

VENEZUELA



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1. Case Report	
Regulation:	Conditions by which the operators of mobile telecommunications services will be able to offer roaming to their subscribers (published in Official Gazette N° 37.907 dated March 26 th , 2004)
Who:	Ministry of Infrastructure – National Commission of Telecommunications (CONATEL)
When:	March 26, 2004
Where:	Caracas, Venezuela
What Happened:	<p>By resolution of the National Commission of Telecommunications (CONATEL) the conditions by which the operators of mobile telecommunications services will be able to offer roaming to their subscribers were provided.</p> <p>In this sense, and in first place, roaming was defined as “the facility of the mobile service by which a subscriber may use the service through the network of an operator different from the one he/she is subscribed, in case of being out of the service area of the latter”. Therefore, there is roaming only when it is used the network of an operator different from the one the subscriber is subscribed. in case,</p> <p>Among the conditions provided for the rendering of the roaming service, we find that this facility must be offered by all the providers to their customers regardless the mode of payment of the service (pre-payment or post-payment). Likewise, the customers must be informed in the service contracts about the services that will be available when they are in roaming, and also there must be services of precise, true and free information available in the service area about the effective prices and tariffs thereof. On the other hand, calls made to the emergency number shall be free of charges even if the customer is in roaming.</p> <p>Finally, and regarding the agreements entered into by and between operators of mobile services, it was provided that these operators may establish the conditions for the rendering of roaming services.</p>

2. Case Report	
Topic:	Creation of the Subcommittee against Intellectual Property Infringements
When:	February 2004
Where:	Caracas, Venezuela
What Happened:	Based on the proposal of the Group of National Anti-piracy Action (GANA), which draws together the most important organizations and sectors affected by piracy of copyright and Related Rights, it was created, in February 2004, the Subcommittee against Intellectual Property Infringements, attached to the National Integrated Service of Customs and Tax Administration (SENIAT),

	<p>with the purpose of coordinating efforts of private and public sectors in order to improve the conditions of applicability of the regulations which protect the rights of holders against unlawful use of their works.</p> <p>Among the general purposes of the aforementioned Subcommittee are to promote reforms of administrative nature to make effective the anti-piracy control correspondent to competent authorities, in their different areas: Customs (avoiding smuggling and other tax infringements related to customs clearance); internal tax control (promoting the compliance with tax regulations, given that the pirate is typically a tax evader); procedural regulations (updating the processes with information related to Intellectual Property to achieve a better control of goods or products); judicial (harmonizing different efforts of organs of police investigation and the Attorney's Office).</p> <p>This these few months of activity of the Subcommittee, it was achieve: an information campaign in all the offices of SENIAT; a workshop of induction and training for officers to recognize the Intellectual Property Infringements; studies to reclassification of codes, and tariff items of goods related to the production of equipments that may be used to infringe Intellectual Property; the design of a Policy of Primary Control in the Customs to avoid smuggling; the production of showcases containing original and falsified products in order to educate customers.</p> <p>Medium-term objectives are: to update the system related to the Custom Measures in the scope of the Regulations of the Organic Law of Customs; and the creation and application of Policies of secondary control of tax infringements which affect the Intellectual Property.</p>
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3. Case Report	
Topic:	Supreme Tribunal of Justice ruling orders to respect Universidad Central de Venezuela's property right over the tangible object which contains the sculpture known under the name of "Maria Lionza."
Who:	Supreme Tribunal of Justice
When:	June 08, 2004
Where:	Caracas, Venezuela
What Happened:	<p>In a ruling that wasted the opportunity of analyzing highly important aspects related to Copyright, the Constitutional Chamber of the Supreme Tribunal of Justice, on June 8, 2004 ordered the "Foundation for the Protection and Defense of the Cultural Patrimony of Caracas" ("FUNDAPATRIMONIO") to refrain from moving the sculpture work known as "Maria Lionza", without prior authorization of the Universidad Central de Venezuela (UCV), owner of the tangible object of the work.</p> <p>The work object of legal dispute, created by the well known local sculptor "Alejandro Colina" in 1951 upon request of the Universidad Central de Venezuela, placed since its termination in a specially designed space in the major highway of the city of Caracas, where it became a referential icon of the city, was in very bad condition and there was a consensus in the cultural community for its prompt restoration.</p> <p>In that sense, UCV and FUNDAPATRIMONIO celebrated meetings in order to discuss about the conditions of the transportation of the work for its restoration and its eventual relocation in a place different than its historic space, for preservation purposes.</p>

