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Beyond the canvas: the importance of copyright in art. Infringement of works of art

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I. Art as Human Expression: Approaches to its Definition and Classifications

We must understand art, for the purposes of this article, as a form of creative expression that human beings use to communicate their feelings, emotions, and perceptions about their experiences and the environment around them.

Over time, the concept of art has evolved and been interpreted in various ways by different cultures and eras, reflecting the complexity of art as a human phenomenon

Art can manifest itself in multiple disciplines. An artistic work is a creation with an aesthetic purpose, made from various artistic techniques. These manifestations can be visual, scenic, musical, literary, among others, and can even combine several of these disciplines.

Doctrinally we find several classifications of artistic works, depending on the criterion that is followed, but in general we could group them into several categories, In general terms, the following could be a fairly complete list, but not the only ones, of the categories in which we could group the different types of artistic manifestations:

- Visual arts
- Performing arts
- Plastic arts
- Literature

- Music

II. The Legal Protection of Art: Copyright and Its Importance in Venezuela

The recognition of ownership over intellectual creations is of utmost importance. However, this recognition would be meaningless if a country's legal system also does not guarantee the ownership of those rights, i.e. if the holders do not have due protection of their rights through an effective remedy.

Copyright is a legal right that grants the creator of an original work exclusive rights over its use. These rights give the author control over their work, enabling them to benefit from their creative endeavors.

The recognition of these rights over artistic works has a constitutional basis in Venezuela, and this is enshrined in Article 98 of the Constitution.

Likewise, the legal protection of art in Venezuela is mainly regulated by the Copyright Law of 1993. This legislation establishes a robust legal framework aimed at safeguarding the rights of creators of artistic works, covering various disciplines such as plastic arts, music and cinema. In this way, it seeks to ensure that authors can enjoy their economic and moral rights, thus promoting a favorable environment for creativity and artistic production.

We must mention the *Berne Convention*, which is also law in Venezuela. This international treaty protects literary and artistic works and the rights of authors.

The legal protection of artistic works is essential for several reasons: it ensures the protection of creativity, recognition and appropriate attribution to authors, allows and regulates economic benefits, preserves the integrity of the work, promotes culture, knowledge and innovation. All this contributes to a social balance that favors artistic and cultural development.

III. Copyright: challenges and opportunities for artists

It is important to note that copyright is obtained automatically from the moment the work is created; No additional procedure is required other than creation to be the holder of these rights.

These rights automatically grant different "privileges" over the work. According to international treaties and national legislation itself, these rights or privileges are divided into:

1. **Economic rights:** related to the monetary part of creation, and allow the artist to exploit his work through reproduction, translation, adaptation, exhibition, distribution, copying, communication, among others.

2. **Moral rights:** reflect the author's personal bond with his work. They recognize the condition of author, and are inalienable and inalienable, accompanying the author throughout his life. The author has the power to demand respect for the integrity of his work and to oppose any modification that harms his honor or reputation.

However, despite these norms in force in Venezuela, in practice infringements of these rights recognized to artists are very common, understanding infringement as the transgression or non-compliance with a legal, moral norm or convention, and especially in matters of artistic works, the violation of the exclusivity that the artist possesses over his work.

For the protection of these rights, collective management organisations play an important role. In Venezuela, the only entities authorized to manage copyright are the Society of Authors and Composers of Venezuela (SACVEN) and the Venezuelan Association of Performers and Producers (AVINPRO). These organizations play a crucial role, as they are responsible for collecting and distributing the corresponding remunerations to authors and performers.

However, these unique entities that exist in Venezuela do not cover all the categories of artistic manifestations mentioned above.

The relevance of this issue is evidenced by the concern and participation of international organizations such as UNESCO, which, for example, promotes the protection and freedom of art through the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the 1980 Recommendation concerning the Status of the Artist.

UNESCO also issued a global report to *Rethink Policies for Creativity and Raise Culture as a Global Public Good*, providing governments, private organizations and civil society with the ideas needed to collectively improve legislation, protect artists and safeguard artistic freedom.

