried out without the author's consent, shall be assimilated to an infringement of copyright for the purposes of civil proceedings and for the implementation of appropriate precautionary measures, without prejudice to any penalties that may be applicable for the offense.

Art. 26. – The following acts shall also constitute an infringement of the rights set out in this Book:

(a) removing or altering, without the relevant authorization, electronic rights management information; and

(b) distributing, importing or communicating to the public the original or copies of a work, in the knowledge that electronic rights management information has been removed or altered without authorization.

"Electronic information" means that which is included in copies of works or which appears in relation to a communication to the public of a work, which identifies the work, the author, the holders of any copyright or related right, or information about the terms and conditions of use of the work, and also any numbers and codes that represent such information.

Art. 27. – The exclusive right of exploitation, or any mode of exploitation individually, and, in general, any instrument or contract that is provided for in this Law or that may exist under civil law shall be transferable. In the event of transfer on any basis, the acquirer shall enjoy and exercise the ownership of rights. The transfer document

shall specify the modes of exploitation covered, in such a way that assignment of the right of reproduction shall not imply assignment of the right of communication to the public and vice versa, unless expressly provided.

Sale of the physical medium in which a work is embodied shall not imply any assignment or authorization in respect of copyright in the work.

Transfer of the right of exploitation in future works shall be valid, where they are specified individually or generically, but in such cases the contract may not last more than five years.

Section V SPECIAL PROVISIONS FOR CERTAIN WORKS

Part One COMPUTER PROGRAMS

Art. 28. – Computer programs shall be considered literary works and shall be protected as such. Said protection shall be granted regardless of whether they are incorporated in a computer and whatever the form in which they are expressed, either human-readable (source code) or machine-readable (object code), whether they are operating programs or application programs, including flow diagrams, plans, user manuals and, in general, those elements that form the structure, sequence and organization of the program.

Art. 29. – The holder of rights in a computer program shall be the producer, that is, the natural or legal person who or which takes the initiative and responsibility for making the work. In the absence of proof to the contrary, the person whose name appears on the work or on copies thereof in the usual manner shall be considered the right holder.

Said right holder shall also be entitled to exercise the moral rights in the work in his own name, including the right to decide whether or not to disclose it.

The producer shall have the exclusive right to carry out, authorize or prohibit the making of subsequent modifications to or versions of the program and of programs derived therefrom.

The provisions of the present Article may be amended by agreement between the authors and the producer.

Art. 30. – Acquisition of a copy of a computer program that has been circulated lawfully shall authorize the owner thereof exclusively to:

- (a) make a copy of the machine-readable (object-code) version of the program for security or backup purposes;
- (b) store the program in the internal memory of the equipment, whether or not such stored program disappears when the equipment is switched off, for the sole purpose of and to the extent necessary for using the program; and
- (c) unless expressly prohibited, adapt the program for his exclusive personal use, provided that this is limited to the normal use provided for in the license. The acquirer may not under any circumstances transfer the medium in which

such adapted program is embodied and may not use it in any other way without express authorization, in accordance with the general rules.

The authorization of the right holder shall be required for any other use, including reproduction for the purpose of personal use or the use of the program by two or more persons through networks or other comparable systems, known or as yet unknown.

Art. 31. – A computer program shall not be considered rented where it is not the essential subject matter of the contract concerned. The program shall be considered the essential subject matter where the functionality of the subject matter of the contract is directly dependent on the computer program supplied with it, for example where a computer is rented with computer programs already installed on it.

Art. 32. – The exceptions to copyright set out in Articles 30 and 31 of this Law shall be the only ones applicable to computer programs.

The rules set out in the present Part shall be interpreted in such a way that the application thereof does not prejudice the normal exploitation of the work or the legitimate interests of the right holder.

Part Two AUDIOVISUAL WORKS

Art. 33. – Unless otherwise agreed, it shall be presumed that the following are joint authors of an audiovisual work:

- (a) the director or producer;
- (b) the authors of the plot, the adaptation, the screenplay and dialogues;
- (c) the author of the music composed especially for the work; and
- (d) the artist, in the case of an animation.

Art. 34. – Without prejudice to copyright in pre-existing works that may have been adapted or reproduced, an audiovisual work shall be protected as an original work.

The authors of pre-existing works may exploit their contribution in a different genre, but the right to exploit the joint work, and to exploit works especially created for the audiovisual work, shall accrue exclusively to the right holder, in accordance with the following Article.

Art. 35. – The producer, that is, the natural or legal person who or which takes the initiative and responsibility for making an audiovisual work, shall be deemed to be the holder of the rights in the work. In the absence of proof to the contrary, the natural or legal person whose name appears on said work in the usual manner shall be considered the producer.

Said right holder shall also be entitled to exercise the moral rights in the work in his own name, including the right to decide whether or not to disclose it.

All of the above shall be understood without prejudice to express provisions and reservations agreed between the authors and the producer.

Part Three ARCHITECTURAL WORKS

Art. 36. – An author of architectural works may object to modifications that aesthetically or fundamentally alter his work.

Modifications that are necessary during or after the construction process shall require merely the authorization of the architect who is the author of the plan, who may not refuse to grant such authorization unless he considers that the proposed modification aesthetically or fundamentally alters his work.

Acquisition of an architectural plan shall confer on the acquirer the right to carry out the planned work, but the author's written consent shall be required in order to use the plan in other works, under the terms stipulated by him and in accordance with the Law on the Professional Practice of Architecture.

Part Four

WORKS OF THREE-DIMENSIONAL ART AND OTHER WORKS

Art. 37. – The acquirer of a physical object embodying a work of art shall, unless otherwise agreed, have the right to display the work publicly in any connection.

Art. 38. – Where the original of a work of three-dimensional art or an original manuscript of a writer or a composer is resold at a public auction, or where a dealer in such works is directly or indirectly involved in such resale as a buyer, seller or agent, the seller shall pay the author or his heirs, as appropriate, a share equivalent to five per cent of the sale price, unless otherwise agreed. This right shall be unrenounceable and inalienable.

Art. 39. – Managers of commercial establishments, the dealer or any other person involved in a resale shall be jointly responsible with the seller for paying such royalty and shall notify the relevant management society of the resale or, in the absence thereof, the author or his successors in title within three months, and shall also supply the documentation relating to the settlement of the payment.

Art. 40. – A portrait or bust of a person may not be placed on the market without the consent of the person himself and, after his death, of his successors in title. However, the publication of a portrait shall be free where it is connected solely with scientific, educational or cultural purposes or with matters or events that are of public interest or that have occurred in public.

Art. 41. – The author of a photographic work relating to a person, or the maker of a mere photograph of a person, shall obtain the authorization of the person photographed and, on his death, of his successors in title, in order to exercise his copyright or related rights, as the case may be. The authorization shall be in writing and shall refer specifically to the type of use of the image that is authorized. However, the use of the image shall be lawful where the image has been made in the usual course of public events and serves cultural or information purposes, or where such use is carried out in connection with matters or events that are of public interest.

The exceptions set out in the foregoing paragraph shall not affect the copyright in the work embodying the image.

**Section VI
TRANSFER OF RIGHTS**

**Part One
TRANSFER *MORTIS CAUSA***

Art. 42. – Copyright shall be transferred to heirs and legatees in accordance with the provisions of the Civil Code.

Art. 43. – The consent of the majority of the heirs shall be required in order to authorize any exploitation of the work using any medium.

Where the majority uses or exploits the work, the costs incurred shall be deducted from the total economic yield and the appropriate share shall be delivered to those who were not able to express their consent.

**Part Two
CONTRACTS FOR EXPLOITATION OF WORKS**

**One
GENERAL PROVISIONS ON CONTRACTS**

Art. 44. – Contracts authorizing the use or exploitation of works by third parties shall be in writing, shall be onerous and shall last for the time specified in the contract; however, they may be renewed indefinitely by mutual agreement between the parties.

Art. 45. – The various forms of exploitation of a work shall be independent of each other and, as such, contracts shall be considered to be limited to the forms of exploitation expressly referred to and the territorial scope mentioned in the contract. All rights that are not the subject of express provisions shall be considered reserved and, in the absence of provisions on territorial scope, said scope shall be the territory of the country in which the contract was concluded.

Assignment of the right of reproduction shall imply assignment of the right of distribution by sale of copies the reproduction of which has been authorized, where this is naturally inferred from the contract or is essential for it to be fulfilled.

Art. 46. – Exclusive assignment of copyright shall confer on the assignee the right of exclusive exploitation of the work, enforceable against third parties and against the author himself. It shall also confer on the assignee the right to grant assignments or licenses to third parties and to conclude any other instrument or contract for exploitation of the work, without prejudice to the relevant moral rights.

In the case of non-exclusive assignment, the assignee shall be authorized to exploit the work in the manner provided for in the contract.

Art. 47. – Without prejudice to provisions relating to works created in the context of an employment relationship, the assignment of economic rights in all works that the author may create in the future shall be null and void, unless such works are clearly specified in the contract and the duration of the contract does not exceed five years.

Any provision pursuant to which the author undertakes not to create any work in the future shall also be null and void.

Art. 48. – The copyright holder may also grant non-exclusive and non-transferable licenses for use to third parties. Acquisition of copies of works that are marketed together with the relevant license shall imply the consent of the acquirer to the terms of such licenses.

Art. 49. – A natural or legal person who or which has commissioned newspaper articles, studies, photographs, diagrams or other works that may be published in newspapers, magazines or other public communication media shall have the right to publish such works in the communication medium provided for in the commission and also to authorize or prohibit the use of the work in media similar or equivalent to those in which it was originally published. The author's rights of exploitation in other communication media that do not entail competition with the original publication shall be unaffected.

Where such works are made in the context of an employment relationship, the author shall retain the right to make an independent edition in the form of a collection.

The provisions of the present Article may be amended by agreement between the parties.

Two PUBLISHING CONTRACTS

Art. 50. – A publishing contract shall be a contract under which the author or his successors in title grant to another person, known as the publisher, the right to publish and distribute the work at his own expense and risk, subject to agreed terms.

Art. 51. – Where an author has already concluded a publishing contract in respect of the same work, or where the work has been published with his authorization or knowledge, he shall make these circumstances known to the publisher before concluding the contract. Where he fails to do so, he shall be liable for any injury caused.

Art. 52. – A publisher may not publish a work with abridgments, additions or deletions or any other modifications without the written consent of the author.

Art. 53. – The author shall retain the right to make such corrections, amendments, additions or improvements as he deems appropriate before the work is printed.

Where such modifications increase the cost of publication, the author shall be obliged to compensate for the costs so occasioned, unless otherwise agreed.

Where the modifications involve fundamental changes in the content or form of the work and are not accepted by the publisher, the work shall be considered withdrawn, in which case the author shall compensate for any injury caused to third parties.

Art. 54. – Where there is no agreement with regard to the sale price of each copy, the publisher shall be entitled to determine it.

Art. 55. – Where a publishing contract has a set termination date and where, on expiry thereof, the publisher still has unsold copies of the work, the author may buy them at cost price plus 10 per cent. This right may be exercised within 30 days of expiry of the contract term, after which the publisher may continue to sell them on the same terms.

Art. 56. – A publishing contract shall be terminated, regardless of the stipulated duration thereof, when the edition is out of print.

Art. 57. – The right to publish separately one or more works by the same author shall not entitle the publisher to publish them together. Similarly, the right to publish an author's works together shall not entitle the publisher to publish them separately.

Art. 58. – Any person that publishes a work shall be obliged to indicate in a visible place on all copies at least the following information:

(a) the title of the work and the name or pseudonym of the author, or a statement that the work is anonymous, and the name of the compiler, adapter or author of the version, where applicable;

(b) reference to the reservation of copyright, with a statement of the name of the copyright holder and, where he so requires, the acronym of the management society that represents him and the year and place of first publication;

(c) the name and address of the publisher and the printer; and

(d) the International Standard Book Number (ISBN), in accordance with Article 7 of the Law on Book Promotion.

Art. 59. – The publisher shall be prohibited from publishing more copies than agreed with the author; where he publishes a greater number, the author may demand payment for the additional copies actually published, without prejudice to any penalties and compensation that may be applicable.

Art. 60. – The publisher shall make appropriate payments to the author or his representative subject to the terms of the contract. In any event, the author or his representative shall have the right to examine the sales records and receipts of those that publish, distribute or sell said printed works; publishers, distributors and sellers shall be obliged to furnish such information.

Art. 61. – Bankruptcy on the part of the publisher shall not cause the contract to be terminated, except where printing of the work has not yet begun. The rights of a bankrupt publisher may not be assigned where this would cause injury to the author or prejudice the dissemination of his work.

Art. 62. – The foregoing provisions shall apply to contracts for publication of musical works, unless the nature of the exploitation of the work precludes such application.

Art. 63. – Unless expressly agreed otherwise, the publisher, sub-publishers or licensees, as the case may be, shall be entitled to authorize or prohibit the inclusion of a work in phonograms, the synchronization thereof for advertising purposes, or any other form of exploitation similar to those authorized under the publishing contract, without prejudice to copyright and to the obligation to pay the author the remuneration agreed in the contract, after deduction of the publisher's share.

Art. 64. – The author shall be obliged to guarantee the authorship and originality of the work.

Three CONTRACTS FOR INCLUSION IN A PHONOGRAM

Art. 65. – A contract for inclusion in a phonogram shall be a contract under which the author of a musical work or his representative, the publisher or the relevant collective management society authorizes a producer of phonograms, in exchange for remuneration, to record or fix a work in order to reproduce it on a phonograph disc, a magnetic tape, a digital medium or any other analogous device or mechanism, for the purpose of reproducing and selling copies.

Art. 66. – Unless otherwise agreed, the author's remuneration shall be proportional to the value of the copies sold and shall be paid periodically.

Art. 67. – Producers of phonograms shall indicate the following information on the physical medium of the phonograms:

- (a) the title of the work and the names or pseudonyms of the authors and of the author of the version, where applicable;
- (b) the names of the performers. Orchestral or choral ensembles shall be referred to by their name or by the name of their director, as appropriate;
- (c) reference to the reservation of copyright with the symbol P (the letter "P" inscribed in a circle), followed by the year of first publication;
- (d) the trade name of the phonogram producer or the trademark that identifies him;
- (e) the statement "All rights of the author and the phonogram producer are reserved. Reproduction, rental or public lending, or any form of communication of the phonogram to the public, is hereby prohibited"; and
- (f) the serial number shall, as a matter of course, be printed on the phonogram.

Any information that cannot be indicated on the labels of the copies owing to lack of adequate space shall be printed on the jacket, cover or accompanying leaflet.

Art. 68. – The provisions set out in Articles 64 and 66 of this Law shall apply, where relevant, to a literary work that is used as a text for a musical work or as a declamation or reading for fixation in a phonogram, for the purposes of reproduction and sale.

Four PERFORMANCE CONTRACTS

Art. 69. – A performance contract shall be a contract under which the holder of rights in an intellectual creation authorizes a natural or legal person, or assigns that person the right, to perform the work on agreed terms.

Such contracts may be concluded for a specified period or for a specified number of public performances.

The provisions relating to performance contracts shall apply to other modes of communication to the public, where relevant.

Art. 70. – Where the author's share has not been specified contractually, he shall receive at least 10 per cent of the total value of ticket sales for each show, and 20 per cent in the case of the premiere.

Art. 71. – Where the promoter does not pay the relevant share to the author, the competent authority, at the request of the right holder or his representative, shall order the suspension of performances of the work or the attachment of the proceeds from ticket sales.

Where the same promoter represents other works of different authors, the authority shall order the attachment of excess amounts collected, after paying the authors' fees for such works and the relevant costs, until the total sum owed to the unpaid author is covered. In any event, the author shall be entitled to terminate the contract and to withdraw the work from the promoter's authority, and also to bring other proceedings, as appropriate.

Art. 72. – In the absence of contractual provisions, it shall be presumed that the promoter acquires the exclusive right to perform the work for six months from the premiere thereof, and non-exclusively for a further six months.

Art. 73. – The promoter may deem the contract terminated, losing any advances he may have made to the author, where performances of the work are discontinued because of poor public reception during the first three shows or owing to a chance event, *force majeure* or any other circumstance beyond the control of the promoter.

Art. 74. – The competent public officials shall not permit public concerts and shows unless the authorization of the holders of rights in the works is submitted.

Five BROADCASTING CONTRACTS

Art. 75. – A broadcasting contract shall be a contract under which the holder of the rights in an intellectual creation authorizes a broadcasting organization to broadcast his work.

These provisions shall also apply to broadcasts by wire, cable, optic fiber or other analogous medium.

Art. 76. – Authorization to broadcast a work shall not include the right to rebroadcast it or to exploit it publicly, unless otherwise agreed.

The express authorization of the right holders shall be required in order to broadcast a work in or to other countries.

Six CONTRACTS RELATING TO AUDIOVISUAL WORKS

Art. 77. – In order to exploit an audiovisual work on video cassettes, in the cinema, on television, by broadcasting or by any other medium, prior agreement with the authors or the performers shall be required or, where appropriate, an agreement concluded with the relevant management societies.

Art. 78. – The distribution or projection of an audiovisual work may not be negotiated unless an agreement that fully guarantees payment of the relevant projection fees

has already been concluded with the collective management societies and the performers.

Seven ADVERTISING CONTRACTS

Art. 79. – Advertising contracts shall be contracts the purpose of which is the exploitation of works for advertising purposes or the identification of advertisements or promotional material through any communication medium.

Without prejudice to any terms stipulated by the parties, the contract shall authorize the dissemination of advertisements or promotional material for up to a maximum period of six months from the first communication; each additional period of six months shall be paid for separately.

With regard to the right of reproduction, the contract shall specify the physical medium in which the work shall be reproduced and also the number of copies to be included in the print run, where appropriate. Each additional print run shall require an express agreement.

Such contracts shall also be subject to the provisions relating to contracts for publication, inclusion in a phonogram and audiovisual production.

Section VII LIMITATIONS OF AND EXCEPTIONS TO AN AUTHOR'S ECONOMIC RIGHTS

Part One DURATION

Art. 80. – Economic rights shall last throughout the author's lifetime and for 70 years after his death, regardless of the country of origin of the work.

In the case of works of joint authorship, the period of protection shall commence on the death of the last joint author.

In the case of posthumous works, the period of 70 years shall commence on the date of the author's death.

An anonymous work the author of which does not make himself known within 70 years of the date of first publication shall enter the public domain. Where the author's name is revealed before that period has expired, the provisions of the first paragraph of this Article shall apply.

Where the identity of the author of a work published under a pseudonym is not known, the work shall be considered anonymous.

Where a collective work is disclosed in parts, the period of protection shall commence on the date of publication of the last supplement, part or volume.

Art. 81. – Where the holder of rights in a work from the time of creation of the work is a legal person, the period of protection shall be 70 years from the making, disclosure or publication of the work, whichever is the later.

