

FACTSHEET

PROTECTING YOUR CREATIONS IN THE ANDEAN COMMUNITY



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1. Copyright: What is it and why is it relevant for SMEs?

Copyright refers to a bunch of rights granted to the author or the owner of an original artistic, literary or scientific work.

Traditionally, Copyright has been more linked to the so-called creative industries, such as music, broadcasting, arts or fashion. However, the Internet expansion and the emergence of e-commerce extended the use of Copyright protected works to almost any type of sector.

Nowadays, you can hardly find a Start-up without online presence (i.e. Facebook, Twitter, LinkedIn, Instagram or a blog). In fact, many existing companies release a new website as part of a strategy aimed to bring revival to the business. Among multiple possibilities, they either opt to create it themselves using a content manager (e.g. Wordpress, Drupal or Joomla) –or a website builder (i.e. Wix, Webyly or BoldGrid)– or hire a web expert to make it from scratch. In this case, in addition to the customized software, text, drawings, pictures, videos and musical works are included as part of the web content.

Each of said elements could be protected as Copyright works and be seen by people from any country. However, Copyright, as any other Intellectual Property Right (IPR) is territorial. This means that protection depends on local regulation, which is also composed by international treaties.

Indeed, pursuant to the [Berne Convention](#), once the work has been made accessible to the public –e.g. published on a website or by any other means–, it is automatically protected in any country party to the Convention. This is why your works created or published in Europe automatically enjoy Copyright protection in all the Andean Community of Nations (CAN) countries and vice versa.

For this reason, it is fundamental to any SME to correctly identify the author/s and source, and be aware of how to protect their creations, ranging from the agri-food company that publishes studies to evidence the quality of their products, to a furniture designer, or the machinery manufacturer that produces brochures, advertising campaigns and user's manuals.

This factsheet will not only provide you with basic information and good practices to protect your works in the Andean Community countries, but also provide you with some recommendations and tips on how to prevent Copyright infringement, as well as different options to deal with it.

2. Andean Community legal framework

TABLE 1: COPYRIGHT AND RELATED RIGHTS TREATIES RATIFIED BY CAN COUNTRIES

	TRIPS	Berne convention	Rome convention	WCT	WPPT	Satellites Convention	Phonograms Convention	Beijing Treaty	Marrakech VIP Treaty
Bolivia	✓	✓	✓	-	-	-	-	-	✓
Colombia	✓	✓	✓	✓	✓	✓	✓	-	-
Ecuador	✓	✓	✓	✓	✓	-	✓	-	✓
Peru	✓	✓	✓	✓	✓	✓	✓	-	✓

The Andean Community (CAN) is a trade bloc composed by Peru, Colombia, Bolivia and Ecuador in charge of the harmonization of the Andean Market. Similarly to the EU, it has legislative instruments such as Laws, that are directly binding for all the Member States (Decisiones) and institutions, with competences to adopt common rules in many fields (Andean Parliament, Andean Commission and Council of Foreign Affairs Ministers).

Nonetheless, it must be noted that CAN's regional integration is not equivalent to the European Union from both an economic and political point of view. On the one hand, there is free circulation of goods and services, but free trade in services is still restricted in the financial and national open-television field, for which rules have not been set. On the other hand, there is no common commercial policy towards third countries (for instance, the CAN has not even adopted a common external tariff). Hence, Bolivian, Colombian, Peruvian and Ecuadorian have not yet achieved a harmonised internal market.

This being said, besides [Decision 486](#), [Decision 351](#) is of particular relevance for the protection of your creations in the Andean Community. The latter harmonises Copyright and related rights regime in the four member states.

Unfortunately, this legal instrument was adopted back in 1993 -before the digital revolution and the ratification by these countries of key IP international agreements. Consequently, Copyright protection in CAN countries is only harmonised in relation to the core principles of Copyright protection.

Thus, each CAN country's domestic regulation differs in important aspects, such as the protection of intellectual creations in the digital environment or the enforcement of IP rights. This point should be born in mind when deciding on where to invest in a copyright-based business and how to shape your business model.

