

El Derecho de Autor: un Enlace Entre la Creación de la Animación Digital y el Diseño, y Su comercialización

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Introduction



- What are digital animation and computer generated designs?
- Digital animation
 - Non-interactive and Interactive
 - All media platforms
 - Motion pictures
 - Video games
 - Television: commercials and programs



Copyright: Categories of Protected Works

Berne Convention for the Protection of Literary and Artistic Works:

- Established standards of copyright protection for member countries
 - Entered into force in Colombia in March 1988
- “[L]iterary and artistic works’ shall include every production in the literary, scientific and artistic domains, whatever may be the mode or form of expression.” (article 2(1))



Copyright: Categories of Protected Works

- Examples of literary and artistic works in the Berne Convention:
 - Books, pamphlets and other writings
 - Dramatic works
 - Musical works
 - Choreographic works
 - Drawings, Paintings, Architecture, Sculpture, Engravings and Lithography
 - Cinematographic works
 - Photographic Works
 - Illustrations, maps, sketches
 - Collections of literary or artistic works
- Articles 2 and 5 of Colombia Copyright Law, 28/01/1982, No. 23



Copyright: Categories of Protected Works

- World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and the WIPO Copyright Treaty (WCT)
 - Expressly include computer programs as “literary works” (TRIPS article 10; WCT article 4)
- Colombia Decree, 23/06/1989, No. 1360:
 - Article 1. “Pursuant to the provisions of Law No. 23 of 1982 on Copyright, software shall be considered a creation in the literary field.”



What Works are Not Protected by Copyright?

- Ideas
- Procedures
- Methods of operation or mathematical concepts

TRIPS article 9(2); WCT article 2



Criteria for Copyright Protection: U.S. Example

- Must be an original work of authorship, meaning:
 - The work must be independently created by the author (as opposed to copied from other works), and
 - The work possesses a minimal level of creativity.
 - The required level of originality in the United States is very low. Other countries' laws may differ.

Criteria for Copyright Protection: U.S. Example



- Work must be fixed in a tangible form of expression.
 - The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device.



Exclusive Rights of Copyright

- Exclusive rights under the Berne Convention:
 - Reproduction
 - Adaptation
 - Public performance
 - Communication to the public



Exclusive Rights of Copyright

- WIPO Copyright Treaty (WCT)
 - Adds to list of exclusive rights: the right of distribution (article 6)
- Exclusive rights in article 76 of Colombia Copyright Law, 28/01/1982, No. 23
- Exclusive rights subject to certain limitations and exceptions, set out in domestic law, that conform with Berne Convention article 9(2), TRIPS article 13, and WCT article 10.

Term of Copyright Protection



- Copyright exists at the moment of creation.
 - Colombia Copyright Law, 28/01/1982, No. 23, article 9
- International treaty requirement is life of the author plus 50 years (Berne article 7).
 - Many countries now exceed minimum term.
 - » U.S term of protection where author is a natural person: life of the author plus 70 years
 - » Colombia: life of the author plus 80 years, with certain exceptions (Copyright Law, 28/01/1982, No. 23, article 21)



Application to Digitally Animated Works & Computer Generated Designs

- Copyright protection:
 - Computer program, as a literary work
 - Applies to source code and object code
 - Example: a video game's computer program

Application to Digitally Animated Works & Computer Generated Designs



- Copyright protection (cont.):
 - A digital animated work, as an audiovisual work



Application to Digitally Animated Works & Computer Generated Designs

- Copyright protection (cont.):
 - A computer generated design, as a work of visual art
 - Legal issue to consider:
 - Do you intend to use pre-existing copyrighted work?

Application to Digitally Animated Works & Computer Generated Designs



- Must still meet requirements for copyright protection under domestic law:
 - Is it an original work of authorship?
 - Is it fixed in a tangible medium of expression? (Requirement in U.S. law)



Ownership of Digitally Animated Works & Computer Generated Designs

Who owns the copyright?

- Three possible scenarios (under U.S. law):
 - Individual author
 - Employer (“work made for hire” doctrine)
 - Individual creator as employee within the scope of his or her employment
 - Several people with different skills contributing to the creation of a work as employees of a common employer within the scope of their employment
 - Joint authorship
 - Two or more authors working as a voluntary team and not as employees within the scope of their employment



New Issues in Digital Animated Works

- New issues in digitally animated works presented by:
 - Online Virtual Worlds
 - Example: Second Life
 - Machinima



Copyright: A Valuable Asset

Purpose of Copyright:

“Copyright ... giv[es] creators incentives in the form of recognition and fair economic rewards... This in turn helps increase access to and enhances the enjoyment of culture, knowledge, and entertainment all over the world.”

World Intellectual Property Organization, www.wipo.int



Copyright: A Valuable Asset

- Colombian copyright industry
 - Internationally recognized local talent in all sectors
 - » Betty La Fea (telenovela)
 - » Gabriel García Márquez (writer)
 - » Shakira, Juanes (performing artists)
- Colombian audiovisual works are booming
 - Telenovelas
 - Films
 - Advertising



Copyright: A Valuable Asset

- Digital animation - a growing sector
- Example in Colombia:
 - 2003 short animated documentary film, “Little Voices” by Colombian producer
 - » Winner of 8 international prizes



Copyright: A Valuable Asset

- For the right holder:
 - Licensing opportunities
 - Commercialization in international markets
 - » High demand for Spanish-speaking works in the U.S. due to an increasingly growing Hispanic population
- For the local economy:
 - Jobs
 - Foreign investment opportunities



Gracias

¿ Alguna pregunta?