Part Two
THE PUBLIC DOMAIN

Art. 82. – On expiry of the periods of protection provided for in this Section, works shall enter the public domain and may consequently be exploited by any person, provided that the relevant moral rights are respected.

Part Three
EXCEPTIONS

Art. 83. – Provided that fair use is respected and normal exploitation of the work is not adversely affected or injury caused to the right holder, exclusively the following acts, which shall not require the authorization of the right holder or be subject to any remuneration, shall be lawful:

(a) the inclusion in a given work of fragments of other works by other people in written, aural or audiovisual form, and also that of individual three-dimensional, photographic, figurative or analogous works, provided that the works concerned have already been disclosed and that the inclusion thereof is by way of quotation or for the purpose of analysis, comment or critical assessment. Such use may take place only for teaching or research purposes, to the extent justified by the purpose of the inclusion, and the source and the name of the author of the work used shall be stated;

(b) the performance of musical works at official functions of State institutions or religious ceremonies, admission to which is free of charge, provided that the participants in the communication do not receive specific remuneration for their involvement in the function;

(c) the reproduction, distribution and communication to the public of articles and comment on current events of collective interest, disseminated through mass communication media, provided that the source and the name of the author are mentioned, if the original article states them, and that the rights therein have not been reserved at the outset;

(d) the dissemination in the press or by broadcasting, for information purposes, of lectures, speeches and similar works disclosed at assemblies, public meetings or public debates on matters of general interest;

(e) the reproduction of news of the day or of miscellaneous facts having the character of mere items of press information, published in the press or broadcast, provided that the origin thereof is stated;

(f) the reproduction, communication and distribution of works that are permanently located in public places, by means of photography, painting, drawing or any other audiovisual process, provided that the name of the author of the original work and the place where it is located are specified, and that the purpose is strictly to disseminate art, science and culture;

(g) the reproduction of a single copy of a work that is in the permanent collection of a library or archive, for the exclusive purpose of replacing it where necessary, provided that said work is not available on the market;

(h) ephemeral recordings that are destroyed immediately after they have been broadcast;

(i) the reproduction or communication of a work that is disclosed for judicial or administrative proceedings;

(j) the parodying of a disclosed work, provided that there is no risk of confusion with the work and that it is not prejudicial to the work or the reputation of the author or performer, as the case may be; and

(k) lessons and lectures given at universities, polytechnic schools and higher technical and technological institutes, colleges, schools, and teaching and training centers in general, which may be annotated and collected by those to whom they are addressed for their personal use.

Art. 84. – Physical ownership of a letter shall accrue to the person to whom or to which it has been addressed, but the author thereof shall retain all the intellectual rights therein. Where the persons to whom or to which such letters are addressed have not obtained the authorization of the author or his heirs or successors in title after making reasonable efforts to do so, they may seek authorization from a judge to disclose them in the form and to the extent necessary to defend their personal honor.

Chapter II RELATED RIGHTS

Part One GENERAL PROVISIONS

Art. 85. – The protection of related rights shall in no way affect the protection of copyright, nor may it be interpreted as diminishing such protection.

Art. 86. – Holders of related rights may, for the protection of the rights conferred under this section, invoke all the provisions in this Book, except for those the nature of which rules out such application or in respect of which this section contains an express provision.

Part Two PERFORMERS

Art. 87. – Irrespective of economic rights and even after the transfer thereof, performers shall, in respect of their live performances or performances fixed in phonograms, enjoy the right to be identified as such, unless omission is dictated by the way in which the performance is used, and also the right to object to any distortion, mutilation or other modification of their performance, insofar as such acts may be prejudicial to their reputation. These moral rights shall not be extinguished on the death of the holder thereof.

Art. 88. – Performers shall have the right to authorize or prohibit the communication of their live performances to the public and also the fixation of their performances and the reproduction of such performances by any means or process.

Art. 89. – Notwithstanding the provisions of the foregoing Article, performers may not object to the communication to the public of their performances, where they are in themselves broadcast performances or are made from a fixation made with their prior consent and published for commercial purposes.

Without prejudice to their exclusive right under the foregoing Article, performers shall, in the cases set out in the foregoing paragraph, have the right to receive remuneration for the communication to the public of a phonogram in which their performances are embodied.

Unless otherwise agreed, the remuneration collected under the foregoing paragraph shall be shared equitably among the phonogram producers and the performers, irrespective of the economic rights of the author already provided for in the articles concerning the economic rights of authors, in accordance with international conventions.

Art. 90. – Performers who participate collectively in the same performance shall appoint a representative for the exercise of the rights conferred under the present Part. In the absence of such appointment, they shall be represented by the director of the vocal or instrumental group that has participated in the performance.

Art. 91. – The rights of performers shall be protected for a period of 70 years from January 1 of the year following that in which the performance took place or the fixation thereof was made, as the case may be.

Part Three PRODUCERS OF PHONOGRAMS

Art. 92. – Producers of phonograms shall hold the exclusive right to carry out, authorize or prohibit:

- (a) the direct or indirect reproduction of their phonograms by any means or in any way;
- (b) distribution to the public; and
- (c) the importation by any means of reproductions of phonograms, lawful and unlawful.

Art. 93. – Exclusive licenses granted by a phonogram producer shall specify the rights which the licensee is authorized to exercise, in order to prove the legitimacy of the licensee's dealings with the relevant administrative and judicial authorities.

Art. 94. – Phonogram producers shall also have the exclusive right to carry out, authorize or prohibit communication to the public by wire or wireless means.

Art. 95. – A common management society may be established to collect remuneration owed to authors, phonogram producers and performers for the communication to the public of their works, performances and phonograms respectively.

Art. 96. – The rights of a phonogram producer shall be protected for a period of 70 years from January 1 of the year following the date of first publication of the phonogram.

Part Four BROADCASTING ORGANIZATIONS

Art. 97. – Broadcasting organizations shall hold the exclusive right to carry out, authorize or prohibit:

- (a) the retransmission of their broadcasts by any means or process;

(b) the fixation and reproduction of their broadcasts, including that of any individual image, where such image has been made available to the public for the first time through the broadcast; and

(c) the communication to the public of their broadcasts, where such communication is effected in places accessible to the public against payment of an admission fee.

Art. 98. – The broadcasts referred to in the foregoing Article shall include the production of program-carrying signals intended for a broadcasting satellite, and also dissemination to the public, by an organization that broadcasts or disseminates transmissions, of other transmissions received by means of such a satellite.

Art. 99. – Without the authorization of the relevant broadcasting organization, it shall be unlawful to decode program-carrying satellite signals, to receive them for profit-making purposes or to disseminate them, or to import, distribute, sell, rent or make available to the public in any way apparatus or systems capable of decoding such signals.

Art. 100. – For the purpose of the enjoyment and exercise of the rights provided for in this Part, comparable protection shall be afforded, as appropriate, to stations that broadcast programs to the public by wire, cable, optic fiber or other similar medium.

Art. 101. – The rights of broadcasting organizations shall be protected for a period of 70 years from the first day of the year following the date of a broadcast or transmission.

Part Five OTHER RELATED RIGHTS

Art. 102. – A producer of moving images, with or without sound, that are not creations capable of being classified as audiovisual works, shall have the exclusive right to carry out, authorize or prohibit reproduction, communication to the public or distribution, including of photographs made in the process of producing the audiovisual recording. This right shall last for 70 years from the first day of the year following the date of the making, disclosure or publication of the recording, as appropriate.

"Audiovisual recordings" means fixations of moving images, with or without sound, that cannot be classified as audiovisual works.

Art. 103. – Anyone who makes a mere photograph or other fixation obtained by an analogous process that does not have the character of a photographic work shall enjoy the exclusive right to carry out, authorize or prohibit the reproduction, distribution and communication to the public thereof, on the same terms as the authors of photographic works. This right shall last for 25 years from the first day of the year following the date of the making, disclosure or publication thereof, as appropriate.

Art. 104. – Anyone who publishes for the first time an unpublished work that is in the public domain shall have in that work the same rights of exploitation as the author would have had, for a period of 25 years from the first day of the year following publication.

Part Six
REMUNERATION FOR PRIVATE COPYING

Art. 105. - The private copying of works fixed in phonograms or videograms, and also the reprographic reproduction of printed literary works, shall be subject to compensatory remuneration in accordance with the provisions of this Part. This remuneration shall be payable in connection with the distribution of physical media capable of embodying an aural or audiovisual fixation, or of equipment for the reproduction of phonograms or videograms, or of equipment for reprographic reproduction.

Remuneration shall accrue in equal parts to the authors, performers and phonogram producers in the case of phonograms and videograms, and shall likewise accrue in equal parts to the authors and publishers in the case of literary works.

Compensatory remuneration for the private copying of phonograms and videograms shall be collected by a single collecting agency common to authors, performers and phonogram and videogram producers, the sole corporate purpose of which shall be the collection on their behalf of compensatory remuneration for private copying. The collection of compensatory fees for reprographic reproduction shall also be carried out by a single collecting agency common to authors and publishers.

These management bodies shall be authorized by IEPI and shall abide by the provisions of this Law.

Art. 106. - The compensatory remuneration provided for in the foregoing Article shall be paid by the manufacturer or importer at the time of placing on the national market:

- (a) tapes or other material carriers capable of embodying an aural or audiovisual fixation; and
- (b) reproduction equipment.

The percentage rate of compensatory remuneration for private copying shall be calculated on the basis of the price of the reproduction media or equipment, and shall be determined and laid down by the IEPI Board of Directors.

Art. 107. – (Amended by Amending Provision Five, para. 3, of unnumbered Law, *Official Register* (RO) No. 544-S, March 9, 2009). - A natural or legal person who or which offers media capable of embodying an aural or audiovisual fixation or reproduction equipment to the public without having paid compensatory remuneration may not place said goods in circulation and shall be jointly liable with the manufacturer or importer for the payment of said remuneration, without prejudice to the right of IEPI or of the competent courts, as the case may be, to withdraw the goods concerned from the market until said remuneration has been paid.

Non-payment of compensatory remuneration shall be punished with a fine equivalent to 300 per cent of the amount that should have been paid.

Producers of phonograms or the holders of rights in the works to which this Part relates, or the licensees thereof, shall not be liable for this remuneration in respect of imports that they carry out.

Art. 108. – "Private copying" means the domestic copying of phonograms or videograms, or reprographic reproduction in a single copy, carried out by the original

acquirer, of a lawfully circulating phonogram or videogram or literary work, to be used exclusively for non-profit-making purposes by the natural person who carries it out. Such copies may not be used in a manner contrary to fair use.

Private copying carried out using media or reproduction equipment for which compensatory remuneration has not been paid shall constitute an infringement of copyright and of the relevant related rights.

Chapter III COLLECTIVE MANAGEMENT SOCIETIES

Art. 109. – Collective management societies shall be legal persons under private law that are not for profit-making purposes, the corporate objective of which is the collective management of economic copyright or related rights or both.

Membership of a collective management society on the part of holders of copyright or related rights shall be voluntary.

Art. 110. – Collective management societies shall be obliged to administer the rights entrusted to them and shall be entitled to exercise them on the terms set out in their own statutes, in the mandates granted to them and in the contracts that they conclude with foreign organizations, as the case may be.

Representation under the foregoing paragraph shall not diminish the entitlement of right holders to exercise directly the rights conferred on them under this Book.

Art. 111. – Where two or more collective management societies exist for a given type of work, a single collecting agency shall be established, the corporate purpose of which shall be exclusively the collection of royalties on behalf of its members. Where the management societies do not agree on the establishment, organization and representation of a collecting agency, the National Copyright Directorate shall appoint one and shall determine its form.

Art. 112. – Collective management societies shall be authorized by the National Copyright Directorate and shall be subject to the Directorate's monitoring, control and intervention. The National Copyright Directorate may, *ex officio* or at the request of a party, intervene in a collective management society, where the society fails to comply with the provisions of this Chapter and of the Regulations. Where such intervention has taken place, instruments and contracts shall be authorized by the National Copyright Director in order to be valid. In order for collective management societies to be authorized to operate, the following requirements shall be met:

(a) the applicant society's statutes shall meet the requirements set out in this Chapter; and

(b) data submitted and information provided shall make it clear that the applicant society meets the required conditions for ensuring the efficient administration of the rights that it will be responsible for managing.

Art. 113. – Without prejudice to the applicable legal provisions, the statutes of a management society shall, in particular:

(a) set out the membership requirements for right holders that apply for membership and that prove their status of right holder; and

(b) provide that the general assembly, made up of the society's members, shall be the supreme governing body and shall have prior authorization to approve tariff regulations and to decide what percentage is to be allocated to administrative costs. This percentage may not, under any circumstances, exceed 30 per cent of the amounts collected, and the difference shall be distributed equitably among the various right holders in proportion to the actual exploitation of the works, performances or phonograms concerned, as the case may be.

Art. 114. – Collective management societies shall be obliged to publish their financial statements annually in a communication medium of wide national circulation.

Art. 115. – Where a management society fails to fulfill its objectives or to comply with the provisions of this Chapter, the National Copyright Directorate may suspend its operating license, in which case the management society shall retain its legal personality only for the purpose of remedying said failure. Where the society fails to rectify the failure within a maximum period of six months, the Directorate shall revoke the society's operating license.

Without prejudice to the foregoing, in all cases of suspension of an operating license, the society may, under the supervision of the National Copyright Directorate, collect the royalties of authors represented by the society.

The proceeds of collections shall be deposited in a separate account in the name of the National Copyright Directorate and shall be returned to the society once a decision has been issued authorizing it to operate once again.

Art. 116. – Collective management societies shall establish tariffs relating to licenses for use of the works or productions in their catalog. The tariffs established by collective management societies shall be published in the *Official Register* on the orders of the National Copyright Directorate, provided that the formal requirements set out in the statutes and in this Chapter for the adoption of tariffs have been met.

Art. 117. – Collective management societies may negotiate with users' organizations and conclude contracts establishing tariffs with them. Any interested party may avail himself of these tariffs by written request to the relevant management society.

Art. 118. – All broadcasting organizations and, in general, any party that habitually performs any act of communication to the public shall keep catalogs, registers or monthly lists in which shall be recorded, in order of broadcasting, the titles of works broadcast and the names of the relevant authors or holders of copyright or related rights, and shall submit them to each management society and to the sole society that collects royalties for communication to the public, for the purposes set out in this Law.

Administrative, police or municipal authorities that in each case perform monitoring and inspection duties in the course of which they identify activities that may give rise to the remuneration referred to in the foregoing Article shall be obliged to inform the management societies concerned.

Art. 119. – Anyone who exploits a work or production without having been assigned the relevant right or granted the relevant license for use shall pay, as compensation, a surcharge of 50 per cent on the tariff, which shall be calculated for the entire time during which the exploitation took place.

The same provision shall apply to collective management societies where they have granted licenses in respect of works that they do not represent; in any event the licensee shall be guaranteed use and peaceful enjoyment of the relevant rights.

Book II INDUSTRIAL PROPERTY

Chapter I PROTECTION OF INVENTIONS

Art. 120. – Inventions in all fields of technology shall be protected by the granting of patents for inventions and utility models.

All industrial property protection shall guarantee the protection of the country's biological and genetic heritage; as such, the granting of patents for inventions or processes that relate to elements of said heritage shall be conditional on those elements having been acquired lawfully.

Chapter II PATENTS FOR INVENTIONS

Section I PATENTABILITY REQUIREMENTS

Art. 121. – Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are industrially applicable.

Art. 122. – An invention shall be new where it is not included in the prior art.

Prior art shall consist of everything that has been made available to the public by means of written or oral description, use or any other means prior to the filing date of the patent application or, where appropriate, the recognized priority date.

Solely for the purpose of determining novelty, the content of a patent application pending before the National Directorate of Industrial Property and having a filing date or priority date earlier than the priority date of the patent application under examination shall likewise be considered part of the prior art.

For the purpose of determining patentability, no account shall be taken of any disclosure of the content of the patent during the year preceding the filing date of the application in Ecuador or during the year preceding the date of priority, if claimed, where such disclosure is attributable to:

- (a) the inventor or his successor in title;
- (b) an office responsible for granting patents in any country that, in infringement of the applicable legal provisions, publishes the content of a patent application filed by the inventor or his successor in title;
- (c) a third party, including public officials or State bodies, that obtained the information directly or indirectly from the inventor or his successor in title;
- (d) an official order;

(e) an obvious violation committed against the inventor or his successor in title; or

(f) the fact that the applicant or his successor in title has displayed the invention at officially recognized exhibitions or fairs or where, for academic or research purposes, it was necessary to make it public in order to continue with development. In this case, the interested party shall, at the time of filing his application, provide a declaration in which he shall state that the invention has actually been displayed and shall file the relevant certificate.

A pending patent application that has not been published shall be regarded as undisclosed information and shall be protected as such in accordance with this Law.

Art. 123. - An invention shall be regarded as involving an inventive step if it would not have been obvious, or obviously derived from prior art, to a person skilled in the technical field concerned.

Art. 124. - An invention shall be regarded as industrially applicable where its subject matter may be produced or used in any productive activity, including services.

Art. 125. - The following shall not be considered inventions:

- (a) discoveries, principles and scientific theories, and mathematical methods;
- (b) materials already existing in nature;
- (c) literary and artistic works or any other aesthetic creation;
- (d) plans, rules and methods for the pursuit of intellectual activities, the playing of games, or economic and business activities, and also computer programs or software, where they do not form part of an industrially applicable invention; and
- (e) methods of presenting information.

Art. 126. - The following shall be expressly excluded from patentability:

- (a) inventions, the prevention of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment or ecosystem;
- (b) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and
- (c) plants and animal breeds, and also essentially biological processes for the production of plants or animals.

For the purposes of subparagraph a), the following shall be considered contrary to morality and shall therefore not be patentable:

- (a) processes for cloning human beings;
- (b) the human body and its genetic identity;
- (c) the use of human embryos for industrial or commercial purposes; and

(d) processes for modifying the genetic identity of animals that cause them suffering without any substantial medical benefit being obtained for human beings or animals.

Section II PATENT OWNERS

Art. 127. – The right in a patent shall accrue to the inventor. This right may be transferred by *inter vivos* instrument or *mortis causa*.

Patent owners may be natural or legal persons.

Where two or more persons make an invention jointly, the relevant right shall accrue jointly to all of them or to their successors in title. Anyone who merely assisted in carrying out the invention, without contributing an inventive step, shall not be considered an inventor or a joint inventor.

Where two or more persons make the same invention independently of each other, the patent shall be granted to the person that is the first to file an application or that claims the earliest priority date, or to his successor in title.

Art. 128. – (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Anyone with a legitimate interest may claim the status of true owner of a patent application before the National Directorate of Industrial Property, in accordance with the procedure established for objections and, before the competent judge, at any time up to three years after the patent has been granted.

Art. 129. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – The right in a patent for an invention developed in fulfillment of a contract shall accrue to the principal or to the employer, unless otherwise stipulated.