To know more about the Copyright landscape in a particular CAN member state and how the former could affect your business, you can contact our free of charge, confidential [Helpline](#).



TABLE 2: CAN COPYRIGHT'S OVERVIEW

	Bolivia	Colombia	Ecuador	Peru
Regional legal framework	Decision No. 351 Establishing the Common Provisions on Copyright and Neighbouring Rights			
National legal framework	<u>Ley 1322 de Derecho de Autor de 13 abril 1992</u> (in Spanish) <u>Reglamento de la ley general de derechos de autor. DS 23907</u> (in Spanish)	<u>Ley 23 de 1982 "Sobre derechos de autor"</u> (in Spanish) modified by <u>Ley No 1915 de 12 de Julio 2018</u> (in Spanish)	<u>Código Orgánico de la economía social de los conocimientos, creatividad e innovación. Ley de 9 de Diciembre de 2016</u> (in Spanish)	<u>Ley sobre el Derecho de Autor</u> (Decreto Legislativo n° 822, modificado por el Decreto Legislativo N° 1391) (in Spanish)
Duration (of economic rights)	Author's life plus 50 years after the death of the author (or after publication in certain cases)	Author's life plus 80 years after the death of the author (70 years from the date of publication in case of legal persons)	Author's life plus 70 years after the death of the author (or after publication/ disclosure in case of legal persons)	Author's life plus 70 years after the death of the author (or after publication in case of legal persons)
Software protection	Software is protected for 50 years since its first publication, fixation, exhibition or use	Author's life plus 80 years after the death of the author (70 years from the date of publication in case of legal persons)	Author's life plus 70 years after the death of the author (or after publication/ disclosure in case of legal persons)	70 years since first publication (or 70 years since its creation if the work remains unpublished)
Registration	According to Berne Convention no registration is needed since protection arises automatically. However, registration is very useful to enforce or license the work.			
Costs*	For foreign authors, between €12 and €49 depending on the type of work	No cost	Between €11 and €18 depending on the type of work**	Between €50 and €100 depending on the type of work
Where to register?	National Copyright and Neighbouring Rights Department of <u>SENAPI</u> .	Dirección Nacional de Derechos de Autor (<u>DNDA</u>)	Servicio Nacional de Derechos Intelectuales (<u>SENADI</u>)	Dirección de Derechos de Autor of <u>INDECOP</u>
*Costs do not include attorney's fees, translation costs neither maintenance fees unless otherwise expressed. (Costs updated to August 2019)				
** MicroSMES might benefit from a 50% reduction, for more information see here (in Spanish)				



3. What does the Copyright protection in CAN consist of?

According to Decision 351, copyrighted works include, among others, works expressed in writing (books, pamphlets and others); lectures, addresses, sermons and similar; musical compositions with or without words; choreographic and mimed works; cinematographic works and others; works of fine art (drawings, paintings, sculptures, engravings and lithographs); works of architecture; photographic works and akin; illustrations, maps, sketches, plans, diagrams and three-dimensional works; computer programs; anthologies or compilations of assorted works, as well as data bases, which, because of the way in which the content is selected and arranged, constitute personal creations.

However, only the form in which the ideas of the author are described, explained, illustrated or incorporated in the works shall be protected by Copyright. Neither the ideas contained in literary and artistic works, or the ideological or technical content of scientific works, nor the industrial or commercial exploitation thereof shall be eligible for this IPR protection.

For example, Flash, Superman or Wolverine are well-known comic characters that can be easily identified by their names, costumes, colours and other physical characteristics. Nonetheless, the superpowers owned by each of them are not exclusively protected by Copyright. Hence, anyone else can create a new superhero that can move at the speed of light, fly or heal him/herself. Quicksilver, Wonder Woman and Deadpool illustrate this clearly.

The same logic could be applied to the description of a method to elaborate a new drug contained in a book. The literary expression (the selection and combination of the words used) would be protected by Copyright. However, the technical content of the book could not be enforced to impede the exploitation of this formula. If requirements are met, Patent or Trade Secret would be the proper IPRs.

