

LEGAL REPORT.

Law 1032 of 2006, defines new conducts to be considered as crimes and also increases penalties to persons who have committed Telecommunications, Copyrights, and Industrial Property related crimes. Such law came into force since June 22, 2006.

By: Daniel Álvarez Rodríguez

On June 22, 2006, the Congress of the Republic of Colombia enacted Law No. 1032, amending articles 257, 271, 272 and 306 of the Colombian Criminal Code, in order to increase penalties due to commission of crimes related to subjects of Telecommunications, Copyrights, and Industrial Property.

Such law, among other purposes, intends to avoid frauds in long distance telephone calls, causing financial damages of great magnitude, because important contributions to the Communications Funds are not undertaken. Likewise, Law 1032 strengthens penalties for committing crimes against Copyrights and Industrial Property, which, in the past and for certain cases, included sanctions of a financial type but not imprisonment penalties as those established by the new law, which evidently contributes to the fight against this type of crimes.

Likewise, Law 1032 of 2006 provides a series of activities related to Industrial Property and Copyrights as crimes (offenses) which, while those activities directly affected title holders of rights of this type, prior to the time that such Law entered into effect, such activities did not have this nature, as indicated below:

- Article First (1st.) of the mentioned law, refers to the crimes committed by a person who, with no authorization from the corresponding authority, incurs in activities to render, access, or use mobile telephone services, a lucrative activity, through copy or reproduction of identification signs of terminal equipment of such services, or their derivations, activities provided for in Article 257 of the Criminal Code as amended by the present law, will have an imprisonment penalty of four (4) to ten (10) years and a fine of five hundred (500) to one thousand (1,000) minimum monthly legal salaries, in effect. (Previously, this article provided an imprisonment penalty of two

(2) to eight (8) years and a fine of five hundred (500) to one thousand (1,000) minimum monthly salaries in effect¹.

- The second article (2) of Law 1032 of 2006, modifies article 271 of the Criminal Code, relating to the crime penalty committed by the person who, without previous and express authorization from the title-holder of the rights, saved for the exceptions foreseen in the law, performs the following actions:
 - Through any means or procedure, reproduces any work of a literary, scientific, artistic or film nature, as well as any phonogram, video-gram, software or computer program, or, whoever transports, stores, maintains, distributes, imports, sells, offers, acquires for sale or distribution, or supplies at any title, such reproductions.
 - Represents, executes or exhibits, in public, theater, musical, phonogram, video-gram, film works, or any other work of a literary or artistic nature.
 - Leases, or otherwise, trades phonograms, video-grams, computer programs or logic software or film works.
 - Fixes, reproduces or trades public representations of theater or musical works.
 - Disposes, performs or uses, through any means or procedure, any communications, fixation, performance, exhibit, commercialization, diffusion or distribution and representation of works protected by the Criminal Code.
 - Re-transmits, fixes, reproduces, or, through any resonant or audio-visual means, publishes emissions of radio organisms.
 - Receives, broadcast or distributes, through any means, T.V. emissions by subscription.

The person committing any of the above crimes, should be penalized with an imprisonment penalty of four (4) to eight (8) years and a fine of twenty-six dot sixty-six (26.66) to one thousand minimum monthly legal salaries in effect. (Before Law 1032 of 2006 was enacted, article 271 of the Criminal Code provided an imprisonment penalty of two (2) to five (5) years and a fine of twenty (20) to one thousand (1,000) minimum salaries).

- Likewise, article Three (3) of Law 1032 of 2006, modified article 272 of the Criminal Code, imposing an imprisonment penalty of four (4) to eight (8) years and a fine of twenty-six dot sixty six (26.66) to one thousand (1,000) minimum monthly legal salaries in effect to whoever incurs in the following activities:
 - Exceeds or avoids technological measures adopted to restrict unauthorized uses.

¹ The day in which Law 1032 of 2006 was established, the minimum monthly salary in effect in Colombia, was equivalent, in dollars of the United States of America, to one hundred fifty nine (US\$159,00), approximately.

- Abolishes or alters essential information for electronic management of rights, or imports, distributes or informs copies with abolished or altered information.
- Manufactures, imports, sells, leases or otherwise distributes to the public, devices or systems that permit to decipher a encoded satellite sign without authorization from the legitimate distributor of such sign; or, otherwise, avoids, evades, renders useless, or eliminates a device or system, that allows title holders of rights to control use of such works or phonograms, or enables to prevent or restrict any unauthorized use thereof.
- Presents statements or information destined directly or indirectly to the payment, collection, liquidation or distribution of financial rights of title-holders or related rights, altering or distorting, through any means or procedure, the necessary data for such effects.

If must be emphasized that sanctions provided in this article of the Criminal Code prior to amendments imposed by Law 1032 of 2006, only consisted of fines (pecuniary sanctions).

Finally, Law 1032 of 2006, amended article 306 of the Criminal Code, imposing an imprisonment penalty of four (4) to eight (8) years and a fine of twenty-six dot sixty six (26.66) to one thousand five hundred (1,500) minimum monthly legal salaries in effect to whoever, by fraud, uses commercial names, ensigns, trademarks, invention patents, models of utility, industrial designs, or misappropriates rights to obtain vegetable varieties, legally protected or that similarly may be confused with another legally protected. Likewise, the same penalties will apply to whoever finances, supplies, distributes, sells, trades, transports or acquires, with commercial or intermediation purposes, goods or vegetal matters, produced, grown or distributed fraudulently. (The penalty for violation of this article prior to the moment Law 1032 of 2006 entered into effect, was imprisonment of two (2) to four (4) years and a fine of twenty (20) to two thousand minimum monthly legal salaries in effect).

Translated by Alicia Groot