The same provision shall apply where an employee is not required by his employment contract to engage in an inventive activity, but has made an invention using information or facilities made available to him by reason of his employment.

In the case provided for in the foregoing paragraph, an employee-inventor shall have the right to a single equitable remuneration that takes into account the information and facilities provided by the company and the personal contribution of the employee, and also the industrial and commercial importance of the patented invention, which, in the absence of agreement between the parties, shall be determined by the competent judge on the basis of a report from IEPI. In the circumstances referred to in the first paragraph of this Article, an employee-inventor shall have a similar right where the invention is of exceptional importance and goes beyond the implicit or explicit object of the employment contract. The right to remuneration provided for in this paragraph shall be unrenounceable.

In the absence of a contractual provision or of an agreement between the parties regarding the amount of said remuneration, it shall be determined by the competent judge on the basis of a report from IEPI. Such remuneration shall be unrenounceable.

Where inventions have been made in the course of or in connection with the academic activities of universities, polytechnic schools, higher technical and technological institutes or teaching centers, or using their facilities or under their

direction, ownership of the patent shall accrue to the university, polytechnic school, higher technical and technological institute or teaching centers, unless otherwise stipulated. Anyone who has directed research shall be entitled to the remuneration provided for in the foregoing paragraphs.

In the case of inventions made in the context of an employment relationship, where the employer is a legal person in the public sector, that employer may assign part of the profits from the innovations to the employee-inventors in order to promote research activity. Entities receiving public-sector funding for their research shall reinvest part of the royalties received in the marketing of those inventions with a view to generating a continuing supply of research funds and encouraging researchers by giving them a share of the proceeds from the innovations.

Art. 130. - An inventor shall have the right to be mentioned as such in the patent or to object to being so mentioned.

Section III GRANTING OF PATENTS

Art. 131. - The first patent application validly filed in a country that is a member of the World Trade Organization or the Andean Community or a party to the Paris Convention for the Protection of Industrial Property or another treaty or convention to which Ecuador is a party and which confers a right of priority with the same effects as provided for in the Paris Convention, or in another country that accords reciprocal treatment to applications from member countries of the Andean Community, shall confer on the applicant or his successor in title the right of priority in applying for a patent for the same invention in Ecuador for a period of one year from the date of such application.

An application filed in Ecuador may not claim priorities in respect of subject matter that is not included in the priority application, although the specification and claims need not necessarily correspond.

Art. 132. - Patent applications shall be filed with the National Directorate of Industrial Property and shall meet the requirements set out in the Regulations.

Art. 133. - Applications shall be accompanied by:

(a) the title or name of the invention with a description thereof, an abstract, one or more claims and the necessary plans and drawings.

Where the invention refers to biological material that cannot be properly detailed in the description, said material shall be deposited at a depositary institution authorized by IEPI;

(b) proof of payment of the relevant fee;

(c) a copy of any patent application filed abroad, where priority is claimed;
and

(d) any other information required under the Regulations.

Art. 134. - Provided that the application is accompanied by the documentation referred to in subparagraphs a) and b) of the foregoing Article, the National Directorate of Industrial Property shall, at the time of receipt, certify the date and time

of filing of the application and assign it a serial number, which shall be from a consecutive and continuous series. In the absence of said documentation, the application shall not be accepted for processing and no filing date shall be granted.

Art. 135. – The description shall be sufficiently clear and complete for a person skilled in the art to carry it out.

Art. 136. – A patent application may relate to one invention only or to a group of inventions so linked as to form a single inventive concept.

Art. 137. – Before publication, as referred to in Article 141 of this Law, an applicant may divide, modify, elaborate on or correct the application, but may not change the subject matter of the invention or expand the nationally disclosed content.

Where an application is divided, each part shall keep the filing date and, where applicable, the priority date of the divided application.

Art. 138. – The National Directorate of Industrial Property or an applicant for an invention patent may suggest that the application be converted into an application for a utility model patent, or vice versa.

A converted application shall keep the filing date of the initial application and shall be subject to the relevant procedure for the new type of patent applied for.

Art. 139. – Where the application is withdrawn before publication, the file shall be kept in reserve.

Art. 140. – The National Directorate of Industrial Property shall examine applications within 15 working days of the filing thereof, as to whether they comply with the formalities mentioned in this Chapter.

Where the examination shows that the application does not meet these requirements, the National Directorate of Industrial Property shall notify the applicant so that he may complete the application within a period of 30 days following the date of notification. This period may be extended once, for a further period of equal length, without loss of priority. Where said period expires without a response from the applicant, the National Directorate of Industrial Property shall declare the application abandoned.

Art. 141. – An extract from the application shall be published in the *Intellectual Property Gazette* in the month following that in which the application has been completed, unless the applicant requests that publication be deferred for up to 18 months.

Until publication takes place, the file shall be reserved and may be examined by third parties only with the applicant's consent or where the applicant has instituted judicial or administrative proceedings against third parties on the basis of the application.

Art. 142. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Within a period of 30 working days following the date of publication, anyone with a legitimate interest may, on one occasion only, file reasoned objections that may nullify the patentability or ownership of the invention.

The period mentioned in the foregoing paragraph may be extended for a further period of equal length at the request of a party that has an interest in filing an

objection, where it is clear that the description, claims and supporting documentation for the application need to be examined.

Anyone who files an unreasoned objection shall be liable for any damages that may be sought before the competent judge.

Art. 143. – Where objections are filed within the period referred to in the foregoing Article, the National Directorate of Industrial Property shall notify the applicant so that he may, within 30 working days of notification - a period that may be extended once for a further period of equal length - present his arguments, file documents or rewrite the claims or the description of the invention, as he sees fit.

Art. 144. – The National Directorate of Industrial Property shall be obliged to carry out an examination of the patentability of an invention within a period of 60 days of expiry of the periods referred to in Articles 142 and 143 of this Law. For such examination, it may request reports from such experts or scientific or technological bodies as it deems appropriate, so as to obtain their opinion on whether the invention is new, involves an inventive step and is industrially applicable. It may also, as it sees fit, request reports from competent national offices of other countries. All information shall be made known to the applicant with a view to guaranteeing his right to be heard on the terms set out in the Regulations.

The National Directorate of Industrial Property may accept the results of such examinations as a technical ruling for the purpose of certifying that the conditions for patentability of the invention have been met.

Technical rulings issued by the competent offices of other countries or international organizations with which IEPI has signed cooperation and technical assistance agreements shall be accepted by the National Directorate of Industrial Property for the purpose of granting patents.

Art. 145. – Where the final examination is favorable, a patent title shall be granted. Where it is partially unfavorable, a patent shall be granted only in respect of those claims that have been accepted, by means of a duly reasoned decision. Where it is entirely unfavorable, the patent shall be refused, also by means of a reasoned decision.

Art. 146. – Patents shall have a term of 20 years from the filing date of the application.

Art. 147. – The International Patent Classification established by the Strasbourg Agreement of March 24, 1971, as updated and amended, shall be used for the organization and classification of patents.

The class or classes to which a given invention belongs shall be determined by the National Directorate of Industrial Property in the patent title, without prejudice to any indication that the applicant may have given.

Section IV RIGHTS CONFERRED BY THE PATENT

Art. 148. - The scope of the protection conferred by a patent shall be determined by the wording of the claims. The description and drawings or plans, and any other elements filed with the National Directorate of Industrial Property, shall be used to interpret the claims.

Where the subject matter of the patent is a process, the protection conferred by the patent shall extend to products obtained directly through said process.

Art. 149. – A patent shall confer on its owner the right to exploit the invention exclusively and to prevent third persons from carrying out any of the following acts without his consent:

- (a) making the patented product;
- (b) offering for sale, selling or using the patented product, or importing or storing it for any of those purposes;
- (c) using the patented process;
- (d) carrying out any of the acts referred to in subparagraphs a) and b) in respect of a product obtained directly through the patented process;
- (e) supplying or offering means of putting the patented invention into practice; and
- (f) any other act or deed likely to make all or part of the patented invention or the effects thereof available to the public.

Art. 150. – A patent owner may not exercise the right referred to in the foregoing Article in any of the following cases:

- (a) where use takes place in the private sphere and not on a commercial scale;
- (b) where use is for non-profit-making purposes, exclusively in an experimental, academic or scientific context; or
- (c) where a patented product that has been placed on the market in any other country is imported, with the consent of a license holder or of any other person so authorized.

Section V NULLITY OF PATENTS

Art. 151. – By means of judicial review, the IEPI Intellectual Property Committee may, *ex officio* or at the request of a party, declare a patent registration to be null and void in the following cases:

- (a) where the subject matter of the patent does not constitute an invention under the present Chapter;
- (b) where the patent was granted for a non-patentable invention;
- (c) where the patent was granted to a person that is not the inventor;
- (d) where a third party, in good faith, before the filing date of the patent application or the claimed priority date, was making the product or using the process in question for commercial purposes in Ecuador or had made serious preparations to make the product or use the process for such purposes; and

(e) where the patent was granted through any other infringement of the law that was a substantial cause of its being granted, or where it was obtained on the basis of erroneous or false data, information or description.

Art. 152. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – The competent judge may declare a patent null and void in any of the cases referred to in the foregoing Article, where a claim is filed after expiry of the period established by law for the institution of a judicial review and before 10 years have elapsed since the date on which the patent was granted, unless a judicial review has previously been instituted and has been finally rejected.

Section VI FORFEITURE OF PATENTS

Art. 153. – In order to keep a patent in force or to maintain a pending patent application, as the case may be, the fees established in accordance with this Law shall be paid.

Before declaring the forfeiture of a patent, the National Directorate of Industrial Property shall grant the interested party a period of six months in which to pay the fees referred to in the foregoing paragraph.

Section VII THE COMPULSORY LICENSE REGIME

Art. 154. – Following a declaration by the President of the Republic of the existence of public interest, emergency or national security considerations, and only for as long as those considerations subsist, the State may subject a patent to compulsory licensing at any time; in such a case, the National Directorate of Industrial Property may grant licenses for which applications are filed, without prejudice to the rights of the patent owner to be remunerated in accordance with this Section. The patent owner shall be notified prior to the granting of the license, so that he may assert his rights.

A decision to grant a compulsory license shall specify the scope or coverage thereof, and in particular shall specify the period for which it is granted, the subject matter of the license, the amount of royalties and the terms of payment thereof, without prejudice to Article 156 of this Law.

The granting of a compulsory license on public interest grounds shall not diminish the right of the patent owner to continue exploiting the patent.

Art. 155. – At the request of a party and on the basis of a judicial decision, the National Directorate of Industrial Property may grant compulsory licenses in the event of practices that have been declared detrimental to free competition by the courts, in particular where they constitute an abuse by the patent owner of a dominant position in the market.

Art. 156. – The granting of compulsory licenses shall in any event be subject to the following:

(a) a potential licensee shall prove that he has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have met with no response or a negative

response within a period of not less than six months from a formal request setting out such terms and conditions in such a manner as to allow the patent owner to make a decision;

(b) a compulsory license shall be non-exclusive, shall not be transferable and may not be sub-licensed, except with that part of the enterprise that permits the industrial exploitation thereof and with the consent of the patent owner; evidence thereof shall be provided in writing and registered with the National Directorate of Industrial Property;

(c) a compulsory license shall be granted predominantly for the supply of the domestic market, where the items concerned are not produced on the domestic market or imported into the country or into the territory of a member country of the Andean Community or of any other country with which Ecuador has entered into a customs union or other agreement with equivalent effect;

(d) a licensee shall give the patent owner the royalties for non-exclusive exploitation of the patent, on the same commercial terms that would have applied to a voluntary license. These terms may not be less favorable than those proposed by the potential licensee under subparagraph a) of this Article and, in the absence of agreement between the parties, shall be determined by the National Directorate of Industrial Property once notice has been given of its decision to grant the license;

(e) a license shall be revoked immediately where the licensee fails to make payments and fulfill other obligations; and

(f) a compulsory license shall be revoked, *ex officio* or on the basis of a reasoned request from the patent owner, where the circumstances that gave rise to it cease to obtain, without prejudice to adequate protection of the licensee's legitimate interests.

Art. 157. – At the request of the patent owner or the licensee, the license terms may be modified by the National Directorate of Industrial Property, where this is justified on the basis of new facts and, in particular, where the patent owner grants another license on more favorable terms than those on which the compulsory license was granted.

Art. 158. – Licenses that do not comply with the provisions of this Section shall have no effect.

The provisions of Book III, Section V, of this Law - Instruments and contracts relating to industrial property and plant varieties - shall apply to voluntary licenses.

Chapter III UTILITY MODELS

Art. 159. – A utility model patent shall be granted for any new shape, configuration or arrangement of components of any device, tool, implement, mechanism or other object or any part thereof that permits improved or different operation, use or manufacture of the object in which it is embodied or that gives it any utility, advantage or technical effect that it did not previously have, and also any other new industrially applicable creation that does not involve a sufficiently inventive step to allow a patent to be granted.

Art. 160. – Processes and subject matter excluded from patent protection for inventions may not be patented as utility models. Sculptures, architectural works, paintings, engravings, patterns or any other object of a purely aesthetic nature shall also not be considered utility models.

Art. 161. – The provisions relating to invention patents shall apply, where relevant, to utility models.

Art. 162. – The period of protection of utility models shall be 10 years from the filing date of the patent application.

Chapter IV CERTIFICATES OF PROTECTION

Art. 163. – Any inventor who has an invention project under development and who needs to experiment or to construct a mechanism that obliges him to make his idea public may apply for a certificate of protection, which shall be conferred on him directly by the National Directorate of Industrial Property for a period of one year prior to the filing date of the patent application.

The holder of a certificate of protection shall enjoy the right of priority in filing a patent application within one year of the date on which the certificate is granted.

Art. 164. – Applications shall be filed with the National Directorate of Industrial Property and shall meet the requirements specified in the Regulations. Applications shall be accompanied by a description of the invention project and other documentation needed in order to interpret it.

Provided that the application meets the relevant requirements, the National Directorate of Industrial Property shall grant a certificate of protection on the filing date.

Chapter V INDUSTRIAL DESIGNS

Art. 165. – New industrial designs shall be registrable.

Any combination of lines, shapes or colors shall be considered an industrial drawing, and any three-dimensional form, whether or not combined with lines or colors, that serves as a pattern for the manufacture of an industrial or handicraft product and that is distinguished from similar shapes by its own configuration shall be considered an industrial model.

Industrial designs the appearance of which is dictated entirely by technical or functional considerations and that do not incorporate any contribution by the designer to give them a special appearance without changing their use or purpose shall not be eligible for registration.

Art. 166. – Industrial designs shall not be new where, before the application date or validly claimed priority date, they have been made accessible to the public by means of a description, use or in any other way.

Designs shall not be new merely because they embody secondary differences in relation to earlier creations or because they are intended for a different purpose.

Art. 167. – An application to register an industrial design shall meet the requirements specified in the Regulations and shall be accompanied by a graphic or photographic reproduction of the industrial design and other documentation specified in the Regulations.

The procedure for registering industrial designs shall be that specified in this Law for the granting of patents, where applicable. A novelty examination shall be carried out only in the event that objections are filed.

Art. 168. – The National Directorate of Industrial Property shall grant a certificate of registration of an industrial design. Such registration shall last for a term of 10 years from the filing date of the application.

Art. 169. – The International Classification established by the Locarno Agreement of October 8, 1968, as amended and updated, shall be used for organizing and classifying industrial designs.

Art. 170. – The first application validly filed in a country that is a member of the World Trade Organization or the Andean Community or a party to the Paris Convention for the Protection of Industrial Property or another treaty or convention to which Ecuador is a party and which confers a right of priority with the same effects as provided for in the Paris Convention, or in another country that accords reciprocal treatment to applications from member countries of the Andean Community, shall confer on the applicant or his successor in title the right of priority in filing a registration application in Ecuador for a period of six months from the date of such application.

Art. 171. – Registration of an industrial design shall confer on the owner the right to prevent third parties from using and exploiting the design concerned. The owner of the registration shall have the right to prevent third parties that do not have his consent from manufacturing, importing, offering for sale, selling, placing on the market or using commercially products that reproduce the industrial design, or producing or marketing articles based on industrial designs that embody secondary differences in relation to the protected design or that are similar in appearance.

Art. 172. - By means of judicial review, the IEPI Intellectual Property Committee may, *ex officio* or at the request of a party, declare the grant of a registration of an industrial design to be null and void in the following cases:

(a) where the subject matter of the registration does not constitute an industrial design under the present Law; or

(b) where the registration was granted in infringement of the requirements set out in this Law.

Art. 173. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – The competent judge may declare an industrial design null and void in any of the cases referred to in the foregoing Article, where a claim is filed after expiry of the period established by law for the institution of a judicial review and before five years have elapsed since the date on which the registration in question was granted, unless a judicial review has previously been instituted and has been finally rejected.

Chapter VI
LAYOUT-DESIGNS (TOPOGRAPHIES) OF SEMI-CONDUCTOR CIRCUITS

Art. 174. – Integrated circuits and layout-designs (topographies) shall be protected under the terms of the present Chapter. For that purpose, the following definitions shall apply:

(a) "integrated circuit" means a product, including a semi-conductor product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and any or all of the interconnections form an integral part of the body or surface of a piece of material, and which is intended to perform an electronic function;

(b) "layout-design (topography)" means the three-dimensional arrangement, expressed in any form, of the elements, at least one of which is an active element, and some or all of the interconnections of an integrated circuit, or such a three-dimensional arrangement designed for an integrated circuit intended for manufacture; and

(c) a layout-design (topography) is considered "fixed" in an integrated circuit where the incorporation thereof in the product is sufficiently permanent or stable to permit the layout-design to be perceived or reproduced for a period of more than transitory duration.

Art. 175. – Exclusive intellectual property rights shall apply in respect of layout-designs (topographies) that are original in that they are the result of the creator's own intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of integrated circuits at the time of their creation.

A layout-design (topography) consisting of a combination of elements or interconnections that are commonplace shall also be protected where the combination, taken as a whole, meets the requirements referred to in the foregoing paragraph.

Layout-designs (topographies) the design of which is dictated exclusively by the functions of the circuit to which it applies shall not be protected.

The protection conferred by this Chapter shall not extend to ideas, procedures, systems, methods of operation, algorithms or concepts.

The right of the right holder in respect of an integrated circuit shall apply regardless of whether the integrated circuit is incorporated in a product.

Art. 176. – The natural or legal person on whose initiative and under whose responsibility a layout-design (topography) is created or developed shall be entitled to the protection conferred under this Chapter. Right holders shall be protected from the time of creation.

Art. 177. – Layout-designs (topographies) may be registered with the National Directorate of Industrial Property. Such registration shall be of a declaratory nature and shall constitute a presumption of ownership for the person that obtains the registration.

Where a layout-design has not been registered, the burden of proving ownership shall be on the person that claims it.