Check our guides on [Trade Secrets in Chile](#), [Trade Secrets in Argentina](#) and [Trade Secrets in Brazil](#) to know more about Trade Secret protection in Latin America. Should you need more information on Patents, take a look at our video [IPR as a tool for internationalization: Patents](#), read our Country Factsheets on [Bolivia](#), [Colombia](#), [Ecuador](#) and [Peru](#) or contact our [Helpline](#).

Economics and Moral Rights

Copyright is composed by different rights -author's rights-, which can be divided into two groups: economic rights and moral rights.

In CAN, **moral rights** refer to:

1. the author's right to be recognised as such and claim proper credit (authorship right);
2. disclose or keep his work unpublished (disclosure right); and
3. prevent any modification of his work for the sake of his reputation (integrity of the work right).

Moreover, each country has some additional moral rights, as for instance, the right to withdraw the work from the market, which is subject to a prior compensation to the third parties affected. In this case, should the author change his mind and intend to remove one of the paintings from the collection to be exhibited during an art event, he would be entitled to do it as long as the organizers and people that paid for it are compensated. For further information about the existing moral rights in CAN, please check the table below (Table 3) or you can contact us through our [Latin America IPR SME Helpdesk](#). In comparison with economic rights, moral rights are not subject to any time limitation (except in certain cases) and cannot be waived or assigned (e.g. sold).

On the other hand, **economic rights** refer to the exploitation of the work for economic gain by the author or others.

As an author of an original work (or the heir, assignee or exclusive licensee), you have the exclusive right to authorise or prohibit the following acts:

- Reproduction
- Transformation
- Distribution
- Public Communication

Hence, you would enjoy the exclusive right to reproduce your work and make as many copies as you wish in any format (i.e. scan your illustration, copy it on your computer and print it on a T-shirt); transform or adapt it (e.g. translate your book into any language or turn it into a Broadway musical); distribute your work (or its copies) in a tangible

TABLE 3: MORAL RIGHTS IN CAN

RIGHT	PERU	ECUADOR	COLOMBIA	BOLIVIA
Disclosure	YES	YES	YES	YES
Authorship	YES	YES	YES	YES
Integrity of the work	YES	YES	YES	YES
Right to modify the work (even after publication)	YES	NO	YES*	NO
Right to withdraw the work from the market	YES*	NO	YES*	NO
Right to access the work	YES	YES	NO	NO
Until it falls into the public domain				
Unlimited in time				
*Subject to prior compensation to third parties affected (if needed)				

medium (i.e. book, CD, Blu-ray, etc.) and sale, rent or simply give it away; and disseminate and exhibit it publicly at cinemas, theatres, TV, radio or via YouTube, Jamendo, Twitter or any social media, etc.

Furthermore, the conferred exclusivity also entitles you to prevent any In comparison with economic rights, moral rights are not subject to any time limitation (except in certain cases) and cannot be waived or assigned (e.g. sold).

On the other hand, **economic rights** refer to the exploitation of the work for economic gain by the author or others.

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Furthermore, the conferred exclusivity also entitles you to prevent any non-authorised person to make any of the above-mentioned uses of your work, including derivative works (see glossary).

ECONOMIC RIGHTS' SCOPE IN CAN

Although, generally speaking, economic rights are closely similar to those granted by EU countries, CAN national laws establish certain differences. For instance, the Copyright Laws in Colombia and Bolivia do, whether uploading a work on a website is considered as an act of communication to the public. Likewise, only in Colombia there is an exception called the "streaming exception" by which it is allowed to reproduce works temporarily and electronically, when the reproduction is essential for a technological process and facilitates the transmission of data. Hence, it is advisable to rely on an IP expert before taking any decision. You can get in touch with our [Helpline](#) for further information concerning the scope of economic rights in a given CAN country.

These exclusive rights do not, however, last forever and the term of protection varies from country to country (see Table 2). In this regard, a minimum of 50 years from the publication or the author's death is provided. The term of protection shall be counted from January 1 of the year following that of the death of the author or that of the making, disclosure or publication of the work, as appropriate. After that time, the work would fall into public domain.

