

MEMORANDUM TO CLIENTS

INTELLECTUAL PROPERTY

February 23, 2016

Public consultation regarding Copyright
Normative Instructions is launched

Law Nº 12.853, of August 14th 2013, attributed to the Ministry of Culture (“MinC”) the responsibility for policing, regulating and monitoring the collective management of copyright in Brazil.

On February 15th 2016, the MinC called for a public debate regarding the regulation of activities that charge for the usage of copyright material on the internet and users’ obligations pertaining to public broadcasting of songs and phonograms.

Among the most important topics for public debate is the airing of music over the internet and how this relates to the system for levying duties on copyright material. Such topic has also been the subject of a public hearing, which was ordered by the Superior Court of Justice in 2015. However, the MinC has indicated that there is no connection between its public consultation and the hearing held by the Court.

Levying Duties in the Digital Environment

One objective for the rules which the MinC is proposing is to regulate the levying of duties on copyright material usage over the internet by collective management associations and by the levying agencies.

Among the topics in debate are: (a) in order to determine what amount should be levied, the assignment of relevance to works, which would take into account the works’ significance for the users’ main activity, the users’ business model, the limitations on users’ choice and the form in which the material will be used; and (b) the entitlement of collective management association to levy duties.

The purpose of this memorandum is to inform our clients about important changes and developments in the area of law. We remain at the reader’s disposal for any additional information that may be desired regarding the subject matter herein.

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Users' Obligations

The second public consultation will discuss the regulation of the provisions of section 22, paragraph 3, of Decree Nº 8,469 of June 22nd 2015, which describes users' obligations regarding the public broadcasting of phonograms and musical works within other national audiovisual works and productions.

Users are defined as companies involved in motion picture exhibition, audiovisual broadcasting and conditioned access service providers (Seac). Accordingly, such normative instruction will apply exclusively to telecommunications service providers and do not encompass companies whose focus is the broadcasting of audiovisual content through streaming.

The initial draft of this normative instruction determines that users are obliged to provide a list of the national titles being reproduced and their respective certificates of national product to the agency responsible for levying duties. Furthermore, it also establishes that companies operating conditioned access audiovisual communication are obliged to provide a complete list of the channels offered by their subscription packages, as well as the number of subscribers per package.

Currently, the ECAD (the collection society for public performance) provides specific forms to be completed with information pertaining to works and phonograms aired for each segment of music use (including TV stations and motion picture exhibitors), which information must include, without limitation, information regarding the producer, director and the date and time of airing.

All contributions must be made through MinC's portal by March 30th 2016. The suggestions will be analyzed by the MinC's Board of Intellectual Rights and may be incorporated into the final text of the normative instructions.

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