Art. 178. – Once a registration application has been filed, the National Industrial Property Director shall analyze whether it meets the formal requirements specified in the Regulations and, in particular, whether the information provided is sufficient to identify the layout-design (topography) and shall grant the relevant registration certificate without further procedure.

Art. 179. – Whether or not a layout-design (topography) has been registered, protection shall apply retroactively from the date of creation thereof.

The term of the protection conferred under this Chapter in respect of layout-designs (topographies) shall be 10 years from the date of the first commercial exploitation thereof in any part of the world. However, the term of such protection shall not be less than 15 years from the date of creation of the layout-design (topography).

Art. 180. – The holder of a registration of a layout-design (topography) shall have the exclusive right to carry out, authorize or prohibit:

(a) the reproduction, by optical, electronic or any other means known or as yet unknown, of the layout-design (topography) or of any of the parts thereof that meet the requirement of originality set out in this Chapter;

(b) any kind of exploitation, including importation, distribution and sale, of the protected layout-design or of an integrated circuit incorporating the protected layout-design (topography), or an article incorporating said integrated circuit insofar as said integrated circuit contains an unlawfully reproduced layout-design; and

(c) any other form of exploitation, for commercial or profit-making purposes, of integrated circuits and layout-designs (topographies).

The acts referred to above shall be considered unlawful where they are carried out without the prior written consent of the right holder.

Art. 181. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – The following acts, carried out without the authorization of the right holder, shall not be considered unlawful:

(a) reproduction of a layout-design (topography) carried out by a third party for the sole purpose of research or teaching, or evaluation and analysis of concepts and techniques, or a flow or organizational chart of elements incorporated in the layout-design (topography) in the course of preparing a layout-design (topography) that itself is original;

(b) incorporation by a third party of an integrated circuit in a layout-design (topography) or the carrying out of any of the acts referred to in the foregoing Article, where the third party, on the basis of evaluation or analysis of the first layout-design (topography) develops a second layout-design (topography) that meets the requirement of originality set out in this Chapter;

(c) importation or distribution of semi-conductor products or integrated circuits incorporating a layout-design (topography), where such objects are sold or

otherwise lawfully placed on the market by the holder of rights in the protected layout-design or with his written consent; and

(d) importation, distribution or sale of an integrated circuit incorporating an unlawfully reproduced layout-design (topography) or of any article incorporating such integrated circuit where the person performing or ordering such acts did not know or had no reasonable grounds to believe, when acquiring the integrated circuit or article incorporating such integrated circuit, that it incorporated an unlawfully reproduced layout-design (topography). This exception shall cease to apply from the time when the person referred to in this subparagraph receives from the right holder or his representative written notification of the unlawful origin of the incorporated item, in which case he may use the object that he has incorporated in the layout-design (topography), with the obligation to pay the right holder a reasonable royalty which, in the absence of an agreement, shall be determined by the competent judge.

Art. 182. – A holder of rights in a layout-design (topography) may transfer it, assign it or grant licenses, in accordance with the provisions of this Law.

For the purposes of this Book, the sale, distribution or importation of a product incorporating an integrated circuit shall constitute an act of sale, distribution or importation of such integrated circuit, where it contains an unauthorized reproduction of a protected layout-design (topography).

Chapter VII UNDISCLOSED INFORMATION

Art. 183. – Undisclosed information relating to trade or industrial secrets or any other type of confidential information shall be protected against acquisition, use or disclosure not authorized by the owner, where:

(a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information concerned;

(b) it has commercial value, actual or potential, because it is secret; and

(c) the person lawfully in control of the information has taken reasonable steps, under the given circumstances, to keep it secret.

Undisclosed information may relate, in particular, to the nature, characteristics or purposes of products; production methods or processes; or means or forms of distribution or marketing of products or rendering of services.

Technological knowledge consisting of manufacturing and production processes in general, and knowledge relating to the use and application of industrial techniques resulting from knowledge, experience or intellectual ability that a person keeps confidential and that allows him to maintain or obtain a competitive or economic advantage over third parties, shall also be protected as undisclosed information.

A natural or legal person who or which has lawful control of undisclosed information shall be considered the owner thereof for the purposes of this Chapter.

Art. 184. – An owner may institute proceedings pursuant to this Law in order to prevent undisclosed information from being made public, acquired or used by third parties; in order to stop acts that are currently leading or will imminently lead to such disclosure, acquisition or use; and in order to obtain appropriate compensation for such unauthorized disclosure, acquisition or use.

Art. 185. – Without prejudice to other means that are contrary to honest uses or practices, the disclosure, acquisition or use of undisclosed information in a manner contrary to this Law may result, in particular, from:

- (a) industrial or commercial espionage;
- (b) failure to fulfill a contractual or legal obligation;
- (c) breach of trust;
- (d) inducement to commit any of the acts referred to in subparagraphs a), b) and c); and
- (e) acquisition of undisclosed information by a third party that knew, or through negligence did not know, that the acquisition involved one of the acts referred to in subparagraphs a), b), c) and d).

Art. 186. – Liability for the unauthorized disclosure, acquisition or use of undisclosed information in a manner contrary to honest and lawful uses and practices shall be borne not only by those that carry out those acts directly, but also by anyone who benefits from such acts or practices.

Art. 187. – The protection of undisclosed information provided for in Article 183 of this Law shall last as long as the conditions set out in that Article obtain.

Art. 188. – Information provided to any authority by a person in possession of it, where that person provides it for the purpose of obtaining licenses, permits, authorizations, registrations or any other official instruments, shall not be regarded as entering the public domain or as being disclosed by legal provision.

The relevant authority shall be obliged to preserve the secrecy of such information and to take steps to guarantee the protection thereof against any unfair use.

Art. 189. – Anyone who has undisclosed information in his possession may transfer it to or authorize its use by a third party. An authorized user shall be obliged not to disclose it by any means, unless otherwise agreed with the person that transferred or authorized the use of said secret.

Art. 190. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Any person with access to undisclosed information by reason of his work, employment, function or post, the practice of his profession or the conduct of business relations, shall refrain from using it and disclosing it without just cause, as determined by the competent judge, and without the consent of the owner, even where his employment relationship, the practice of his profession or the conduct of business relations has come to an end.

Art. 191. - Where the submission of test data or other undisclosed information, the origination of which involves a considerable effort, is required as a condition of approving the marketing of pharmaceutical or of agricultural chemical products that utilize new chemical-producing chemical entities, the authorities shall protect such data against any unfair use, except where necessary to protect the public and where the necessary steps are taken to ensure that the data are protected against any unfair use.

A person applying for marketing approval may state what data or information the authorities may not disclose.

No person other than the person that submitted the data referred to in the foregoing paragraph may, without the authorization of that person, rely on such data in support of an application for approval of a product, where the information has the characteristics set out in this Chapter.

Art. 192. – For the purposes set out in the foregoing Article, the competent public authorities shall refrain from requiring undisclosed information where the product or compound has already been registered or certified for marketing in another country.

Art. 193. – Undisclosed information may be deposited, in a stamped and sealed envelope, with a notary public, who shall notify IEPI of the receipt thereof.

Such deposit shall not, however, constitute evidence against the owner of the undisclosed information where the information was taken from the owner in any form by the person that carried out the deposit or where said information was provided to that person by the owner under any contractual relationship.

Chapter VIII TRADEMARKS

Section I REGISTRATION REQUIREMENTS

Art. 194. – "Trademark" means any sign that is capable of distinguishing goods or services on the market.

Signs that are sufficiently distinctive and that are capable of graphic representation may be registered as trademarks.

Commercial slogans may also be registered as trademarks, provided that they do not contain references to similar products or trademarks or expressions that may be damaging to such products or trademarks.

Legally established associations of producers, manufacturers, service providers, organizations or groups of persons may register collective trademarks in order to distinguish in the market the goods or services of their members.

Art. 195. – Signs may not be registered as trademarks where they:

- (a) fail to constitute a trademark under Article 194 of this Law;
- (b) consist of the everyday shape of goods or their packaging, or of shapes or characteristics dictated by the nature or function of the good or service concerned;
- (c) consist of shapes that attribute a functional or technical advantage to the good or service to which they are applied;
- (d) consist exclusively of a sign or statement that may serve in trade to classify or describe a characteristic of the good or service concerned, including expressions of praise for those goods or services;

(e) consist exclusively of a sign or statement that is the generic or technical name of the good or service concerned, or that is the common or usual designation for the good or service in everyday language or in commercial use in Ecuador;

(f) consist of an isolated color, without any demarcation to give it a specific shape, except that it can be shown to have acquired distinctiveness for identifying the goods or services for which it is used;

(g) are contrary to the law, morality or *ordre public*;

(h) may cause confusion in business circles or among the public as to the nature, source, manufacturing process or characteristics of the goods or services concerned, or their suitability for use;

(i) reproduce or imitate a protected appellation of origin or consist of an Ecuadorian or foreign geographical indication likely to cause confusion with regard to the goods or services to which they are applied or which, when used, may mislead the public as to the origin, source, qualities or characteristics of the goods for which the marks are used;

(j) reproduce or imitate the name, armorial bearings, flags and other emblems, acronyms, denominations or abbreviated denominations of any officially recognized State or international organization, without the permission of the competent authority of the State or international organization concerned. However, such signs may be registered where they do not cause confusion as to the existence of a link between the sign and the State or organization concerned;

(k) reproduce or imitate official signs, seals or hallmarks indicating control or warranty, except where the registration thereof is applied for by the competent organization;

(l) reproduce coins or notes that are legal tender in the territory of Ecuador or of any country, securities and other commercial documents, seals, stamps or revenue stamps in general; or

(m) consist of the denomination of a plant variety that is protected in Ecuador or abroad, or of a denomination essentially derived therefrom, except where the application is filed by the owner himself.

Where signs are not inherently capable of distinguishing the relevant goods or services, the National Directorate of Industrial Property may make registration depend on distinctiveness acquired through use for the purpose of identifying the applicant's goods or services.

Art. 196. – Signs that infringe the rights of third parties may also not be registered as trademarks, for example signs that:

(a) are identical or similar, in such a way that they may cause confusion among consumers, to a trademark already filed for registration or registered by a third party to protect the same goods or services, or goods or services in respect of which use of the trademark may cause confusion or association with the trademark, or may cause injury to the owner thereof by weakening its

distinctive force or commercial value, or cause unfair advantage to be taken of the prestige of the trademark or of its owner;

(b) are identical or similar to a protected trade name, in such a way that they may cause confusion among consumers;

(c) are identical or similar to a commercial slogan already filed for registration or registered by a third party, in such a way that they may cause confusion among consumers;

(d) constitute a total or partial reproduction, imitation, translation, transliteration or transcription of a sign that is well known in Ecuador or abroad, regardless of the goods or services to which it is applied, where the use thereof is likely to cause confusion or association with that sign, to cause unfair advantage to be taken of the fact that it is well known, or to lead to the weakening of its distinctive force or commercial value.

A sign shall be considered well known where it is identified by the relevant consumer sector in Ecuador or internationally.

This provision shall not apply where the applicant is the lawful owner of the well-known mark;

(e) are identical or similar to a sign of high renown, regardless of the goods or services for which registration is sought.

A sign shall be considered of high renown where it is known by the general public in Ecuador or internationally.

This provision shall not apply where the applicant is the lawful owner of the mark of high renown;

(f) consist of the full name, pseudonym, signature, title, nickname, caricature, image or portrait of a natural person who is not the applicant or who is identified by the relevant sector of the public as being a different person, unless the consent of that person or his heirs is proved;

(g) consist of a sign that involves an infringement of copyright, unless the holder of such rights has given consent; or

(h) consist of, incorporate or reproduce medals, prizes, diplomas or other awards, except where filed by those that present them.

Art. 197. – In order to determine whether a mark is well known, the following criteria, *inter alia*, shall be taken into account:

(a) the extent to which it is known by the relevant sector of the public as a distinctive sign for the goods or services for which it is used;

(b) the scale and scope of dissemination and advertising or promotion of the mark;

(c) the age of the mark and whether it has been in constant use; and

(d) analysis of production and marketing of the goods or services that lend the mark distinctiveness.

Art. 198. – In order to determine whether a mark is of high renown, the same criteria, *inter alia*, as under the foregoing Article shall be taken into account, but the mark shall be known by the general public.

Art. 199. – Where the mark consists of a geographical name, the good may not be marketed or the service rendered unless the place of manufacture of the good or origin of the service is indicated in visible and clearly legible form.

Art. 200. – The first trademark registration application validly filed in a country that is a member of the World Trade Organization or the Andean Community or a party to the Paris Convention for the Protection of Industrial Property or another treaty or convention to which Ecuador is a party and which confers a right of priority with the same effects as provided for in the Paris Convention, or in another country that accords reciprocal treatment to applications from member countries of the Andean Community, shall confer on the applicant or his successor in title the right of priority in filing a registration application for the same mark in Ecuador for a period of six months from the date of such application. Said application may not refer to goods or services different from or additional to those set out in the first application.

The same right of priority shall exist for the use of a trademark at an officially recognized exhibition held in Ecuador. The period of six months shall begin on the date on which the goods or services bearing the mark concerned were first exhibited, which shall be certified by the competent authority responsible for the exhibition.

Section II REGISTRATION PROCEDURE

Art. 201. – Trademark registration applications shall be filed with the National Directorate of Industrial Property, shall consist of a single international class of goods or services, and shall meet the requirements specified in the Regulations.

Art. 202. – Applications shall be accompanied by:

- (a) proof of payment of the relevant fee;
- (b) a copy of the first trademark registration application filed abroad, where priority is claimed; and
- (c) other documents specified in the Regulations.

Art. 203. – A registration application for a collective trademark shall also be accompanied by the following:

- (a) a copy of the statutes of the association, organization or group of persons applying for registration of the collective mark;
- (b) a copy of the rules used by the applicant seeking the collective mark to exercise control over goods or services;
- (c) a statement of the conditions for use of the collective mark and the form in which it is to be used; and

(d) a list of members.

Once a collective mark has been registered, the association, organization or group of persons shall inform the National Directorate of Industrial Property of any change that is made.

Art. 204. – Provided that the application is accompanied by the documentation referred to in Article 202(a) of this Law, the National Directorate of Industrial Property shall, at the time of receipt, certify the date and time of filing of the application and assign it a serial number, which shall be from a consecutive and continuous series. In the absence of the documentation referred to in Article 202(a) of this Law, the application shall not be accepted for processing and no filing date shall be granted.

Art. 205. A trademark registration applicant may modify his initial application at any stage of processing before it is published, solely with respect to secondary elements. He may also eliminate or restrict the goods or services specified. He may also add to the goods or services within the same international class, until the application is published pursuant to Article 207 of this Law.

The National Directorate of Industrial Property may, at any time during processing, require the applicant to modify the application. Such required modification shall be processed in accordance with the following Article.

Under no circumstances may the application be modified by changing the sign.

Art. 206. – Once an application has been accepted, the National Directorate of Industrial Property shall examine, within 15 working days of the filing thereof, whether it meets the formal requirements set out in this Chapter.

Where the examination reveals that the application does not meet the formal requirements, the National Directorate of Industrial Property shall notify the applicant so that he may remedy the irregularities within a period of 30 days following notification.

Where the irregularities have not been remedied within the specified period, the application shall be rejected.

Art. 207. Where a registration application meets the formal requirements, the National Directorate of Industrial Property shall order it to be published on one occasion only in the *Intellectual Property Gazette*.

Art. 208. – Within 30 working days of publication, any person with a legitimate interest may file a duly reasoned objection to a registration application. Anyone who claims to have a legitimate interest in filing an objection may apply for an extension of 30 working days in which to file the objection.

Art. 209. – The National Directorate of Industrial Property shall not process objections that:

(a) are filed outside the prescribed time period;

(b) are based exclusively on an application the filing date or validly claimed priority date of which is later than the date of the trademark registration application that is being opposed; or

(c) are based on the registration of a trademark that has coexisted with the mark for which registration is sought, provided that the registration application was filed by the person that was its last owner, during the six months following expiry of the grace period, for the purpose of applying for renewal of the trademark registration.

Art. 210. – The National Directorate of Industrial Property shall notify the applicant so that he may, within 30 working days of notification, present his arguments, as he sees fit.

On expiry of the period referred to in this Article, the National Directorate of Industrial Property shall rule on the objections and on whether registration of the trademark is granted or refused, which shall be recorded in a duly reasoned decision.

At any time before the decision is issued, the parties may reach a settlement agreement, which shall be binding on the National Directorate of Industrial Property. However, where the parties consent to the coexistence of identical signs to protect the same goods or services, the National Directorate of Industrial Property may object where it considers that the general interests of consumers are affected.

Art. 211. – Where the period referred to in Article 208 of this Law expires without any objections being filed, the National Directorate of Industrial Property shall carry out an examination of registrability and shall grant or refuse registration of the trademark. The relevant decision shall be duly reasoned.

Art. 212. – A trademark shall be registered for a period of 10 years from the date on which it is granted and may be renewed for successive periods of 10 years.

Art. 213. – Applications for renewal of a trademark shall be filed with the National Directorate of Industrial Property within the six months prior to the expiry of the registration. Nonetheless, the trademark owner shall have a grace period of six months from the date of expiry of the registration in which to apply for the renewal thereof. During that period, the trademark registration shall retain its full validity.

For renewal, it shall be sufficient to file the relevant application and renewal shall be granted without further procedure, on the same terms as the original registration.

Art. 214. – A trademark registration shall lapse automatically where the owner does not apply for renewal within the legal time limit, including the grace period.

Art. 215. – The International Classification set out in the Nice Agreement of June 15, 1957, as updated and amended, shall be used to determine the international classes for trademark registrations.

The International Classification referred to in the foregoing paragraph shall not determine whether goods or services are similar to or different from each other.

Section III RIGHTS CONFERRED BY A TRADEMARK

Art. 216. – The right to exclusive use of a trademark shall be acquired through registration with the National Directorate of Industrial Property.

Trademarks shall be used as registered. Variations shall be accepted only where they involve secondary modifications or alterations of the registered sign.

Art. 217. – Registration of a trademark shall confer on the owner thereof the right to bring proceedings against any third party that uses it without his consent and in particular carries out any of the following acts in relation to goods or services that are identical or similar to those for which the mark has been registered:

(a) using for commercial purposes a sign identical or similar to the registered trademark in relation to goods or services that are identical or similar to those for which the mark has been registered, where the use of said sign may create confusion or cause economic or commercial harm to the owner thereof, or result in a weakening of its distinctive force.

It shall be presumed that there is a possibility of confusion where an identical sign is used to distinguish identical goods or services;

(b) selling, offering, storing or placing on the market goods bearing the mark or offering services bearing the mark;

(c) importing or exporting goods bearing the mark; and

(d) any other act which, by its nature or purpose, may be considered analogous or assimilable to those referred to in the foregoing subparagraphs.