Nonetheless, during its period of validity, you can transfer some or all of your economic rights in an exclusive or non-exclusive way to others by means of license agreements, assignment or any other contractual form.

Check our Factsheet "[Licensing in Latin America](#)" to find out what is the most suitable type of license for your case and the main aspects to take into consideration.

Regardless, bear in mind that the transfer of economic rights must be registered before the National Authorities in order to be enforceable against third parties. In addition, transfers are governed by each country's regulation and may, therefore, differ from country to country. For example, in Peru, any person with local domicile can register the work before [INDECOP](#), while in Ecuador, foreign companies must appoint a local lawyer as a representative to register before SENADI.

This being said, there are certain situations established by law, called exceptions or limitations, where the work can be freely used by anybody without any compensation or without having to request authorization from the right holder. Hence, these behaviours do not constitute copyright infringement.

Copyright exceptions and limitations

The Copyright exceptions and limitations are legal measures that provide any person with the possibility to enjoy copyright protected works, as long as they do not jeopardize the normal exploitation of the work by the right holder, and do not cause him/her unjustified damage.

Some of the exceptions and limitations included within the CAN countries' local regulation are similar to those established in EU Law. Nonetheless, each of them has its own list and requirements. Overall, it is advisable to assess their applicability on a case-by-case basis – preferably with the support of an [IP expert](#).

For example, in Peru, according to the quotation right (see glossary), you can make quotations from lawfully disclosed works if you indicate the name and source. In Ecuador and Colombia, parodies are allowed, as long as they do not create confusion with –or damage– the original work or its author, and they are not a surreptitious exploitation of the work. The teaching exception (see glossary) is also accepted in Bolivia. In Colombia, on the other hand, a single, private copy with no profitable purposes of a literary or scientific work is allowed.

COMPULSORY LICENSES

Although, generally speaking, economic rights are closely similar to those granted by EU countries, CAN national laws establish certain differences. For instance, the Copyright Laws in Colombia and Bolivia do, whether uploading a work on a website is considered as an act of communication to the public. Likewise, only in Colombia there is an exception called the "streaming exception" by which it is allowed to reproduce works temporarily and electronically, when the reproduction is essential for a technological process and facilitates the transmission of data. Hence, it is advisable to rely on an IP expert before taking any decision. You can get in touch with our [Helpline](#) for further information concerning the scope of economic rights in a given CAN country.

4. Six steps to rightly manage and protect your works in CAN

Although public bodies have improved their performance to fight piracy and counterfeits, download of illegal content (namely, music and audiovisual works) or the use of unlicensed software are still major concerns in CAN.

FIGHT AGAINST PIRACY IN CAN

Over the last few years, national authorities have improved their efforts to fight piracy through:

- Public awareness campaigns: For example, in Peru campaigns such as the “[Anti Piracy Crusade](#)”, or the “[Ya lo sabes](#)” both launched by INDECOPI
- Public and private Alliance against piracy (Convenio Antipiratería Colombia): Representatives of different sectors related to cultural and entertainment industries, accompanied by entities of the official sector, seek the protection of Copyright and related rights in Colombia, by combating piracy of books, music, software, TV signals and audio-visual works.
- Creation of IP-specialised bodies: That is the case of Peru, where IP-specialised administrative and criminal courts in Lima, and IP-specialized units within the Public Prosecutor Office and the Police Department have been created. In Colombia, a specialized unit within the Public Prosecutor Office exists as well.

The following recommendations should provide guidance in the management and protection of your creative works, in order to avoid the most common mistakes when facing some of the IPR challenges in the region:

1. Prevent ownership conflicts

Real-life situations are more complex than it appears at first glance. In the case of a website, a movie or a videogame, many copyright works are mixed and usually the terms of use of each of them are far from being clear.

In practice, many companies are not aware of what they can do regarding the copyrighted works they deal with on a daily basis and may end up infringing IP rights without even realizing it.

