RESEÑA
INTELLECTUAL PROPERTY, COPYRIGHT, AND TRADEMARK LAW IN THE CREATIVE INDUSTRIES

María Alejandra Zarate Becerra
Laura Valentina Córdoba Guerrero

Código: 694253248 • Autor: Shutterstock

DOI: 10.14718/NovumJus.2022.16.2.17

RESEÑA

INTELLECTUAL PROPERTY, COPYRIGHT, AND TRADEMARK LAW IN THE CREATIVE INDUSTRIES

Germán Darío Flórez Acero, Luis Ángel Madrid, Marcela Palacios Puerta, Julián Camilo Paca, Diana Carolina Pérez, Manuela Moncaleano

By María Alejandra Zarate Becerra and Laura Valentina Córdoba Guerrero, students at the Universidad Católica de Colombia and editorial assistants for the *Revista Jurídica Novum Jus*

This paper addresses the creative economy in Colombia, also known as the "Orange Economy," defined by John Howkins as "transactions of creative products that have an economic good or service that results from creativity and has monetary value." Specifically, it focuses on intellectual property, a legal figure that includes industrial property, copyright and trademark law, and their regulatory framework.

In the first place, we have witnessed technological advancement and industrial development in many countries, from the invention of photographic camera to video cameras with high resolution, along with an important tool called the internet. Likewise, the increasing strength of cultural-industrial expansion, such as advertising, architecture, art, and software development, among others, has signified an increase in Colombia's economy and contributed to the development of new creative projects. At the same time, it has been regulated normatively to protect natural and legal persons at the center of new projects in the cultural-industrial sector.

In this context, Law 1834 of 2017 seeks the development and protection of creative industries so that they generate value through goods and services with

a special focus on intellectual property. Consequently, it strengthens the stages of productive value, that is, it protects everything from intangible assets, production processes, content distribution to circulation in the market. Thus, Pérez and Flórez Acero describe the Orange Economy as an opportunity in which the sectors in the field of creative industry generate new prospects, with the guarantee that the entire productive chain, from beginning to end, is protected against the misuse of copied works—or what is colloquially called piracy. Likewise, they allude to the productive chain from whoever creates, designs, and materializes a creative company, whether in the cultural, artistic, or cinematographic field, among others, to its reproduction, which is to take it to the public for dissemination and visibility, with the mentioned copyright.

For their part, Moncaleano and Flórez Acero define and name the rules for the regulation of the rights that arise during the entire process of creation and reproduction of creative industries; nevertheless, it is important to highlight that these also depend on technological advances that connect the country to the national and international context, to the point that Colombia, in different creations, has become internationally recognized. Therefore, it is necessary to regulate the industry to care for those who make these projects possible to encourage demand and generate confidence to develop them, as is the case with several platforms that have been successful worldwide, such as Netflix, Amazon, and Disney+.

Similarly, in legal terms, Palacios Puerta and Flórez Acero highlight that when a third party obtains exclusive rights over multiple works without authorization, Law 1915 of 2018 points out possible pre-established damages, proving the quantification of the damage. The Law also mentions the mechanisms that facilitate proper self-management of copyright and related rights, which are Media Transfer Protocol (MTP) and Internet Gateway Device (IGD) Protocol. MTP is a technological measure of protection, by means of different techniques, components, or devices used in connection with the objects protected by copyright and aim to promote authorized use. In turn, IGD facilitates the traceability and dynamic management of any kind of digital information regarding intellectual rights, seeking to distribute digital information aimed at the management of copyright and related rights. As the authors state, they are measures that allow the owner of the work to protect their rights against certain considerable situations against them. The main function of MTP is to give access to the work, while IGD allows the identification of the right holders of the work.

Second, as evidenced from the European and North American legal practice, García R., Madrid, and Flórez Acero analyze the probability of registering a color as a trademark, based on the problems derived from color trademark registration and their generalities.

In fact, the Andean Community managed to demonstrate that according to the constant use of color in commerce, it will reach the point where it can be identified in its derived context; however, the Manual of the Superintendence of Industry and Commerce (SIC) of Colombia establishes as an essential requirement graphic representation that delimits the color to individualize the product regarding its competitors. On the other hand, in the United States, the Supreme Court has specified as a principle that a color may be registered as a trademark as long as it is not functional, that is to say, it must be essential for the final use. It is also important to emphasize that the graphic representation of a trademark must be made by means of an appropriate technology, to give the public an understanding of the central theme of the trademark, determining it with clarity and accuracy.

Ultimately, industrial property can be classified into two types: definitive signs and new creations, which is why industrial property, through law, expresses the economic progress of trademarks.

In terms of law, trademark "is an immaterial good, susceptible of being reproduced unlimitedly and simultaneously in different places..." In Colombia, the Decision 486 of 2000, issued by the Andean Community, in its Article 134, establishes that a trademark can be defined as any sign that is apt to distinguish products or services in the market; therefore, it must meet two requirements: to be susceptible of graphic representation and possess a distinctive character. The first requirement is a demand made by SIC to achieve trademark registration and the second one is primarily related to the functions of the trademark.

In addition, Flórez Acero y Paca emphasize the principle of limited territoriality, the principle of independence, and the principle of specialty, which are able to situate the trademark law for the respective legal regulation of a trademark.

In conclusion, to file or register a trademark or design, at the national or international level, it is necessary to prove that the creation and establishment of the object of the application is new and complies with regulatory requirements; additionally, the industrial property through the trademark law is able to evidence the monetary

reflection the country has had in the creation of new trademarks. In Colombia, the different types of rights and limitations conferred by trademark registration are clear, although the above must be filed and registered before the SIC to be effective before third parties, and the only way to extinguish the trademark right is by termination of its validity, waiver, or nullity of the trademark registration. On the other hand, to establish the protection of the audiovisual industry, it must be related to the regulation of intellectual property protection, considering what is established in each territory.