The owner of a trademark may prevent all the acts listed in the present Article, regardless of whether they are carried out through digital communication networks or through other channels of communication known or as yet unknown.

Art. 218. - Provided that it is done in good faith and does not constitute use as a trademark, third parties may, without the consent of the owner of a registered trademark, make use in the market of their own names, addresses or pseudonyms, a geographical name, or any other precise indication concerning the kind, quality, amount, purpose, value, place of origin or time of production of their goods or of the rendering of their services or other characteristics thereof, provided that such use is limited to identification or information purposes and is not likely to mislead the public as to the source of the goods or services.

Trademark registration shall not confer on the owner thereof the right to prohibit a third party from using the mark to announce, offer for sale or advertise the existence or availability of lawfully trademarked goods or services, or from using the mark to advertise the compatibility or suitability of spare parts or accessories that can be used with goods bearing the registered trademark, provided that such use is in good faith, is limited to the purpose of informing the public for sale and is not likely to mislead or cause confusion as to the corporate origin of the goods concerned.

Art. 219. – The right conferred by a trademark registration shall not entitle the owner thereof to prohibit the entry into the country of goods trademarked by said owner, his licensee or any other person so authorized, where they have been sold or otherwise lawfully placed on the national market of any country.

Section IV CANCELLATION OF REGISTRATION

Art. 220. - A trademark registration shall be canceled at the request of any interested party where, without valid reasons, the trademark has not been used by the owner or licensee thereof in at least one of the member countries of the Andean Community,

or in any other country with which Ecuador has relevant agreements in force, for three consecutive years prior to the date on which cancellation proceedings begin. Cancellation of a registration owing to non-use of the trademark may also be requested as a defense in infringement, opposition or nullity proceedings instituted on the grounds of non-use of the trademark.

The following shall be considered evidence of use of a trademark:

- (a) commercial invoices that demonstrate the regular nature and amount of trade prior to the start of cancellation proceedings brought for non-use of the trademark;
- (b) inventories of goods identified by the trademark, the existence of which is certified by a firm of auditors that shows regular production or sales prior to the date on which cancellation proceedings for non-use of the mark begin; and
- (c) any other appropriate evidence of use of the mark.

Proof of use of the mark shall be provided by the owner of the registration.

Registration may not be canceled where the owner of the trademark shows that non-use is due to *force majeure*, a fortuitous event, import restrictions or other official requirements that have a restrictive effect on the goods and services protected by the mark.

Art. 221. – A trademark registration shall not be canceled where it is used only in respect of one or some of the goods or services protected by the registration concerned.

Art. 222. – A trademark registration shall also be canceled at the request of the lawful owner, where it is identical or similar to a mark that was well known or of high renown at the time of the application for registration.

Art. 223. – On receipt of a request for cancellation, the owner of a registered trademark shall be notified so that he may, within a period of 30 working days from notification, present his arguments and file documents, as he sees fit, with a view to proving the use of the mark.

On expiry of the period referred to in this Article, a duly reasoned decision shall be issued on whether or not the trademark registration is to be canceled.

Art. 224. - A trademark shall be considered in use where the goods or services distinguished by it have been placed in circulation or are available on the market under that trademark, in the form and amounts that are normal, due account being taken of the nature of the goods or services and the methods used for the marketing thereof.

Subject to the provisions of the foregoing paragraph, a trademark shall also be considered in use in the following cases:

- (a) where it is used to distinguish goods or services intended exclusively for export;

(b) where it is used by a duly authorized third party, even if such authorization or license has not been registered; and

(c) where genuine goods bearing the registered trademark are placed and distributed on the market by persons other than the registration owner.

Use of a trademark in a form that differs from the registered form only in respect of details or features that do not alter its original distinctive character shall not constitute grounds for cancellation of the trademark registration.

Art. 225. – A person that secures the cancellation of a trademark shall have a preferential right to register it, where he applies for such registration within three months of the date on which the decision ordering such cancellation becomes enforceable or final, as the case may be.

Art. 226. – The owner of a trademark registration may renounce all or some of his rights. Where he renounces all his rights, the registration shall be canceled. Where he renounces only some of his rights, the registration shall be limited to the goods or services to which the renunciation does not apply.

Renunciation shall not be permitted where rights in the trademark are registered to third parties, unless the holders of those rights have given their express consent.

Renunciation of a trademark shall have effect with respect to third parties only where a note of the renunciation has been made in the margin of the original registration.

Section V NULLITY OF REGISTRATION

Art. 227. - By means of judicial review, the IEPI Intellectual Property Committee may declare a trademark registration to be null and void in the following cases:

(a) where registration was granted on the basis of false data or documents that were essential to the granting of the registration;

(b) where registration was granted in contravention of Articles 194 and 195 of this Law;

(c) where registration was granted in contravention of Article 196 of this Law;

(d) where registration was obtained in bad faith. The following, *inter alia*, shall be considered cases of bad faith:

1. where a representative, distributor or user connected to the owner of a trademark that is registered abroad applies for and obtains registration in his name of that trademark or another that could be confused with it, without the express consent of the owner of the foreign trademark; and

2. where the registration application was filed or the registration obtained by a person that habitually registers trademarks for marketing purposes; and

(e) where registration was obtained in violation of established procedure or through any other infringement of the law that substantially influenced the granting of the registration.

Art. 228. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – The competent judge may declare a trademark registration null and void in the cases referred to in subparagraphs a), c), d) and e) of the foregoing Article, where a claim is filed after expiry of the period established by law for the institution of a judicial review and before 10 years have elapsed since the date on which the trademark registration was granted, unless a judicial review has previously been instituted and has been finally rejected.

In the case referred to in subparagraph b) of the foregoing Article, a claim may be filed at any time after expiry of the period established by law for the institution of a judicial review and provided that such application has not been finally rejected. In such cases, a claim of nullity may be filed by any person.

Where a registration is declared null and void, the National Directorate of Industrial Property shall be notified so that it may make a note accordingly in the margin of the registration.

Chapter IX TRADE NAMES

Art. 229. – "Trade name" means a sign or denomination that identifies a business or economic activity of a natural or legal person.

Art. 230. – Trade names shall be protected without the obligation of registration.

The right to exclusive use of a trade name shall derive from the public and continuous use thereof in good faith in trade for at least six months.

Trade names may be registered with the National Directorate of Industrial Property, but the right to the exclusive use thereof shall be acquired solely on the terms set out in the foregoing paragraph. However, such registration shall constitute a presumption of ownership in favor of the holder thereof.

Art. 231. – No sign or denomination may be adopted as a trade name where it could be confused with another previously used by another person or with a registered trademark.

Art. 232. – The procedure for registration of a trade name shall be that established for the registration of trademarks, but the registration period shall be indefinite.

Art. 233. – The owners of trade names shall have the right to prevent third parties from using, adopting or registering, without their consent, identical or similar trade names or signs that could create a risk of confusion or association.

Art. 234. – The provisions of this Law relating to trademarks shall apply, where relevant, to trade names. The rules on trademarks that are well known or of high renown shall apply to trade names that are similarly well known or of similarly high renown.

Chapter X DISTINCTIVE APPEARANCE

Art. 235. – Any series of colors, shapes, get-up, structures and designs characteristic of and particular to a commercial establishment that identifies it and distinguishes it in the rendering of services or sale of goods shall be considered a distinctive appearance.

Art. 236. – Distinctive appearances shall be protected in the same way as trade names.

Chapter XI GEOGRAPHICAL INDICATIONS

Art. 237. – "Geographical indication" means an indication that identifies a good as originating in the territory of a country or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin, including both natural and human factors.

Art. 238. – The use of geographical indications with respect to natural, agricultural, handicraft or industrial goods shall be reserved exclusively for producers, manufacturers and craftsmen who have their production or manufacturing establishments in the locality or region designated in or evoked by said indication or denomination.

Art. 239. – The right of exclusive use of Ecuadorian geographical indications shall be conferred from the time of a declaration to that effect issued by the National Directorate of Industrial Property. The use thereof by unauthorized persons shall be considered an act of unfair competition, including where they are accompanied by expressions such as "kind", "class", "type", "style", "imitation" and other similar terms that also create confusion among consumers.

Art. 240. – The following may not be declared geographical indications:

- (a) those that do not conform to the definition contained in Article 237 of this Law;
- (b) those that are contrary to good manners or *ordre public* or that may mislead the public as to the source, nature, manufacturing process, or characteristics or qualities of the goods concerned; and
- (c) common or generic terms for distinguishing the good concerned, where they are regarded as such by persons with knowledge of the subject concerned or by the general public.

Art. 241. - A declaration of protection of a geographical indication shall be made *ex officio* or at the request of persons that demonstrate a legitimate interest, such being natural or legal persons directly engaged in the extraction, production or processing of the good or goods to be covered by the geographical indication. The central or local public administrative authorities shall likewise be considered interested parties where geographical indications relate to their own areas of concern.

Art. 242. – Applications for a declaration of protection of a geographical indication shall be filed with the National Directorate of Industrial Property and shall meet the requirements specified in the Regulations.

Art. 243. – Once an application has been accepted for processing, the procedure specified for the registration of trademarks shall apply.

Art. 244. – The validity of a declaration conferring exclusive rights to use a geographical indication shall be subject to the continuing existence of the conditions on which it was based. The National Directorate of Industrial Property may revoke said declaration in the event of a change to the conditions on which it was based. Interested parties may reapply for such declaration where they consider that the conditions on which protection was based have been re-established.

Art. 245. – An application to use a geographical indication shall be filed with the National Directorate of Industrial Property by persons that are directly engaged in the extraction, production or processing of the goods identified by the geographical indication and that carry out said activity within the territory specified in the declaration.

Art. 246. – The National Industrial Property Director, *ex officio* or at the request of a party, shall cancel an authorization for the use of a geographical indication, after hearing the person that obtained it, where it was granted without the requirements specified in this Chapter being met or where they have ceased to be met.

Art. 247. – The National Directorate of Industrial Property may declare protection for geographical indications of other countries, where an application is filed by their producers, extractors, manufacturers or craftsmen who have a legitimate interest, or by the public authorities of those countries. Geographical indications must have been declared as such in their countries of origin.

Geographical indications protected in other countries shall not be considered common or generic for distinguishing any good for as long as that protection subsists.

Book III PLANT VARIETIES

Section I DEFINITIONS AND REQUIREMENTS

Art. 248. – All cultivated plant genera and species that involve the genetic improvement of plants shall be protected through the granting of breeders' certificates, provided that such cultivation and improvement are not prohibited for reasons of human, animal or plant health.

No protection shall be granted for wild species that have not been improved by humans.

The provisions relating to protection of the country's biological and genetic heritage set out in the second paragraph of Article 120 of this Law shall be observed for the purpose of protecting plant varieties.

Art. 249. – For the purposes of this Book, the terms set out below shall have the following meanings:

BREEDER: the person who bred, or discovered and developed, a variety; the employer of the aforementioned person or the person that has commissioned the aforementioned person's work; or the successor in title of the first or second aforementioned person, as the case may be. "Breeding" means the production of a new variety by the application of scientific knowledge to the genetic improvement of plants.

DISCOVERY: the application of the human intellect to any activity the purpose of which is to make known characteristics or properties of a new variety or an essentially derived variety insofar as such variety meets the requirements of novelty, distinctness, uniformity and stability. This shall not include mere finding. Species that have not been planted or improved by humans shall not be protected.

LIVE SAMPLE: a sample of the variety supplied by a person applying for a breeder's certificate, which sample shall be used for the testing of novelty, distinctness, uniformity and stability.

VARIETY: set of cultivated botanical individuals that are distinguished by specific morphological, physiological, cytological and chemical characteristics and can be perpetuated by reproduction, multiplication or propagation.

ESSENTIALLY DERIVED VARIETY: a variety shall be deemed to be essentially derived from an initial variety where it originates from that variety or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety and which, although clearly distinguishable from the initial variety, nevertheless conforms to it in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, except for the differences that result from the derivation process.

MATERIAL: propagating plant material of any kind; harvested material, including entire plants and parts of plants; and any product made directly from the harvested material.

Art. 250. – The National Directorate of Plant Varieties shall grant breeder's certificates, where varieties are new, distinct, uniform and stable and have been given a denomination that constitutes their generic designation.

Art. 251. – A variety shall be deemed to be new if the propagating or harvested material of the variety has not been sold or otherwise lawfully disposed of to third parties, by or with the consent of the breeder or his successor in title, for the purpose of commercial exploitation of the variety.

Novelty shall be lost in the following cases:

- (a) where exploitation in the national territory began more than one year prior to the filing date of the application or the date of any priority claimed;
- (b) where exploitation abroad began more than four years prior to the filing date of the application or the date of any priority claimed; and

(c) in the case of trees and grapevines, where exploitation abroad began at least six years prior to the filing date of the application or the date of any priority claimed.

Art. 252. – Novelty shall not be lost through sale or disposal of the variety to third parties, *inter alia*, where those acts:

(a) are the result of a violation committed against the breeder or his successor in title;

(b) form part of an agreement for the transfer of rights in the variety;

(c) form part of an agreement under which a third party multiplied propagating material on behalf of the breeder, provided that property in the propagated material reverts to the breeder or his successor in title and that said material is not used for the production of another variety;

(d) form part of an agreement under which a third party undertakes field or laboratory tests, or small-scale processing tests, with a view to evaluating the variety;

(e) involve harvested material that has been obtained as a by-product or a surplus product of the variety or of the activities referred to in subparagraphs c) and d) of this Article, provided that said material is sold or disposed of anonymously;

(f) are carried out in fulfillment of a statutory obligation, in particular concerning biosafety or the entry of varieties in an official register of varieties admitted to trade; or

(g) are carried out in any unlawful manner.

Art. 253. – A variety shall be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application or the claimed priority date.

The filing of an application for the granting of a breeder's right in any country shall render that variety a matter of common knowledge from that date, provided that said act leads to the granting of the right or the registration of the variety, as the case may be.

Common knowledge of the existence of another variety may be established by reference to various factors, such as: exploitation of the variety already in progress; entry of the variety in a register of varieties kept by a recognized professional association; or inclusion of the variety in a reference collection.

Art. 254. - A variety shall be uniform if, subject to the variations that may be expected from the manner of its reproduction or propagation, it is sufficiently uniform in its essential characteristics.

Art. 255. – A variety shall be stable if its essential characteristics remain unchanged from generation to generation and at the end of each particular cycle of reproduction or propagation.

Art. 256. - No rights in the designation registered as the denomination of a variety shall hamper the free use thereof, even after the expiration of the breeder's certificate.

The designation adopted may not be registered as a trademark and shall be sufficiently distinctive in relation to other denominations registered previously.

The requirements for registration of designations shall be specified in the Regulations.

Art. 257. – The right to apply for a breeder's certificate shall accrue to the breeder or his successor in title, whether natural or legal persons, Ecuadorian or foreign nationals. Where two or more persons have bred and developed a variety jointly, entitlement to protection shall accrue to them jointly. Subject to any agreement to the contrary between the joint breeders, they shall have equal shares.

Where the breeder is an employee, the right to apply for a breeder's certificate shall be governed by the employment contract under which the variety was bred and developed. In the absence of a contractual provision, Article 129 of the present Law shall apply, where relevant.

Art. 258. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Anyone with a legitimate interest may claim the status of true owner of an application for a plant variety with the National Directorate of Plant Varieties, in accordance with the procedure established for objections, before the competent judge at any time up to 10 years after the breeder's certificate has been granted.

Section II REGISTRATION PROCEDURE

Art. 259. – Applications for the granting of a breeder's certificate for a new plant variety shall be filed with the National Directorate of Plant Varieties and shall meet the requirements specified in the Regulations.

Art. 260. – Applications shall be accompanied by:

- (a) proof of payment of the relevant fee;
- (b) an exhaustive description of the process of breeding the variety;
- (c) a statement of the place where live samples of the variety are found, such that the National Directorate of Plant Varieties may verify them at a time of its choosing, or a document certifying the deposit thereof with a competent national authority of a member country of the International Union for the Protection of New Varieties of Plants (UPOV); and
- (d) other documents specified in the Regulations.

The National Directorate of Plant Varieties shall not require the deposit of a live sample where such deposit with a competent national authority of a member country of UPOV is attested, except where necessary to rule on an objection or where required as evidence of visibility, uniformity and stability.

Art. 261. – On receiving an application, the National Directorate of Plant Varieties shall certify the date and time of filing thereof and shall assign it a serial number, which shall be from a consecutive and continuous series. In the absence of the documents referred to in subparagraphs a) and b) of the foregoing Article, the application shall not be accepted for processing and no filing date shall be granted.

Art. 262. – When an application has been accepted, the National Directorate of Plant Varieties shall examine, within 15 working days of the filing thereof, whether it meets the formal requirements set out in this Book.

Where the examination reveals that the application does not meet the requirements referred to, the National Directorate of Plant Varieties shall make appropriate observations so that the applicant may respond to them or provide additional supporting documentation within a period of three months following the date of notification.

Art. 263. – A breeder shall enjoy provisional protection during the period between the filing of an application and the granting of a certificate. Consequently, an applicant shall be entitled to institute appropriate legal proceedings with a view to preventing or stopping acts that constitute an infringement or violation of his rights, except for proceedings for damages, which may not be instituted until the relevant breeder's certificate has been obtained. Any damages specified may cover injury caused by the defendant after he became aware of the application. The application shall automatically be presumed to be known once it has been published.

Art. 264. – The owner of an application for the granting of a breeder's certificate filed in a member country of UPOV, a member country of the Andean Community or another country that accords reciprocal treatment to applications from member countries of the Andean Community shall enjoy a right of priority for a period of 12 months in applying for protection of the same variety in Ecuador. This period shall commence on the filing date of the first application.

In order to benefit from the right of priority, the breeder shall, in the application, claim the priority of the first application. The National Directorate of Plant Varieties may require that a copy of the first application be supplied within a period of three months from the filing date of the second application.

Art. 265. – Where a registration application meets the formal requirements, the National Directorate of Plant Varieties shall order it to be published on one occasion only in the *Intellectual Property Gazette*.

Until publication takes place, the file shall be reserved and may be examined by third parties only with the applicant's consent or where the applicant has instituted judicial or administrative proceedings against third parties on the basis of the application.

Within a period of 30 working days following the date of publication, anyone with a legitimate interest may file reasoned objections relating to the granting of a breeder's certificate.

The period mentioned in the foregoing paragraph may be extended for a further period of equal length at the request of a party that has an interest in filing an objection, where it is clear that the supporting documentation for the application needs to be examined.

Objections shall be substantiated in accordance with the relevant provisions of Book II, Chapter II, Section III, of this Law, where relevant.

Objections may be based on questions of novelty, distinctness, uniformity or stability, questions as to whether or not the applicant is entitled to protection, and also on considerations of biosafety, *ordre public* or morality, the protection of human, animal or plant life or health, or in order to avoid serious damage to the environment.