For this purpose, you should act at three levels:

1. If you are the author of the work, it is strongly advisable to duly document the process of creation and publication of the work by means of registers, contracts (in case of work-for-hire), licenses and any other document suitable to demonstrate your rights over the work. In order to prove authorship, including an identifiable sign (i.e. a symbol or your name or pseudonym) on your work is as simple as effective. This would allow you to enforce your rights in case of infringement or if your authorship –or contribution- is challenged.

Nevertheless, it must be noted that you may not necessarily own the economic rights over your work due to contractual or legal reasons.

Actually, many Start-Ups base their business on a creation that was developed during their leisure time in their former company’s premises (i.e. researchers or software developers). However, it should be verified whether in fact those employees retain such ownership.

2. On the basis of the above, you should check whether any ownership clauses are included within your employees’ or outsourcing’s agreements to discard unknown automatic assignment that may harm your interests. If possible, try to add some clauses where the transfer or license of rights over the work is explicitly stated in terms that suit you best.

SUCCESS STORY

The Spanish art studio Pasozebra created and licensed Benito (or Tikato), the mascot of Flakes and Choco Flakes biscuits, to the Spanish well-known company SOS Cúetara. After several years, the biscuit company was sold to Nutrexpá, which took for granted that there was no copyright limitation regarding the use of the mascot. However, some IP clauses inserted by the art studio prohibited the inclusion of the copyright protected work on apps and social media. As a result, Nutrexpá lost any right over the mascot, had to remove it from any product and platform, was forced to create a new one; and had to compensate Pasozebra.

Moreover, you should take into account that each country has specific provisions regarding ownership of works-for-hire and works created by employees (e.g. in Colombia, the economic rights are automatically assigned to the employer/client, unless otherwise agreed and proven, while in Ecuador it is the other way around. In Peru, the parties are free to set the terms and conditions of the relationship. However, if nothing is expressly agreed in writing, it is presumed that the employer/client will be granted a non-exclusive licence limited to the extent of its regular activities at that moment).

3. In addition, regular training on IP for your employees would help clarify and keep up with the rules of the game.

2. Register your work

The only requirement for Copyright protection in CAN is originality. Thereon, the work must have its own unique features making it different from any other work. It does not, however, have to be new in the sense of novelty (see glossary), but it cannot be a total or partial copy or imitation of others' work.

Contrary to other IPRs (i.e. Patents, Trademarks or Designs), Copyright protection arises from the creation of the work. In other words, registration is not required (except in case of assignment of rights; otherwise, it would not be enforceable against third parties).

Nonetheless, it is advisable. Registration is relatively cheaper compared to other IPRs (e.g. in Colombia it is free of charge) and fast (e.g. in Bolivia, it takes only 10 working days) and it provides you with a presumption of authorship, which can be very useful in case of legal actions.

Generally speaking, the following documents must be provided, either in person or online (except in Bolivia, where online registration is not available):

- Application form
- Copy of the work
- ID copy
- Proof of payment (when applicable)
- Power of Attorney
- Translations of documents (when needed)

Bear in mind that the working language for registration in CAN countries is Spanish and documents are to be submitted in this language. Moreover, in countries such as Bolivia, an official translation of any other documents issued in a foreign language is mandatory.

To know more about registration costs and steps, check our Factsheets on [Colombia](#), [Peru](#), [Bolivia](#) and [Ecuador](#), [contact our experts](#) or visit the web sites of the national authorities in the field:

- [SENAPI](#) in Bolivia
- [SENADI](#) in Ecuador
- [DNDA](#) in Colombia
- [INDECOPI](#) in Peru

3. Opt for lower-risk business models

Business models based on tangible or physical supports are more likely to be harmed by piracy. Tangible copies of works, such as software or music DVDs, are easy to copy; therefore, it is extremely advisable to assess if you really need to provide your clients with such copies or if you can reach similar levels of customer satisfaction through other –less risky– business models.

For instance, sale of digital copies or subscription services may be a good option. Companies such as Netflix or Spotify are present in the four CAN member states. Their strategy that blends relatively low prices and an Internet-based business model has helped them to reduce the impact of piracy.