	<p>Given the impossibility of reaching a consensus, the UCV ordered to transportation the sculpture to its restoration workshops, notifying that decision to Fundapatrimonio, which, in answer, unilaterally ordered the transportation for restoration to other place, and even decided its relocation to other zone of the city in the same unconsulted way.</p> <p>UCV submitted a constitutional action for legal protection against this administrative decision, based on its property right over the tangible object which contains the sculpture. Third Superior Civil and Contentious Administrative Tribunal, on February 5th, 2004, rendered a favorable ruling to UCV, granting the later the exclusive right to decide over the work's destiny.</p> <p>"Fundapatrimonio" appealed from that decision before the Supreme Tribunal of Justice, and the Constitutional Chamber confirmed the contents of the appealed ruling, based on considering sufficiently proved the capacity of owner of the UCV over the tangible object of the sculpture, and ordering the parties:</p> <p>a) Fundapatrimonio: to refrain from disturbing the property right of UCV, and to comply with the decisions of the later related to restoration and relocation of the work. b)UCV: provide the guidelines to the immediate restoration of the work.</p> <p>Although "justice was done", in restoring the UCV property rights disturbed, the ruling completely ignores fundamental principles related to copyright (the ruling does not even take into account copyright law as an applicable law), which, properly applied, allowed to reach the same conclusion and further recognize the interests of the creator of the work or his heirs, which were completely ignored in the process, and given that Venezuela recognize moral rights as a complement of patrimonial rights, they should have voice, even vote in any initiative which involves the modification and eventual relocation of the sculpture object of the conflict reported herein.</p> <p>In this sense, in accordance with current Copyright Law, article 20, the creator has a moral right over the work, by which the creator may object any modification which jeopardize the integrity of the work and his/her reputation, <u>even against the owner of the tangible object.</u></p> <p>Even assuming that in this case the collective interest for the work would not had allowed alterations in the spirit of the work, it is also true that the process that caused such a ruling, specially coming from the highest tribunal of the Republic, should at least consider some fundamental aspects of copyright, instead of merely analyzing documental issues of the property over the tangible object which contains the work.</p>
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4. Case Report	
Regulation:	New regulation on SPAM in Venezuela within the Amendment of the Law of Protection to the Consumer and User (Published in Official Gazette N° 37.934
Who:	National Assembly
When:	May 4 th , 2004
Where:	Caracas, Venezuela
What Happened:	The Amendment of the Law of Protection to the Consumer and User was enacted in May, 2004, and among other aspects, it comprises a few articles regulating the posting of unsolicited emails, better known as SPAM.

	<p>This law establishes that providers of goods and services must implement easy and effective procedures allowing the user or consumer to decide whether she/he will receive SPAM or not. Once communicated this decision, it must be respected under penalty of fine.</p> <p>On the other hand, we observe with concern how our legislation punishes the provider of goods and services who obtained consumers' or users' information through a lawful transaction, if a third non-authorized party uses such information to send <i>Spam</i>, reversing the liability established in the legislations of United States or the European Union, for example.</p> <p>Similarly, it is established the obligation of the provider to define what information will be shared with third non-related parties, for final approval by the consumers or users.</p>
Comment:	The regulation, even briefly, of Spam in Venezuela, is a big step, and we consider that it still must be object of widening in future regulations.

5. Case Report	
Topic:	<p>Unfair Competition. Resolution No. SPPLC/0031-2004.</p> <p>Case: OPTILASER & Emi Music Venezuela, C.A.; Inversiones Rodven, C.A.; IFPI Latin America - Federación Latinoamericana de Productores de Fonogramas y Videogramas (IFPI) (<i>Latin American Federation of Phonograms and Videograms Producers</i>) and Asociación de Productores Fonográficos de Venezuela (APROFON) (<i>Association of Phonographic Producers of Venezuela</i>)</p>
Who:	Ministry of Production and Commerce - Superintendence for the Promotion and Protection of Fair Competition (PROCOMPETENCIA)
When:	May 19 th , 2004
Where:	Caracas - Venezuela.
What Happened:	<p>OPTILASER made a formal complaint against the companies EMI, RODVEN and associations IFPI and APROFON, for the alleged commission of "exclusion" and "boycott".</p> <p>The plaintiff participates in the music market as independent manufacturer of compact discs, not related to record labels or phonographic producers. Additionally, OPTILASER emphasizes that there are only two plants for replication of compact disks in the domestic market, OPTILASER (independent) and RODVEN (phonogram producer who owns a fabric <i>in house</i> where orders from third parties are accepted). The plaintiff argue that orders have significantly decreased by virtue of concerted and continuous actions of permanent effects performed by the defendants who, according to OPTILASER, abuse of hegemonic position in the market.</p> <p>RODVEN representatives allege in its defense that it does not have exclusivity with any other record label. According to them, new technologies have contribute to reduce significantly the size of the music and video market, because those make available products which were brought in record stores before, and that is why sales have decrease in such extend. Additionally, piracy has decreased even more the levels of production of units in the legal market, causing the entrance in Venezuelan market of disks produced abroad (Argentina, Colombia, México), which evidences that there are no entrance barriers to the Venezuelan phonographic market.</p>

According to EMI, the main cause of the market crisis is the non-authorized reproduction of music works. Consequently, it has found that lacks of presence in music market and its production levels have also decreased.

IFPI assures that the manufacture of compact disks exceeds the geographic limits of Venezuela and consequently no company has market power. Their representatives set out that the in music business, which has international nature, there are multiple providers located abroad, which implies that neither OPTILASER nor RODVEN solely considered have actual or potential capacity to affect the market.

APROFON, denies and rejects that this company has incur in unfair trade practices prohibited by the Law, or practices affecting trade or economical interests of the Plaintiff.

PROCOMPETENCIA DECISION

1. The "relevant market" in this case confines itself to the international market of replication of compact disk services.
2. The conditions which defines the unfair practice contrary to the free competition known as "BOYCOTT" are not present in this case by any of the four reported companies.
3. It is not true that RODVEN "monopolizes" the Venezuelan market if OPTILASER is excluded thereof, given that being the market framed in an international context, RODVEN have to compete with other offers already present in the market, capable to discipline RODVEN in case of intending to obtain supra-competitive benefits. Consequently, RODVEN has no capacity to affect the relevant market.
4. Regarding EMI, which owns *in house* replication fabrics abroad, competitors to OPTILASER, it has a world-wide market share of approximately 12%, and in Latin America 12,4% for the year 2002; so it has no capacity to affect the market by itself. The companies RODVEN and EMI have no capacity to exclude OPTILASER from the relevant market; consequently, in this case it is not possible to consider that there is "EXCLUSION" pursuant the law.