Art. 266. – The National Directorate of Plant Varieties shall issue a technical opinion on novelty, distinctness, uniformity and stability in all cases. Where objections are filed, the National Directorate of Plant Varieties shall also carry out a technical examination of the plant variety. The National Directorate of Plant Varieties may request reports from such experts or public or private scientific or technological bodies as it deems appropriate, so that they may carry out such examination relating to the requirements of distinctness, uniformity and stability of the plant variety. It may also, as it sees fit, request reports from competent national offices of other countries. All information shall be made known to the applicant with a view to guaranteeing his right to be heard.

The requirements of distinctness, uniformity and stability shall be essentially of a technical nature and shall be evaluated on the basis of internationally recognized criteria for each plant species.

Art. 267. – Where the requirements set out in the present Book are met, the National Directorate of Plant Varieties shall either grant or refuse a breeder's certificate.

Art. 268. - The term of a breeder's certificate shall be 25 years in the case of vines, forest trees and fruit trees, including their rootstocks; and 20 years for other species, from the filing date of the application.

For those varieties that have not yet been marketed in Ecuador, the term of a breeder's certificate initially registered in the country of origin shall be the remainder of the period of validity of the first registration in that country.

Section III BREEDER'S OBLIGATIONS AND RIGHTS

Art. 269. – The owner of a registered variety shall be obliged to maintain or reconstitute a deposit effected during the term of the breeder's certificate.

Art. 270. – Without prejudice to the provisions of Article 263 of this Law, a breeder's certificate shall confer on the owner thereof the right to institute administrative or judicial proceedings, as provided for in this Law, with a view to preventing or stopping acts that constitute an infringement or violation of his right and securing appropriate forms of compensation or indemnification.

In particular, the owner shall have the right to prevent third parties from engaging without his consent in the following acts in respect of reproduction or propagating material of the protected variety:

(a) production reproduction or propagation;

(b) preparation for the purpose of reproduction or propagation;

(c) sale, offering for sale or any other act that entails placing reproductive or propagating material on the market for commercial purposes;

(d) export or import;

(e) possession for any of the purposes mentioned in the foregoing subparagraphs;

(f) performance of the acts mentioned in the foregoing subparagraphs in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of reproductive or propagating material of the protected variety, unless the owner has had reasonable opportunity to exercise his exclusive right in relation to said reproductive or propagating material; and

(g) commercial use of ornamental plants or parts of plants as propagating material for the production of ornamental and fruit plants or parts thereof, or cut flowers.

Art. 271. – The provisions of the foregoing Article shall also apply to:

(a) varieties that are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety; and

(b) varieties the production of which requires the repeated use of the protected variety.

Art. 272. – Anyone who stores and sows for his own use, or sells as a raw material or food, the product of his cultivation of the protected variety shall not be thereby infringing the breeder's right. This Article shall not apply to the commercial use of reproductive or propagating material, including entire plants and parts of plants, of fruit, ornamental and forest species.

Art. 273. – A breeder's certificate shall not confer on the owner thereof the right to prevent third parties from using the protected variety where such use is made:

(a) in the private sphere, for non-commercial purposes;

(b) for experimental purposes; or

(c) for the breeding and exploitation of a new variety, except in the case of a variety essentially derived from a protected variety.

Art. 274. – The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by Article 272 of this Law, that has been sold or otherwise marketed in the national territory by the owner or with his consent, or any material derived from said material, unless such acts:

(a) involve further propagation of the variety in question; or

(b) involve an export of material of the variety that enables the propagation of the variety into a country that does not protect varieties of the genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

For the purposes of this Article, "material" means, in relation to a variety:

1. propagating plant material of any kind;
2. harvested material, including entire plants and parts of plants; and
3. any product made directly from the harvested material.

Art. 275. - With a view to ensuring appropriate exploitation of the protected variety, in exceptional circumstances affecting national security or the public interest, the National Government may declare said variety freely available, subject to equitable compensation of the breeder.

The competent national authority shall determine the amount of compensation, after hearing the parties and taking expert advice, on the basis of the scale of exploitation of the licensed variety.

Section IV NULLITY AND CANCELLATION

Art. 276. - By means of judicial review, the IEPI Intellectual Property Committee may, *ex officio* or at the request of a party, declare a breeder's certificate to be null and void in the following cases:

- (a) where the variety did not meet the requirements of novelty, distinctness, stability and uniformity at the time of granting of the breeder's certificate;
- (b) where the breeder's certificate was conferred on a person that is not the breeder; and
- (c) where it was granted through any other infringement of the law that was a substantial cause of its being granted, or where it was obtained on the basis of erroneous or false data, documents, information or description.

Art. 277. – The IEPI Intellectual Property Committee shall declare a breeder's certificate canceled in the following cases:

- (a) where it is established that the protected variety has ceased to meet the requirements of novelty, uniformity, distinctness and stability; and
- (b) where the breeder does not provide the information or documents necessary to demonstrate the maintenance or reconstitution of the registered variety.

Art. 278. – The State shall recognize farmers' rights arising from past, present and future contributions in conserving, improving and making available plant genetic resources. These rights shall include the right to maintain their traditional practices, to save, improve and exchange seeds, to access technology, credit and the market, and to be rewarded for the use of seeds that they have developed.

To that end, a special law shall govern cases in which this principle is to be applied.

Section V
INSTRUMENTS AND CONTRACTS RELATING TO INDUSTRIAL PROPERTY
AND PLANT VARIETIES

Art. 279. – Industrial property rights and plant variety rights may be transferred by *inter vivos* instrument or *mortis causa*, before or after they are registered or granted.

Art. 280. – Holders of industrial property rights and plant variety rights may grant licenses to third parties for the exploitation or use thereof, by means of written contracts. Such contracts may not contain clauses that restrict trade or create unfair competition.

Sub-licenses shall require the express authorization of the right holder.

Art. 281. – Transfers, licenses, amendments and other instruments that affect industrial property rights and plant variety rights shall be entered in the relevant registers on the same date as the application in question is filed. Entry in the register shall have retroactive effect from the filing date. Such instruments shall have effect with respect to third parties from the time of entry in the register. However, failure to enter an instrument or contract in the register shall not invalidate that instrument or contract.

Art. 282. Rights in a trademark or trade name may be transferred with or without the business identified by it.

A collective trademark may be transferred subject to the authorization of the association, organization or group of persons that applied for it or registered it and of the National Directorate of Industrial Property. In any event, the use thereof shall be reserved for members of the association, organization or group of persons.

A collective mark may not be licensed to persons other than those authorized to use it, in accordance with the regulations for the use thereof.

No entry in the register shall be required where the instruments or contracts in question refer to an industrial property right that is not subject to compulsory registration.

Art. 283. – Industrial property rights and plant variety rights shall be considered movable property exclusively for tax purposes. However, a prohibition on the disposal of such rights, and also the seizure and public auction thereof, may be decreed subject to the provisions of the Code of Civil Procedure.

Book IV
UNFAIR COMPETITION

Art. 284. – Any deed, act or practice contrary to honest practices in the conduct of economic activities shall be considered unfair competition.

The expression "economic activities" shall be understood in a broad sense to include the activities of professionals such as lawyers, doctors, engineers, and other fields in the practice of any profession, trade or craft.

"Honest practices" shall be defined in accordance with criteria for national trade; regardless of whether the acts or practices in question are carried out in the context

of international operations or have connections with more than one country, the criteria for honest practices in international trade shall be met.

Art. 285. – The following, *inter alia*, shall be considered acts of unfair competition: those that are of such a nature as to create confusion, regardless of the means used, with the establishment, the goods, the services or the commercial or industrial activities of a competitor; false allegations in the course of trade of such a nature as to discredit the establishment, the goods or services, or the commercial or industrial activities of a competitor, and also any other act likely to harm or weaken the intangible assets or reputation of the company in question; indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quality of the goods or the provision of services; and the disclosure, acquisition or use of secret information without the consent of the person that controls it.

These acts may relate, *inter alia*, to trademarks, whether registered or not; trade names; business identifiers; the appearance of goods or establishments; the get-up of goods or services; celebrities or well-known fictional characters; manufacturing processes of goods; the suitability of goods or services for specific purposes; qualities, quantities or other characteristics of goods or services; the geographical origin of goods or services; the terms on which goods or services are offered or supplied; advertising that imitates, is disrespectful to or insults a competitor or his products or services, and unverifiable comparative advertising; and boycotts.

"Weakening of an intangible asset" means lessening the distinctive character or advertising value of a trademark, trade name or other business identifier, the appearance of a good or the get-up of goods or services, or a celebrity or well-known fictional character.

Art. 286. – Any act or practice that takes place in the course of economic activities shall also be considered an act of unfair competition, regardless of any infringement proceedings that may be appropriate in respect of undisclosed information, where it consists or results in:

(a) unfair commercial use of undisclosed test data or other secret data, the origination of which involves a considerable effort and which have been submitted to a competent authority for the purpose of obtaining approval of the marketing of pharmaceutical products or chemical, agricultural or industrial products;

(b) the disclosure of such data, except where necessary to protect the public and where steps are taken to ensure that the data are protected against any unfair commercial use; and

(c) the unauthorized extraction of data, the origination of which involves a considerable effort, for commercial use in an unfair manner.

Art. 287. – Without prejudice to other legal proceedings that may be applicable, any injured natural or legal person may institute the proceedings provided for in this Law, including with regard to preventive or precautionary measures.

The measures referred to in the foregoing paragraph may also be requested by trade unions or professional associations with a legitimate interest in protecting their members against acts of unfair competition.

Title I
PROTECTION AND ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Chapter I
GENERAL PRINCIPLES

Art. 288. – The infringement of any of the intellectual property rights set out in this Law shall give rise to the institution of civil and administrative proceedings, without prejudice to such criminal proceedings as may be appropriate where the act is classified as an offense.

The administrative protection of intellectual property rights shall be governed by Book V of the present Law.

Art. 289. – In the event of infringement of the rights conferred under this Law, the following may be requested:

- (a) cessation of the infringing acts;
- (b) permanent seizure of the goods or other objects resulting from the infringement, or permanent removal from the channels of commerce of the infringing goods, and also the destruction thereof;
- (c) permanent seizure of apparatus and equipment used to commit the infringement;
- (d) permanent seizure of apparatus and equipment for the storage of copies;
- (e) compensation for injury;
- (f) any other form of reparation for the consequences of the infringement of the right; and
- (g) total court costs.

The rights set out in international conventions in force in Ecuador may also be asserted, in particular those set out in the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Art. 290. – In order for a holder of copyright and related rights conferred under this Law to be accepted as such before any judicial or administrative authority, it shall be sufficient for the name or pseudonym, or any other denomination that leaves no doubt as to the identity of the natural or legal person in question, to appear on the work, performance, production or broadcast, in the usual manner.

Art. 291. – No authority or natural or legal person may authorize the use of a work, performance, phonographic production or broadcast or any other subject matter protected by this Law, or lend support to such use, if the user does not have the express prior authorization of the right holder or his representative. In the event of non-compliance, such authority or person shall bear joint and several liability.

Art. 292. – Where rights are infringed through digital communication networks, joint and several liability shall be borne by the operator or any other natural or legal person in control of a computer system connected to such network that allows, induces or facilitates communication, reproduction, transmission or any other act that

infringes the rights provided for in this Law, where such person is aware or has been warned of the possibility of an infringement, or could not have been unaware of it without serious negligence on his part.

He shall be deemed to have been warned of the possibility of an infringement where he has been given duly substantiated notice thereof.

The operators or other natural or legal persons referred to in this provision shall be exempt from liability for acts and technical measures that they carry out with a view to preventing the infringement from occurring or continuing.

Art. 293. – Where the holder of a right in a trademark, trade name or plant variety establishes that the Superintendency of Companies or of Banks and Insurance has approved the adoption by companies under its control of a denomination that includes a sign identical to said trademark, trade name or plant variety, he may, through the relevant proceedings, request that IEPI suspend the use of the denomination or trade name in question so as to eliminate any risk of confusion or improper use of the protected sign.

IEPI shall notify the parties and the Superintendency of Companies or of Banks and Insurance by means of the relevant decision; the company shall have a period of 90 days from notification of the IEPI decision in which to adopt another denomination or trade name. This period may be extended once only for a further period of equal length, provided that there is just cause.

Where no new denomination or trade name is adopted within the period referred to in the foregoing paragraph, the Superintendency shall dissolve or liquidate the company.

Chapter II INTELLECTUAL PROPERTY PROCEEDINGS

Section I HEARINGS

Art. 294. - (Amended by Amending Provision Five, para. 1, of unnumbered Law, RO No. 544-S, March 9, 2009). – In the first instance, administrative litigation judges in the defendant's area of residence shall be competent to hear disputes on these matters and, in the second instance, the relevant provincial court division that specializes in such matters.

Judicial review proceedings instituted in respect of these matters shall be heard by the Special Division for Administrative Litigation of the National Court of Justice.

Note:

Amending Provision Five, para. 1, of the Judiciary Organization Code (unnumbered Law, RO No. 544-S, March 9, 2009) provides that the phrase "District Intellectual Property Judges and, in the second instance, District Intellectual Property Tribunals" shall be replaced by the phrase "administrative litigation judges in the defendant's area of residence shall be competent to hear disputes on these matters and, in the second instance, the relevant provincial court division that specializes in such matters"; however, this provision was the subject of a partial veto by the President of the Republic, which changed the organizational structure of the administrative litigation courts by establishing the specialized Provincial Court division as the sole competent instance for hearing such cases.

Art. 295. – (Repealed by Amending Provision Five, para. 2, of unnumbered Law, RO No. 544-S, March 9, 2009).

Art. 296. – (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Competence in intellectual property matters shall be determined in accordance with the rules set out in Articles 26, 27, 28 and 29 of the Code of Civil Procedure and in the present Article.

Judges whose jurisdiction covers the place where an infringement was committed shall also be competent to hear such cases.

In the case of transmissions by satellite, the infringement shall be considered to have been committed either in the place where said transmission originated or in the place where the signal is predominantly made accessible to the public.

Infringements committed through digital communication networks shall be considered to have been committed either in the place where the computer systems referred to in Article 292 of this Law are situated or in the place where the transmission is predominantly made accessible to the public.

Art. 297. – Claims relating to intellectual property shall be heard in oral summary proceedings, subject to the modifications set out in the present Chapter.

Art. 298. – In proceedings concerning these matters, related counterclaims shall be admissible and shall be ruled on in a judgment that shall not affect the progress of the proceedings. Such counterclaim shall be filed in a conciliation hearing after the claim has been answered. In the hearing, the applicant shall answer the counterclaim. Failure to do so shall be taken as an outright rejection of the factual and legal grounds.

Art. 299. – (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Where, during the evidence period, a request is made for the hearing of testimonial evidence, the judge shall give a date and time for an oral hearing of such evidence, in which the party that requested the evidence shall prepare questions and the other party may cross-examine.

Art. 300. – (Amended by Amending Provision Five, para. 4, of unnumbered Law, RO No. 544-S, March 9, 2009). – Where experts are needed, one shall be appointed for each party to the proceedings, unless the parties agree to appoint a single expert.

Without prejudice to the submission of a written report by one or both experts, either of the parties may request the judge to summon them to a hearing so that they may provide information orally on the questions put to them by the parties.

Infringement of the mandate set out in this provision, as well as other infringements referred to in the law, shall be grounds for the dismissal of administrative litigation judges.

Art. 301. – All evidence requested within the relevant period shall be submitted within 30 days of the end of that period, unless the parties request an extension by mutual consent.

Art. 302. – (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – A judge shall have the authority to order the

submission of evidence that is under the control or in the possession of the opposing party, to which end he shall indicate the date, time and place for such submission. Where the requested party fails to submit the evidence, the judge may, in order to make a ruling, rely on the information provided by the party that requested the evidence.

Where either of the parties fails to provide information or access codes or in any way obstructs the verification of implements, equipment or other media in which unauthorized reproductions may be stored, these instruments, equipment or media shall be presumed to infringe intellectual property rights.

Where the case relates to infringement of an invention patent for processes, the defendant shall bear the burden of proof regarding the lawfulness of the process used to manufacture the product.

Art. 303. – Compensation for injury shall cover losses suffered and the loss of income resulting from the infringement. The amount of income lost shall be determined, *inter alia*, in accordance with the following criteria:

- (a) the profits that the right holder would have obtained if the infringement had not occurred;
- (b) the profits obtained by the infringer as a result of the infringement;
- (c) the price, remuneration or royalty that the infringer would have had to pay to the right holder for the lawful exploitation of the infringed rights; and
- (d) reasonable costs, including professional fees incurred by the right holder in connection with the dispute.

Art. 304. – Sentences in civil proceedings for infringement of intellectual property rights shall also impose on the infringer a fine of three to five times the total value of copies of works, performances, productions or broadcasts, or of the royalties that the right holder would otherwise have received for lawful exploitation of these or other forms of intellectual property.

Where fines are collected pursuant to this provision, one third shall be paid to IEPI and one third to the holder of the infringed right; the remaining third shall be distributed among the following:

- (a) the Budget of the Judiciary;
- (b) the Solidarity Fund; and
- (c) the Promotion of Science and Technology through IEPI.

Section II PREVENTIVE AND PRECAUTIONARY MEASURES

Art. 305. – Preventive and precautionary measures relating to intellectual property shall be processed in accordance with Section 27, Title Two, Book Two, of the Code of Civil Procedure, as amended pursuant to this Section.

Art. 306. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – A judge shall order a measure on being seized of a claim, where there is specific and consistent evidence giving rise to a reasonable presumption that the intellectual property rights conferred under this Law are being

infringed or that such infringement is imminent, or information giving rise to a reasonable and well-founded fear that they are being infringed or that such infringement is imminent, taking account of the preventive or precautionary nature of the measure and the infringement that may be involved.

The judge shall verify whether the applicant is the right holder, to which end account shall be taken of the presumptions set out in this Law. Where no information creating a presumption of ownership is provided with the claim, the sworn statement to that effect enclosed with the claim shall suffice.

Art. 307. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – The judge, taking due account of the circumstances, shall require the applicant to provide a security or assurance sufficient to protect the defendant and to prevent abuse.

Art. 308. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – With a view to preventing the occurrence or continuation of an infringement of any of the rights conferred under the present Law, preventing the entry into the channels of commerce of goods, including imported goods, or preserving relevant evidence in regard to the alleged infringement, judges shall have the authority to order, at the request of a party, such precautionary or preliminary measures as may be necessary, depending on the circumstances, for the urgent protection of such rights, and in particular:

- (a) immediate cessation of the unlawful activity;
- (b) suspension of activity consisting of use, exploitation, sale, offering for sale, import or export, reproduction, communication or distribution, as the case may be; and
- (c) any other measure to prevent the continued infringement of rights.