If your company is devoted to software, you could move from a physical to a digital purchase model, so your clients could easily and quickly download your product, have the latest versions and be provided with more efficient support. You would have, on the other hand, the chance to reach many more customers and get valuable feedback that would allow you to improve your creations.

You could also take it a step further and offer a cloud-based service. Many successful companies already provide storage and maintenance services so people can access and modify their files anytime, anywhere. E.g. Adobe's CC version allows you to access all your documents from any device where the program/application is installed. Other examples that do not require installation are Dropbox (Software-as-a-Service or "Saas") or Amazon Web Service (AWS) (Infrastructure-as-a-Service or "IaaS").

These enterprises must, nonetheless, adopt the necessary measures to ensure compliance with copyrights according to each local regulation.

DIGITAL COPYRIGHT PROTECTION IN CAN

- Not all the CAN countries have adapted their Copyright legislation to the digital environment and there is some uncertainty regarding the legality of certain behaviours.
- In this regard, in Bolivia it is not clear whether the “reproduction right” covers digital copies (if not, uploads and downloads would require a separate authorization from the right holder). Furthermore, there is no clear answer regarding the legality of temporary acts of reproduction (such as streaming, caching and temporary downloads). Hence, it cannot be unequivocally said that Internet Service Providers can make copies in their routers to transmit information requested by their users without authorization of the author.
- In addition, only Ecuador provides for a regulation on the exemptions to liability of intermediary service providers for Copyright infringements committed by their users. Neither Colombia nor Peru have implemented yet the strict obligations on this issue provided for in their Free Trade Agreements with the EU and the US.

4. Make use of TPM and DRM Systems

If you want to have some control over your digital material, Technological Protection Measures (TPM) and Digital Rights Management (DRM) systems are the most effective solution.

DMS is a catch-all term referring to technology limitations aimed at preventing unauthorised copies, transmission, use or access to your digital copyrighted work, while TPM referred to those limitations used to prevent access or use of copyrighted works embodied on electronic devices (i.e. Content Scrambling System –CSS- or digital watermarks).

Just think of the one-device-at-a-time limit of your music streaming service account (i.e. Spotify); the pre-paid control system of streaming video platforms; or the video edition program that must be activated in the official website by a purchase code.

Have you ever tried to rip a CD or run a PlayStation2 game on a PlayStation4 without success? This is because TPM were included within those devices by Sony Corporation and Microsoft Corporation.

Similarly, the blog that impedes non-registered users to read anything but an excerpt of the post implemented DRM, and the online store that restricted its sales to certain geographical areas thanks to an encryption system did it too.

Thus, any EU SME can also benefit from this kind of mechanisms. You should not, however, lose sight of the fact that TPM and DRM systems can be indeed circumvented or *hacked*. Nonetheless, apart from Bolivia, in the rest of the CAN countries, circumvention activities and devices are already banned and sanctioned by local regulation, pursuant to the international Copyright treaties they all signed –such as the WIPO Internet Treaties: [WCT](#) and [WPPT](#).

5. Contact an IP expert at the very first moment an infringement is detected

Copyright protection is still a territorial right that can vary from country to country.

This is why IP advice is essential –in particular, during the initial stages. Chart carefully your litigation strategy together with an IP expert with expertise in the country. Otherwise, protection and enforcement of your rights would rely upon reactive decisions that are usually more expensive and infrequently have a happy ending.

In any case, avoid trying to solve the problem by yourself. Even first written contact (Cease and Desist letters) with infringers must be correctly planned and preceded by research and collection of evidence if you want your claims to be successful.

If you feel like testing your IP skills with no risk, play [Protect'em Go](#). Our choose-your-own-adventure game will allow you to learn from very realistic scenarios and test your IP knowledge and tactics.

Otherwise, our experts will be delighted to assist you. Contact our [Helpline](#) for further information.



4. Choose the best option to enforce your rights

Bringing the infringer before the Court is not always the best way to go. The right path will be determined by balancing your interests (i.e. stop a public communication, seize infringing goods or be compensated) and resources (i.e. time or money). Moreover, it requires a thorough analysis by you and your IP expert on a case-by-case basis.