Thus, despite the established legal framework and the existence of these entities, many plastic artists face significant challenges. One of the most significant problems is the lack of more collective management organisations that adequately represent this sector. This situation means that a large part of artists and creators are not properly informed about their rights. As a result, there is a dispersion in the defense of their interests, which hinders their ability to claim what corresponds to them.

IV. The most common infractions in art

In Venezuela, infringements of art rights are diverse and can have significant legal consequences. Below are some common examples of these violations, as well as their implications:

1. *Unauthorized use of works*

Unauthorized use of artistic works, such as paintings or songs, constitutes a serious violation. This situation arises when a work is reproduced, distributed or publicly exhibited without the consent of the author or the rights holder. Lack of authorization not only affects the economic rights of the creator, but can also discourage artistic production by undermining confidence in intellectual property protection.

2. *Piracy*

Piracy involves the manufacture, import, or commercial distribution of copies of protected works without proper authorization. This phenomenon encompasses the sale of CDs, DVDs, and any media containing artistic works without the knowledge or permission of the creator. Both the unauthorized use of works and piracy are punishable by fines and imprisonment, which underscores the seriousness of these infractions in the Venezuelan legal context.

3. *Plagiarism*

Plagiarism is defined as the misappropriation of someone else's work, usurping the authorship of the original author. This act not only affects economic rights, but also violates the moral rights of the creator. Considered an infraction and a crime that violates the rights of intellectual authorship, plagiarism can be equated with theft.

It is important to note that certain practices are not considered plagiarism, such as:

- Properly citing or referencing a work of another or part of it;
- Paraphrasing other people's ideas, as long as their origin is indicated;
- Submit compilations of other people's documents as part of your own research;
- Translating someone else's work written in a foreign language;
- Use ideas that are public knowledge or that do not belong to any specific author, such as proverbs.

In this context, it is essential to highlight that the author has the "right to paternity", which is defined as the recognition of the author as the creator and protector of his work.

4. *Alteration of works*

Altering an artistic work without the author's consent is a serious offence. This practice includes any modification that may affect the reputation or decorum of the creator, which is expressly prohibited by the Copyright Act. In this context, it is essential to mention the "right to the integrity of the work", which protects the essence of the creation and ensures that no changes are made that could damage the image of the author.

This right implies that the author has the right to oppose any distortion, modification, mutilation or alteration of his work that may undermine his honor or reputation.

In other words, the author has the inalienable and inalienable right to demand that his work be presented to the public as it was conceived, without alterations that may affect its creative integrity. This means that even if the author has transferred the economic rights to his work, he cannot waive this fundamental right.

National and international law protects this right to ensure that the author's work is respected in its original form. Therefore, any modification, alteration, mutilation or deformation carried out without due authorization represents a serious violation of the legitimate interests of the author with respect to the integrity of his creation. In short, the author has the right to have his work exhibited and represented in its entirety and as he conceived it: any change requires his prior consent (Rodríguez Miglio, 2013).

5. *Unauthorized public communication*

On the other hand, the exhibition or public communication of a work without authorization is also considered a significant infringement. This type of violation ranges from concerts to exhibitions where protected works are used without the author's permission.

It is important to highlight here the "right to disclosure", understood as the right that the author and/or artist has to control when and how their work is published. This right is essential to ensure that creators maintain control over the public presentation of their works and can decide on the conditions under which they are shared with the public.

V. Monitoring and Protection of Copyright in Venezuela

It is crucial to monitor unauthorized use of artistic works. Upon detection of an infringement, the perpetrator has the possibility of taking legal action, which may include claims for damages or requests for cessation of misuse, among others. It is



important for all authors and artists to be aware that Venezuelan law provides for both civil and criminal penalties for those who infringe copyright.

Although copyright protection is granted without the need for formalities, registration of the work with the Autonomous Service of Intellectual Property (SAPI) is strongly recommended. This registry not only provides irrefutable proof of authorship, but also facilitates the defense in case of infringement before the Venezuelan authorities. In this way, creators can strengthen their legal position and protect their interests.

In addition to economic rights, Venezuelan legislation recognizes moral rights that are inalienable and inalienable. These rights, which have been mentioned in each of the infringements, include the right to paternity, the right to integrity and the right to disclosure. Each of these rights is critical to ensuring that authors maintain control over their works and reputation.

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