Confiscation may be ordered in respect of income obtained from the infringing activity, property used as security against the payment of compensation, products or goods that infringe an intellectual property right, and also equipment, apparatus and media used to commit the infringement, and original copies that have been used for reproduction or communication.

Detention shall be ordered in respect of assets owed for exploitation or remuneration.

A prohibition on leaving the country shall be ordered where the defendant has no permanent residence or establishment in Ecuador.

Art. 309. – Immediate cessation of unlawful activity may include:

- (a) suspension of an infringing activity or prohibition of the resumption thereof by the infringer, or both;
- (b) temporary closure of the premises or establishment, which shall be compulsory where the infringing goods or unlawful copies form a substantial part of the infringer's usual trade;
- (c) removal of goods, unlawful copies or infringing objects from the channels of commerce and deposit thereof with the courts; and

(d) any other measure necessary for the urgent protection of intellectual property rights, taking account of the nature and circumstances of the infringement.

Art. 310. – (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Where the applicant so requests, measures shall be executed in the presence of a judge, who may take advice from the necessary experts or from IEPI officials, whose opinion on the proceedings shall be set out in the appropriate record and shall be used for execution. An order issued by a judge pursuant to the foregoing Article shall mean that no further formality or additional ruling is required in order to take any practical steps necessary for the full execution of a precautionary measure, including the breaking of locks, without prejudice to the judge's authority to order, at the time of the proceedings, any other precautionary measure necessary for the urgent protection of rights, either *ex officio* or at the verbal request of a party.

Art. 311. – Requests for precautionary measures, and also the related rulings, shall be classed as confidential, and the defendant shall not be notified thereof until after they have been executed.

Art. 312. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Where the applicant states that a prior judicial inspection is necessary in order to prove an infringement of rights, the judge shall order such inspection without notifying the opposing party and may order appropriate precautionary measures in the course of the inspection. To that end he shall coordinate with the officials who are to carry out such measures.

Article 313. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – In the case of works that are fixed electronically in digital data devices or using analogous processes, or the seizure of which would be difficult or could cause serious injury to the defendant, the judge, subject to the applicant's consent and where he sees fit, may order that confiscated property remain in the custody of the defendant after being identified, itemized and inventoried, without prejudice to the confiscation of fixations in removable media.

The judge shall place seals on identified, itemized and inventoried property.

Art. 314. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Once a precautionary measure has been carried out, the defendant shall be notified of the claim and the judge shall order the commencement of the evidence period provided for in Article 902 of the Code of Civil Procedure.

Precautionary measures shall lapse where the merits of the claim are not filed within a period of 15 days of execution of the measures.

Where provisional measures are revoked or where they lapse owing to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the competent judge shall order the applicant, upon request of the defendant, to provide compensation for injury.

Art. 315. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Judges who do not comply with the provisions of Article 69 of the Code of Civil Procedure within 48 hours of receipt of the claim or

who unjustifiably reject the adoption of a precautionary measure shall be liable to the right holder for any injury caused, without prejudice to appropriate criminal proceedings.

Art. 316. - (Amended by Amending Provision Five, para. 5, of unnumbered Law, RO No. 544-S, March 9, 2009). – With a view to protecting trade secrets or confidential information in the course of executing precautionary measures under this Law, only the judge and the appointed experts shall have access to information, codes or other elements, to the extent necessary in order to implement the measure. For the defendant, persons delegated by him may be present, and for the applicant, his judicial attorney. All those that have access in this way to such information shall be obliged to maintain total confidentiality and shall be subject to the proceedings provided for in this Law and other laws for the protection of trade secrets and confidential information.

Art. 317. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – In the implementation of precautionary measures or the hearing of evidence, officials appointed by IEPI may testify as experts. The judge shall be obliged to request the expert testimony of such officials where a party so requests.

Art. 318. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Judges shall also comply with the procedures and measures provided for in international conventions or treaties on intellectual property that are in force in Ecuador, where applicable. Judges shall be exempt from liability under the terms of Article 48, paragraph 2, of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Chapter III OFFENSES AND PENALTIES

Art. 319. - A prison term of three months to three years and a fine of one thousand three hundred and fourteen United States dollars and 45/100 (1,314.45) to thirteen thousand one hundred and forty-four United States dollars and 50/100 (13,144.50), taking into consideration the degree of financial injury caused, shall be incurred by anyone who stores, manufactures, uses for commercial purposes, offers for sale, sells, imports or exports any of the following in violation of intellectual property rights:

- (a) a product covered by an invention patent or utility model obtained in Ecuador;
- (b) a product manufactured using a process covered by an invention patent obtained in Ecuador;
- (c) a product covered by an industrial design registered in Ecuador;
- (d) a plant variety registered in Ecuador, and also the reproductive or propagating material thereof;
- (e) a layout-design (topography) registered in Ecuador, a semi-conductor circuit incorporating said layout-design (topography) or an article incorporating such semi-conductor circuit;

(f) a good or service that uses an unregistered trademark identical or similar to a mark registered in Ecuador or abroad that is well known or of high renown;

(g) a good or service that uses an unregistered trademark identical or similar to a mark registered in Ecuador; and

(h) a good or service that uses an unregistered trademark or geographical indication identical or similar to a geographical indication registered in Ecuador.

In the cases referred to in subparagraphs (g) and (h), goods or services that use an unregistered sign shall be identical or similar to goods or services protected by trademarks or geographical indications registered in Ecuador.

Art. 320. – The same penalty as indicated in the foregoing Article shall be incurred by anyone who, in violation of intellectual property rights:

1. discloses, acquires or uses trade or industrial secrets or confidential information;
2. uses, in respect of goods or services or commercial transactions, trademarks or geographical indications not registered in Ecuador that imitate distinctive signs registered in Ecuador or abroad that are well known or of high renown and that may reasonably be confused with the original; or
3. uses, in respect of goods or services or commercial transactions, trademarks or geographical indications that imitate distinctive signs registered in Ecuador that may reasonably be confused with the original, in order to distinguish goods or services that could supplant the protected goods or services.

Art. 321. - A prison term of one month to two years and a fine of six hundred and fifty-seven United States dollars and 22/100 (657.22) to six thousand five hundred and seventy-two United States dollars and 25/100 (6,572.25) shall be incurred by anyone who, in violation of intellectual property rights, uses trade names in which he has not acquired rights that are identical to trade names that are publicly well known in Ecuador, or trademarks registered in Ecuador, or trademarks registered in Ecuador or abroad that are well known or of high renown, taking into consideration the degree of financial injury caused.

The same penalty as indicated in the foregoing paragraph shall also be incurred by anyone who, in violation of intellectual property rights, uses a distinctive appearance identical or similar to a distinctive appearance that is publicly well known in Ecuador.

Art. 322. – A prison term of one month to two years and a fine of six hundred and fifty-seven United States dollars and 22/100 (657.22) to six thousand five hundred and seventy-two United States dollars and 25/100 (6,572.25), taking into consideration the degree of financial injury caused, shall be incurred by anyone who, in violation of intellectual property rights:

- (a) manufactures, markets or stores labels, seals or packaging bearing trademarks registered in Ecuador or abroad that are of high renown or well known;

(b) manufactures, markets or stores labels, seals or packaging bearing trademarks or appellations of origin registered in Ecuador; or

(c) detaches, removes, replaces or uses labels, seals or packaging bearing lawful trademarks, so as to use them on goods of a different origin.

The same penalty shall be incurred by anyone who stores, manufactures, uses for commercial purposes, offers for sale, sells, imports or exports articles bearing false statements about the nature, source, manufacturing process, quality, characteristics or suitability for use of the goods or services concerned, or bearing false information regarding prizes or other distinctions.

Art. 323. - A prison term of three months to three years and a fine of one thousand three hundred and fourteen United States dollars and 45/100 (1,314.45) to thirteen thousand one hundred and forty-four United States dollars and 50/100 (13,144.50), taking into consideration the degree of financial injury caused, shall be incurred by anyone who stores, manufactures, uses for commercial purposes, offers for sale, sells, imports or exports counterfeit goods identified with trademarks registered in Ecuador or abroad that are of high renown or well known, or with trademarks registered in Ecuador.

The same penalty as indicated in the foregoing paragraph shall also be incurred by anyone who places spurious goods inside packaging identified with another's trademark.

Art. 324. - A prison term of three months to three years and a fine of one thousand three hundred and fourteen United States dollars and 45/100 (1,314.45) to thirteen thousand one hundred and forty-four United States dollars and 50/100 (13,144.50), taking into consideration the degree of financial injury caused, shall be incurred by anyone who, in violation of copyright or related rights:

(a) alters or mutilates a work, including through the removal or alteration of applicable electronic rights management information;

(b) registers, publishes, distributes, communicates or reproduces, in whole or in part, another's work as if it were his own;

(c) reproduces a work;

(d) communicates works, videograms or phonograms, in whole or in part, to the public;

(e) brings into the country, stores, offers for sale, sells, rents or in any other way places in circulation or makes available to third parties unlawful reproductions of works;

(f) reproduces a phonogram or videogram or any protected work in general, and also the performances of performers, in whole or in part, whether or not they are imitating the outward characteristics of the original, and also anyone who brings into the country, stores, distributes, offers for sale, sells, rents or in any other way places in circulation or makes available to third parties such unlawful reproductions; or

(g) brings into the country, stores, offers for sale, sells, rents or in any other way places in circulation or makes available to third parties reproductions of

works, phonograms or videograms on which the applicable rights management information has been altered or removed.

Art. 325. - A prison term of one month to two years and a fine of six hundred and fifty-seven United States dollars and $22/100$ (657.22) to six thousand five hundred and seventy-two United States dollars and $25/100$ (6,572.25), taking into consideration the degree of financial injury caused, shall be incurred by anyone who, in violation of copyright or related rights:

(a) reproduces a greater number of copies of a work than that authorized by the right holder;

(b) brings into the country, stores, offers for sale, sells, rents or in any other way places in circulation or makes available to third parties reproductions of works in numbers exceeding those authorized by the right holder;

(c) retransmits by any means the transmissions of broadcasting organizations; and

(d) brings into the country, stores, offers for sale, sells, rents or in any other way places in circulation or makes available to third parties apparatus or other facilities intended for deciphering or decoding encrypted signals or in any other way circumventing or breaking the technical protection facilities applied by the copyright holder.

Art. 326. - A prison term of one month to two years and a fine of six hundred and fifty-seven United States dollars and $22/100$ (657.22) to six thousand five hundred and seventy-two United States dollars and $25/100$ (6,572.25) shall be incurred by anyone who unlawfully obstructs, fails to comply with or prevents the execution of a preventive or precautionary measure.

Art. 327. - The following shall be aggravating circumstances, in addition to those set out in the Penal Code:

(a) where the infringer has received a warning regarding the infringement of a right;

(b) where the infringing goods are a potential health hazard; and

(c) where the infringements are committed in respect of unpublished works.

Art. 328. - The infringements set out in this Chapter shall be prosecutable publicly and by the State.

Art. 329. - Civil and criminal proceedings shall be subject to the statute of limitations, in accordance with the Civil Code and the Penal Code respectively, except for proceedings for infringement of moral rights, to which the statute of limitations shall not apply.

In the absence of proof to the contrary and for the purposes of the statute of limitations on proceedings, the date on which an infringement was committed shall be the first day of the year following the latest edition, reissue, reproduction, communication or other use of a work, performance, production or broadcast.

Art. 330. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – In all the cases covered in this Chapter, the seizure of all objects used directly or indirectly in the commission of the offense shall be ordered; the confiscation thereof may be ordered by the judge in the case and shall be compulsory when a committal order is issued.

Art. 331. – The proceeds of the fines specified in this Chapter shall be divided equally between the Judiciary and IEPI, which shall use at least 50 per cent thereof for training and education programs on intellectual property.

Book V

ADMINISTRATIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Art. 332. – Enforcement of and compliance with intellectual property rights shall be a matter of public interest. The State, through the Ecuadorian Intellectual Property Institute (IEPI), shall exercise the administrative protection of intellectual property rights and shall ensure that they are complied with and enforced.

Art. 333. – IEPI, through the National Directorates, shall, *ex officio* or at the request of a party, carry out inspections and monitoring and impose penalties with a view to preventing and punishing infringements of intellectual property rights.

Art. 334. – Any person affected by an infringement or possible infringement of intellectual property rights may request IEPI to take the following measures:

- (a) inspections;
- (b) requests for information; and
- (c) imposition of penalties for infringement of intellectual property rights.

Art. 335. – Inspections shall be carried out by the National Directors or their delegates in the manner specified in the Regulations. At the time of an inspection, and as a requirement for the conduct thereof to be valid, a copy of the administrative instrument ordering the inspection shall be provided and, where applicable, the request from the affected party.

Applications for precautionary measures shall remain confidential until after the measures have been executed, and even thereafter the authorities shall take the measures necessary in order to preserve the confidentiality of undisclosed information that has had to be provided during the proceedings.

Art. 336. – Where, during proceedings, it is confirmed, or even suspected (*prima facie*), that an intellectual property right has been infringed or that there are facts unequivocally indicating the imminent possibility of such infringement, a detailed inventory of property of any kind connected with such infringement shall be prepared. A record of the examination shall be made using whatever means best enable the state of the inspected items to be assessed.

Such a measure may include the immediate removal of business signs that clearly infringe intellectual property rights, without prejudice to the seizure and deposit of the goods or other items that infringe patent rights, trademarks or other forms of intellectual property.

IEPI, through the regional directorates competent in these matters, may adopt any precautionary measure for the urgent protection of the rights referred to in this Law, where the application for the precautionary measure is accompanied by the evidence

referred to in Article 306 of this Law. Such measures shall be of a provisional nature and shall be subject to revocation or confirmation in accordance with Article 339 of this Law.

Art. 337. – Where an infringement of intellectual property rights is suspected, IEPI may request any information that makes it possible to establish whether or not such infringement exists. Said information shall be provided within a period of no more than 15 days from the date of notification.

Art. 338. – With the exception of provisional precautionary measures that are adopted in accordance with Article 336 of this Law, the party against which the proceedings have been brought shall be heard prior to the adoption of any decision. Where deemed appropriate, a hearing may be convened, at which the interested parties may express their positions.

Art. 339. - (Amended by Amending Provision Five, para. 6, of unnumbered Law, RO No. 544-S, March 9, 2009). – Once the investigation process has concluded, IEPI shall issue a reasoned decision. Where it is established that intellectual property rights have been infringed, the infringer shall be punished with a fine of between fifty-two United States dollars and 58/100 (52.58) and one thousand eight hundred and forty United States dollars and 23/100 (1,840.23); in addition, the adoption of any of the precautionary measures referred to in this Law may be ordered, or those adopted on a provisional basis may be confirmed.

Where an offense is alleged to have been committed, a copy of the record of the administrative proceedings shall be sent to the Public Prosecutor's Office.

Art. 340. – IEPI shall impose the same penalty as established in the foregoing Article on anyone who obstructs or impedes the implementation of the acts, measures or inspections ordered by IEPI or who fails to send any information requested within the period given.

Art. 341. – Where the communication to the public of a legally protected work is announced or in any way becomes known without the relevant authorization having been obtained, the right holder may request that the National Directorate for Copyright and Related Rights prohibit it; this shall be ordered immediately. To that end, it shall be presumed, from the mere fact that the right holder has protested, that the organizer, promoter or user does not have the proper authorization.

Art. 342. – The Ecuadorian Customs Corporation and all those that have control over the entry or exit of goods into or from Ecuador shall be obliged to prevent the entry or export of goods that in any way infringe intellectual property rights.

Where, at the request of an interested party, they do not prevent the entry or export of such goods, they shall be considered accessories to the offense committed, without prejudice to the relevant administrative penalty.

Where, *ex officio* or at the request of a party, they prevent the entry or export of any good that infringes intellectual property rights, they shall bring this to the attention of the President of IEPI by means of a detailed report; he shall, within a period of five days, confirm or revoke the measure taken. Where the measure is confirmed, the goods shall be placed at the disposal of the competent prosecutor.

Where the Ecuadorian Customs Corporation or any other competent official refuses to take the required measure or does not make a statement within a period of three

days, the interested party may, within the next three days, call directly on the President of IEPI to order the measure.

The person that orders the measure may require security in accordance with the following Article.

Art. 343. – Without prejudice to the provisions of the foregoing Article, any of the National Directors, in accordance with his area of competence, may, at the request of a party, order suspension of the entry or export of any good that in any way infringes intellectual property rights.

A decision shall be issued within three days of the request. Where considered necessary or appropriate, the applicant may be ordered to provide sufficient security. Where no such security is provided within a period of five days of being requested, the measure shall be without effect.

At the request of the party affected by the suspension, the National Director of IEPI, where appropriate, shall order a hearing in order to examine the goods and, where relevant, to revoke the measure. Where he does not revoke the measure, he shall order that the entire case be referred to the competent prosecutor.

Art. 344. – Without prejudice to the provisions of this Law, the Statute of the Legal and Administrative Regime of the Executive shall be applied to administrative proceedings.

Art. 345. – The police, in particular the Criminal Investigation Service, shall be obliged to provide IEPI officials with the assistance that they request for the performance of their functions.

Book VI **THE ECUADORIAN INTELLECTUAL PROPERTY INSTITUTE (IEPI)**

Chapter I **PURPOSES OF THE INSTITUTE**

Art. 346. - The Ecuadorian Intellectual Property Institute (IEPI) is hereby established as a legal person under public law, with its own assets, administrative, economic, financial and operational autonomy, and headquarters in the city of Quito, and shall be responsible for pursuing the following objectives on behalf of the State:

- (a) fostering the protection and defense of intellectual property rights conferred under national law and under international treaties and conventions;
- (b) promoting and encouraging intellectual creativity, both in its literary, artistic or scientific form and in its sphere of industrial application, and also the dissemination of technological knowledge within the cultural and production sectors; and
- (c) preventing acts and deeds that may undermine intellectual property and free competition, and also ensuring compliance with and respect for the principles set out in this Law.

Chapter II ORGANIZATION AND FUNCTIONS

Section I GENERAL PROVISIONS

Art. 347. – IEPI shall have the following organs:

- the President;
- the Board of Directors;
- the Intellectual Property Committee;
- the National Directorate of Industrial Property;
- the National Directorate for Copyright and Related Rights; and
- the National Directorate of Plant Varieties.

Art. 348. – Other rules for the organization and operation of IEPI shall be set out in the Regulations under this Law and in the functional and organizational regulations thereunder.

Section II THE PRESIDENT OF IEPI

Art. 349. – The President of IEPI shall be appointed by the President of the Republic and his term of office shall last six years. He shall be the legal representative of IEPI and shall be directly responsible for technical, financial and administrative management.

In the event of withdrawal, permanent absence or any other incapacity that disqualifies him from continuing to perform his functions, the President of the Republic shall immediately appoint a replacement, whose term of office shall also last six years. In the event of temporary incapacity or absence, he shall be replaced by the National Director designated by the Board of Directors.