CAN countries provide different alternatives to enforce your rights:

- a) Alternative Dispute Resolution System or ADR (see Glossary)
- b) Administrative actions
- c) Civil legal actions
- d) Criminal legal actions

Depending on the country, the type of infringement and the above-mentioned aspects, you might opt for one route or another –or a

combination of them-. For example, in Peru, you can go to court (in case of civil infringement or criminal offense) or to INDECOPI (administrative procedure).

Ecuador, on the other hand, enables the right holder to initiate an administrative procedure before SENADI or to take the infringer to court (civil action); while Colombia and Bolivia only provide the possibility to initiate criminal or civil actions before courts.

In addition, some of the above-mentioned routes allow you to benefit from the following options:

- Seek provisional measures.
- Apply for preliminary injunctions to immediately stop the illegal activity (when possible).
- Ask for damages.
- Request the intervention of the Public Prosecutor.

In case your copyright is infringed, CAN countries offer you different alternatives to enforce your rights.

Peru provides a three-alternative route:

- 1) You can claim your rights before INDECOPI (administrative action). It is fast and cheap, and INDECOPI has a specialized commission (first instance) and a second instance court. You cannot ask for damages, but you can choose from a huge array of measures to enforce your rights:
 - a. cessation of the illegal activities
 - b. prevent the entry into the channels of commerce of imported pirated goods
 - c. disposal of infringing goods outside the channels of commerce
 - d. destruction of those goods, legal costs, provisional measures.
- 2) You can file a lawsuit before civil courts (civil action), which will allow you to claim damages. However, lack of specialization and backlog of decisions are very strong disincentives for most of the IPR holders.
- 3) Finally, you can file a complaint before criminal courts (criminal action) in case of criminal offense. The Public Prosecutor Office may also act on its own motion, but it seldom happens.

Ecuador has a similar system. Today, you can:

- 1) Start administrative actions and request preliminary injunctions. Beside the border measures and those mentioned for Peru, the administrative authority can order the removal of the infringing copyrighted content from the website or any other digital platform. Moreover, no compensation for damages can be obtained through this option.
- 2) Start civil actions. The IPR holder may also bring civil proceedings requesting compensation for damages incurred due to the infringement.
- 3) Start criminal actions. The IPR holder may request that the public prosecutor initiate a criminal investigation to sanction the offender, in particular in relation to counterfeit products.

Colombia has a three-alternative system:

ADR: the [National DNDA](#) administers a well-established system of Alternative Dispute Resolution (see glossary).

- 1) Civil and commercial courts: in order to enforce your rights, you need to go to judicial courts, as no administrative proceeding is provided for; or
- 2) Criminal courts. Unfortunately, the range of enforcement measures available is more limited than in Peru or Ecuador –seizure of the infringing goods or prohibition of a performance or of the communication to the public of a work of art-. Nonetheless, there is a special IP unit within the Public Prosecutor Office.

In **Bolivia**, the regulation of copyright enforcement is, unfortunately, very weak.

- 1) Administrative proceedings: the Copyright Code offers an Administrative conciliation procedure, but it does not provide for any kind of measure to enforce your rights.
- 2) Civil action is not available;
- 3) Criminal actions: the IP penalties in the Criminal Code are not deterrent.

If you want to have further information on how to enforce your rights in each of the CAN countries –including using customs

to block counterfeits-, check our country guides on [Bolivia](#), [Colombia](#), [Ecuador](#) and [Peru](#) or contact our [Helpline](#).

5. Glossary:

Right of quotation: is a copyright exception that allows the use without prior authorisation of a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper Articles and periodicals in the form of press summaries.

Source: [WIPO](#)

Teaching exception: copyright exception that allows the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided that such utilization is compatible with fair practice.

Source: [WIPO](#)

Novelty: It is one of the basic requirements established in most of the Latin American countries for the registration of Patents, Utility Models and Industrial Designs. Novelty means that the invention, creation or design does not exist anywhere else in the world. There has not been a publication, disclosure, commercialization, use, presentation or prior Patent/Utility Model/Industrial Design application regarding the invention or design. The law provides

for certain exceptions that do not affect the novelty, e.g. illegal or unauthorized disclosure of the invention within a year before the Patent application.

Source: [Latin America IPR SME Helpdesk](#)

Derivative works: Are works that modify prior protected works (the original work). Examples of these are translations, film adaptations of novels, or versions of songs. Should you want to translate/adapt a work you need prior authorization from the right holder of the original work to exploit such derivative work.

Source: [Latin America IPR SME Helpdesk](#)

ADR: Alternative Dispute Resolution consists of Mediation and Arbitration and it allows parties to settle contractual (i.e. patent or software licence, trademark coexistence agreements, pharmaceutical products distribution agreements, R&D partnerships) and non-contractual (i.e. patent infringement) disputes between individuals without going to court.

Source: [Latin America IPR SME Helpdesk](#)

6. Related links and additional information:

Latin America IPR SME Helpdesk
www.latinamerica-ipr-helpdesk.eu

Berne Convention for the Protection of Literary and Artistic Works:
http://www.wipo.int/treaties/en/text.jsp?file_id=283698

Rome Convention:
<http://www.wipo.int/treaties/en/ip/rome/>

WIPO Copyright Treaty (WCT):
<http://www.wipo.int/wipolex/en/details.jsp?id=12740>

WIPO Performances and Phonograms Treaty (WPPT):
<http://www.wipo.int/treaties/en/ip/wppt/>

Decision 486:
<http://www.wipo.int/edocs/lexdocs/laws/en/can/can012en.pdf>

Decision 351:
<http://www.wipo.int/edocs/lexdocs/laws/en/can/can010en.pdf>

DNDA's copyright handbook:
<http://derechodeautor.gov.co/documents/10181/331998/Cartilla+derecho+de+autor+%28Alfredo+Vega%29.pdf/e99b0ea4-5c06-4529-ae7a-152616083d40>

The Andean Community: economic integration
[http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/542185/EPRS_ATA\(2014\)542185_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/542185/EPRS_ATA(2014)542185_REV1_EN.pdf)

Criminal Measures for Enforcement of Intellectual Property Rights - Sanctions in the Andean Community:
http://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_4/wipo_ace_4_5.doc

Special 301 Report:
https://ustr.gov/sites/default/files/2019_Special_301_Report.pdf

Report on the protection and enforcement of IPR in third countries (2018):
http://trade.ec.europa.eu/doclib/docs/2018/march/tradoc_156634.pdf

WIPO Advisory Committee on Enforcement, Report of the Campaigns of the Copyright Directorate – Peru (2013):
http://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ace_9/wipo_ace_9_17.pdf

Factsheet on Alternative Dispute Resolution:
<http://www.latinamerica-ipr-helpdesk.eu/content/alternative-dispute-resolution>

DNDA's arbitration and mediation center:
<http://www.wipo.int/amc/es/center/specific-sectors/dnda/>

Código Orgánico de la economía social de los conocimientos, creatividad e innovación. Ley de 9 de Diciembre de 2016 (Código Ingenios):
<http://www.asambleanacional.gob.ec/sites/default/files/private/asambleanacional/filesasambleanacionalnameuid-29/Leyes%202013-2017/133-conocimiento/ro-cod-econ-conoc-899-sup-09-12-2016.pdf>





PROTECTING YOUR CREATIONS IN THE ANDEAN COMMUNITY

Download Guide



The **Latin America IPR SME Helpdesk** offers **multilingual services** (English, French, German, Spanish and Portuguese¹), with free information and first-line legal advice on IP related subjects, as well as training, webinars and publications, especially designed for EU SMEs.



HELPLINE First-line advisory service on IP protection and enforcement for EU SMEs working or planning to operate in Latin America.

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¹The language offer will depend on the specific service and experts' availability.

If you have any queries on how to protect your Intellectual Property in Latin America contact our Helpdesk service:

helpline@latinamerica-ipr-helpdesk.eu

+34 96 590 9684

Working Hours: Monday - Friday 9:00 -16:30 (CEST)

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