Art. 350. – The President of IEPI shall have a university degree and proven expertise and professional experience in aspects of intellectual property, and shall meet the other requirements set out in the Regulations.

Art. 351. – The President's duties and powers shall be as follows:

- (a) to be the legal representative of IEPI;
- (b) to ensure compliance with and implementation of laws and international conventions relating to intellectual property;
- (c) to prepare the annual IEPI budget and submit it to the Board of Directors for approval;
- (d) to appoint and dismiss National Directors, the Secretary-General and other IEPI staff;
- (e) to propose guidelines and strategies for international negotiations conducted by the national Government on intellectual property matters, and

also to establish groups of negotiators on these matters, in consultation and coordination with the Ministry of Foreign Affairs;

(f) to order border measures, as provided for in this Law;

(g) to respond to enquiries relating to the implementation of intellectual property rules. Responses to enquiries shall be binding on IEPI in the particular case referred to. Enquiries may not relate to matters that are pending before any organ of IEPI on the date on which they are made; and

(h) other duties and powers specified in this Law and the Regulations.

Note:

- The name "Ministry of Foreign Affairs" was replaced by "Ministry of Foreign Affairs, Trade and Integration" pursuant to Decree No. 7 (RO No. 36, March 8, 2007).

Section III THE BOARD OF DIRECTORS

Art. 352. – The Board of Directors shall be the controlling and consultative organ of the Institute and shall have the following powers:

(a) setting and approving fees;

(b) approving the Institute's budget;

(c) ruling on draft amendments to this Law, the Regulations and international conventions relating to intellectual property;

(d) proposing to the President of the Republic draft amendments to the law or regulations;

(e) appointing and dismissing members of the Intellectual Property Committee in accordance with this Law and the Regulations;

(f) issuing the necessary rules for full compliance with this Law; and

(g) other powers specified in the law and regulations.

Art. 353. – The Board of Directors shall consist of:

(a) the President of the Ecuadorian Intellectual Property Institute, who shall chair the Board;

(b) the Minister of Foreign Trade, Industrialization, Fisheries and Competitiveness, or his delegate;

(c) the Minister of Foreign Affairs or his delegate;

(d) the Minister of Education and Culture or his delegate;

(e) a representative of the Council of Production Chambers and Associations or his alternate;

(f) a representative of the collective management societies and of the trade unions concerned with copyright or related rights or his alternate;
and

(g) a representative appointed by the National Higher Education Council (CONESUP) or his alternate.

Decisions of the Board of Directors shall be adopted by a favorable vote of at least five of its members.

Note:

- The current name of the Ministry of Education and Culture is the Ministry of Education, owing to the establishment of the Ministry of Culture pursuant to Decree No. 5 (RO No. 22, February 14, 2007).
- The name "Ministry of Foreign Affairs" was replaced by "Ministry of Foreign Affairs, Trade and Integration" pursuant to Decree No. 7 (RO No. 36, March 8, 2007).
- The name "Ministry of Foreign Trade, Industrialization, Fisheries and Competitiveness" was replaced by "Ministry of Industry and Competitiveness" pursuant to Decrees No. 7 (RO No. 36, March 8, 2007) and No. 144 (RO No. 37, March 9, 2007); pursuant to Decree No. 1558 (RO No. 525, February 10, 2009), "Ministry of Industry and Competitiveness" was replaced by "Ministry of Industry"; and the Ministry was renamed once more, as "Ministry of Industry and Productivity", pursuant to Executive Decree (DE) No. 1633 (RO No. 566, April 8, 2009).
- The text in bold type was declared unconstitutional pursuant to Resolution (Res.) No. 0004-2008-TC (RO No. 441-S, October 7, 2008).

Section IV THE NATIONAL DIRECTORATES

Art. 354. – The National Directors shall exercise the leadership of the respective National Directorates. They shall be appointed for a period of six years and may be re-elected indefinitely. In the event of temporary incapacity or absence of a National Director, the President of IEPI shall appoint an official to replace him.

Art. 355. – In order to be a National Director, a person shall be a lawyer or a doctor of jurisprudence, shall prove that he has relevant professional experience and shall meet the other requirements set out in the relevant regulations.

Art. 356. – The National Directorates shall be responsible for the administrative implementation of the present Law and other legal provisions relating to intellectual property, within the scope of their competence.

Art. 357. - (Amended by Amending Provision Five, para. 7, of unnumbered Law, RO No. 544-S, March 9, 2009). – Final administrative instruments and those issued by the National Directors preventing the continuation of proceedings shall be subject to the following remedies:

- remedy of reconsideration, before the same official that issued the instrument;
- remedy of appeal, before the Intellectual Property Committee; and
- remedy of judicial review, before the Intellectual Property Committee.

It shall not be essential to apply for these remedies in order to exhaust the administrative route, and the proceedings provided for in the Law on Jurisdiction for Administrative Litigation may therefore be instituted directly against final administrative instruments or those issued by the National Directors preventing the continuation of proceedings.

These remedies shall be granted with suspensive and devolutive effect within the administrative jurisdiction.

Administrative litigation judges may, *ex officio* or at the request of a party, suspend enforcement of an instrument that has been appealed, where said enforcement may cause injury for which it is difficult or impossible to provide redress.

Art. 358. – The National Directorate for Copyright and Related Rights shall have the following powers:

- (a) to organize and administer the National Register of Copyright and Related Rights;
- (b) to oversee the administrative procedures relating to copyright and related rights set out in this Law;
- (c) to approve the statutes of societies for collective management of copyright and related rights, to issue or suspend their operating licenses, and to carry out monitoring, inspection and control of such societies, with intervention where necessary; and
- (d) to exercise other powers relating to copyright and related rights set out in this Law and in the Regulations.

Art. 359. – The National Directorate of Industrial Property shall have the following powers:

- (a) to administer the procedures for granting, registration or deposit, as the case may be, of patents for inventions, utility models, industrial designs, trademarks, slogans, trade names, distinctive appearances, geographical indications, layout-designs (topographies) of semi-conductor circuits and other forms of industrial property provided for in the relevant legislation;
- (b) to rule on the granting or refusal of registrations;
- (c) to process and rule on objections that are filed;
- (d) to oversee the other administrative procedures relating to industrial property set out in this Law; and
- (e) to exercise the other powers relating to industrial property set out in this Law and in the Regulations.

There shall be a single industrial property register and it shall confer a nationally applicable right. The National Directorate of Industrial Property shall therefore be the sole competent authority for deciding whether to grant or refuse industrial property registrations at the national level.

Art. 360. – The National Directorate of Plant Varieties shall have the following powers:

- (a) to administer the procedures for deposit of, and conferral of rights in, new plant varieties;
- (b) to rule on the granting or refusal of registrations;
- (c) to process and rule on objections that are filed;
- (d) to oversee the other administrative procedures relating to plant varieties set out in this Law;
- (e) to organize and maintain a national center for deposit of plant varieties or to delegate that activity to the private sector; and
- (f) to exercise other powers relating to plant varieties set out in this Law and in the Regulations.

Art. 361. – The Board of Directors may distribute competence among the National Directorates according to subject matter and the different forms of intellectual property, and alter their names accordingly.

In addition, with a view to ensuring the exercise of administrative protection by IEPI, the Board of Directors may establish regional sub-directorates and determine the limits of their administrative competence.

The National Directors, in accordance with their areas of competence, may order border measures pursuant to Article 351 of this Law.

Section V

THE INTELLECTUAL PROPERTY, INDUSTRIAL PROPERTY AND PLANT VARIETIES, AND COPYRIGHT COMMITTEES

Art. 362. - The Intellectual Property, Industrial Property and Plant Varieties, and Copyright Committees shall each consist of three members appointed by the IEPI Board of Directors.

The members of these Committees shall have a term of office of six years and shall meet the same requirements as for a high court judge.

The Board of Directors shall also appoint the relevant alternate members, who shall replace the principal members in the event of temporary or permanent absence.

Art. 363. – At the request of the President of IEPI, the Board of Directors may divide the Intellectual Property, Industrial Property and Plant Varieties, and Copyright Committees into special divisions according to subject matter and, consequently, increase the number of members of the Committees.

Art. 364. – The Intellectual Property, Industrial Property and Plant Varieties, and Copyright Committees shall have the following powers:

- (a) to process and rule on opinions issued by the National Directors in respect of objections filed against any application for granting or registration of intellectual property rights;
- (b) to process and rule on applications for appeal and judicial review;
- (c) to process and rule on applications for cancellation of the granting or registration of intellectual property rights, with the exception of the cases provided for in Article 277 of this Law; and
- (d) other powers specified in this Law.

Decisions of the Intellectual Property, Industrial Property and Plant Varieties, and Copyright Committees shall be adopted by a majority of votes; dissenting votes, if any, shall be recorded.

Art. 365. – No administrative remedy may be sought against decisions of the Intellectual Property, Industrial Property and Plant Varieties, and Copyright Committees, except for the remedy of reconsideration, applications for which shall be heard by the Committee itself that issued the decision, but shall not be essential in order to exhaust the administrative route. The proceedings provided for in the Law on Jurisdiction for Administrative Litigation may be instituted against decisions of the Committees.

Section VI FINANCIAL RESOURCES AND FEES

Art. 366. – IEPI shall be financially self-sufficient. All authorities shall be prohibited from diverting for other purposes funds collected by IEPI or set aside for its operation.

Art. 367. – The following shall constitute the assets and resources of IEPI:

- (a) property acquired by it on any grounds;
- (b) the proceeds of the collection of fees provided for in this Law;
- (c) the proceeds of fines, as provided for in this Law;
- (d) the proceeds of any sales of the *Intellectual Property Gazette* or other publications; and
- (e) other assets and resources specified in the law.

Art. 368. – Fees shall be established for the following acts and services:

- (a) the filing of applications for registration, recording or granting of rights;
- (b) the filing of applications for renewal or modification of registrations;
- (c) the registration of contracts;

- (d) the issuing of certificates of the granting or registration of rights;
- (e) the granting of certified copies of any document or administrative instrument;
- (f) the granting of official search certificates requested of IEPI;
- (g) examinations prior to the granting of patents for inventions or utility models and the registration of plant varieties;
- (h) expert work carried out by IEPI;
- (i) procedures carried out for the exercise of administrative protection;
- (j) the filing of objections;
- (k) applications for administrative remedies;
- (l) applications for cancellation;
- (m) provision of information on magnetic media;
- (n) maintenance of registers;
- (o) maintenance of live samples; and
- (p) use of technological information.

Art. 369. – The fees provided for in the foregoing Article shall be set by the IEPI Board of Directors as a multiple of the general minimum living wage, due account being taken of the proportionality of the fee to the cost and efficiency of the service. Fees shall be collected and administered by IEPI.

Final Title GENERAL PROVISIONS

Art. 370. – In cases where the present Law provides for the possibility of lengthening or extending a period or deadline, such extension shall be considered granted by the competent administrative authority where the interested party applies for it.

Where the expiry date of a given period is a public holiday, that period shall expire on the first subsequent working day.

Art. 371. – Legalization or authentication of pending documents or applications for registration of any form of intellectual property shall not be required where priority is claimed.

Art. 372. – Without prejudice to the provisions of the present Law, the provisions of international conventions or agreements on intellectual property that are in force in Ecuador shall apply.

In the implementation and interpretation of intellectual property rules, those that grant greater protection shall prevail. Consequently, no provision of national law or of an international convention may be invoked or interpreted in such a way as to diminish,

limit, prejudice, affect or reduce the level of protection conferred on the holders of intellectual property rights.

Art. 373. – IEPI shall have a coercive procedure for the collection of the fines and fees provided for in this Law.

Art. 374. – Any dispute relating to intellectual property may be referred for arbitration or mediation, in accordance with the Law on Arbitration and Mediation, published in *Official Register* No. 145 of September 4, 1997.

To that end, IEPI shall be authorized to sign the relevant arbitration agreement without the need to consult the Public Prosecutor, except in the cases provided for by law.

Art. 375. - (Repealed by Amending Provision Five, para. 8, of unnumbered Law, RO No. 544-S, March 9, 2009).

Art. 376. – In order to ensure the protection of the country's biological and genetic heritage, as provided for in the Constitution and in this Law, acquisition shall be considered lawful where it meets the requirements for access to biological and genetic resources set out in the Constitution and this Law, decisions of the Andean Community, and international treaties and conventions.

COLLECTIVE RIGHTS

Art. 377. - A *sui generis* system of collective intellectual rights of local ethnic groups and communities is hereby established.

The protection, evaluation mechanisms and application thereof shall be subject to a special law that shall be issued for that purpose.

REPEALING PROVISIONS

Art. 378. - All legal or regulatory provisions that conflict with the present Law are hereby repealed, and expressly the following instruments:

1. the Copyright Law, published in *Official Register* No. 149 of August 14, 1976;
 - a. Supreme Decree No. 2821, published in *Official Register* No. 735 of December 20, 1978, and also the amendments thereto set out in Law No. 161, published in *Official Register* No. 984 of July 22, 1992; and
 - b. the Regulations under the Copyright Law, published in *Official Register* No. 495 of December 30, 1977; and also all other related executive decrees or ministerial agreements that in any way conflict or are incompatible with the provisions of this Law;
2. the Law on Factory Marks, published in *Official Register* No. 194 of October 18, 1976;
3. the Law on Patents for Exclusive Exploitation of Inventions, published in *Official Register* No. 195 of October 19, 1976; and

4. Article 5 of Supreme Decree No. 2241 of October 6, 1964, published in *Official Register* No. 360 of October 26, 1964.

TRANSITIONAL PROVISIONS

ONE. – Until the relevant regulations are issued, the regulations under the decisions of the Commission of the Andean Community shall continue to apply, provided that they are not incompatible with the provisions of the present Law.

TWO. – Until the IEPI Board of Directors issues the relevant decision, the fees for services regulated by Ministerial Agreement No. 0144 of February 19, 1998, which was published in *Official Register* No. 264 of February 26, 1998, shall apply. Said fees shall be collected directly by IEPI from the date of entry into force of this Law and shall be used for the operation of IEPI.

Revenue generated by the implementation of the Ministerial Agreement referred to in the foregoing paragraph, or from the fees set by the IEPI Board of Directors through publication in the *Intellectual Property Gazette*, shall be distributed in the proportion of 60 per cent to IEPI and 40 per cent to the Ministry of Foreign Trade, Industrialization, Fisheries and Competitiveness (MICIP) for the purposes of Executive Decree No. 386 of June 10, 1997, published in *Official Register* No. 89 of June 18, 1997.

THREE. – This Law shall apply to all works, performances, productions, broadcasts or other subject matter of copyright or related rights, and to the layout-designs of semi-conductor circuits referred to in this Law, that are created prior to its entry into force, provided that they have not entered the public domain. The date on which they shall enter the public domain, once this Law has been promulgated, shall be determined by reference to the periods of protection provided for in this Law.

Decisions on pending applications shall be made in accordance with this Law.

FOUR. – Any industrial property right validly conferred under legislation existing prior to the entry into force of the present Law shall subsist for the time for which it was conferred.

Decisions on applications pending before the National Directorate of Industrial Property shall be made in accordance with this Law, without prejudice to Article 372 of this Law.

FIVE. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Until district intellectual property courts and tribunals are established, district administrative litigation tribunals shall hear cases relating to these matters, in accordance with the provisions of this Law and the jurisdiction granted thereunder, with the exception of precautionary measures, applications for which shall be heard by civil judges.

Note:

The Organization Code of the Judiciary (RO No. 544-S, March 9, 2009) changed the organizational structure of the judiciary, transferring the jurisdiction of the district administrative litigation tribunals to administrative litigation divisions of the provincial courts; however, the tribunals shall continue performing their functions until the Council of the Judiciary has established those divisions.

SIX. – Irrespective of the collection of royalties by the relevant management society, the collection of royalties for the communication to the public, effected through any medium, of musical works with or without words and dramatico-musical works shall be the responsibility of a sole entity consisting of the Society of Ecuadorian Authors and Composers (SAYCE) and the Association of Phonogram Producers of Ecuador (ASOTEC), the sole entity that shall carry out collections as part of collective management.

Until the sole collecting entity commences operation, SAYCE shall continue to collect these fees.

The sole collecting entity shall be established within 60 days of the establishment of the IEPI Board of Directors.

SEVEN. – Exploitation of plant varieties carried out prior to the entry into force of this Law shall be subject to agreed terms and shall give rise to the collection of royalties. In the absence of a written contract, the following shall be observed:

(a) the value of royalties specified in contracts for the same variety and species during the preceding three years; and

(b) any royalties pending payment shall be settled within 180 days of the entry into force of this Law.

EIGHT. – Breeder's rights conferred in accordance with legislation existing prior to the date of entry into force of the present Law shall subsist for the time for which they were conferred. The provisions of the present Law shall apply to the use and enjoyment thereof, the rights therein and the obligations, licenses and royalties pertaining thereto.

Decisions on pending applications for the breeding of plant varieties shall be made in accordance with this Law.

NINE. – For decentralization and devolution to be effective, it shall be essential for the National Directorate and the regional sub-directorates to be provided with all the budgetary, technological and human resources necessary for the efficient administration of processes, especially with regard to access by means of telecommunication to the National Directorate's database and the possibility of recording the exact filing times of applications online. Regional sub-directorates may not operate until the installation of such computer and technological resources as will allow applications to be entered in the National Directorate's database at the same time as they are filed.

FINAL PROVISIONS

1. By virtue of its special nature, the present Law shall prevail over any other conflicting law.

2. The provisions of this Law, the amendments thereto and the repealing provisions thereof shall be in force from the relevant dates of publication in the *Official Register*.

Hereafter the new numbering shall be cited.

This Codification was drafted by the Legislation and Codification Commission, in accordance with Art. 139, paragraph 2 (120, para. 6), of the Political Constitution of the Republic.

Once the requirements of Art. 160 of the Political Constitution of the Republic have been met, it shall be published in the *Official Register*.

Quito, November 29, 2006.

CODIFICATION SOURCES FOR THE INTELLECTUAL PROPERTY LAW

1. Political Constitution of the Republic.
2. Law No. 83, published in *Official Register* No. 320 of May 19, 1998.
3. Law No. 108, published in *Official Register* No. 367 of July 23, 1998.
4. Law No. 2000-16, published in *Official Register* No. 77 of May 15, 2000.
5. Decision No. 161-2000-TP, published in *Official Register* No. 173 of September 28, 2000.
6. Code of Penal Procedure, published in the Supplement to *Official Register* No. 360 of January 13, 2000.

SOURCES OF THE PRESENT EDITION OF THE INTELLECTUAL PROPERTY LAW

1. Codification No. 2006-013 (Supplement to *Official Register* No. 426, December 28, 2006).
2. Decision No. 0004-2008-TC (Supplement to *Official Register* No. 441, October 7, 2008).
3. Unnumbered Law (Supplement to *Official Register* No. 544, March 9, 2009).