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PERSONAL LIBERTIES AND COPYRIGHT LAW
a comparison between the dutch and bolivian copyright law
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UNIVERSIDAD CATÓLICA BOLIVIANA
"SAN PABLO"

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Introduction

Intellectual property is considered an innovative branch for laws that was cultivated over time, from 1813 until this day in which it overcomes cultural and (or) economic barriers, deserving to be legally regulated. The idea of copyright legislation can be traced back to the 15th century, but the first official law traces back to 1710. This law was called the Statute of Anne (American Society of Media Photographers, 2018). After this, copyright all around the world started to develop. Countries added directives on copyright and intellectual property to their legislation. Internationally seen, 180 countries signed the Berne convention that was initiated by the World Intellectual Property Organization. In addition to this, several regions have also managed to generalize intellectual property legislation over several countries. Examples of these regions are Europe and America. The internationalization of copyright legislation helps with artists that share their work across borders (Rights Direct, 2018).

Human rights trace back to even earlier times. Some of the first documents stating human rights are: Magna Carta (1215), English Bill of Rights (1689), The French Declaration on the Rights of Man and Citizen (1789) and the US Constitution and Bill of Rights (1791). This document are some of the precursors of the Human Rights Declaration but most of them leave out the rights of woman, people of color and some religions (hrlibrary.umn.edu, 2018).

As a result of the genocide of World War II fifty countries sent delegates to San Francisco in 1945 to form The United Nations, a body which is supposed to promote peace worldwide. In 1948 the Universal Declaration on Human Rights was adopted which is serving to today in the means of defending human rights (humanrights.com, 2018).

The two different sorts of rights do not seem to have much in common, but there is more interface then some would think. For example, all humans have the right to privacy and to have their own life. But if we look at portrait rights, privacy seems like a limited privilege. Taking a picture of someone in the streets and publishing it is in most countries permitted. Also, what happens to the copyright of a journalist if we compare it to the right to information and freedom of expression?.

There are different areas where the rights collide. In this report you will read a comparison analysis of copyrights and human rights and how the legislation is arranged in the Netherlands and in Bolivia.

Chapter 1: Personal Liberties vs Protection of Intellectual Property

1.1 Personal Liberties vs Protection of Intellectual property in the Netherlands

To what extent do we recognize the right of personal enjoyment and/or sharing things with each other?

Freedom, democracy and personal liberties are three words closely related to each other. It seems simple: in a democratic country each person has its own personal rights which makes it free to act according to those liberties. Democracy is a way of ruling which allows society to get involved into so called 'collective' decision making process by granting an equal right for individuals to take part in a 'voting' process (Beetham & Boyle, 2009). That way, allowing the personal opinion forming process to take place and working as a prevention of autocracy, absolutism and tyranny (Mannermaa, Dator, & Tiihonen, n.d.). Personal liberties, sometimes referred to as freedoms, are an important part of human lives. They are legal guardians of humans intellectual, philosophical, economical, material and spiritual separations. They allow democracy and freedom in societies to blossom, which is why they are an important part of any constitution and legal form one's country accepts (Aprender La Libertad, 2014).

Now Looking at the personal liberties of the Netherlands, the Dutch constitution has multiple articles about freedoms related to the right of personal enjoyment and/or sharing things with each other. Article 6 of Dutch constitution (DC) titled the freedom of religion and belief which states that everyone shall have the right to profess freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law.

Freedom of speech falls under art. 7 of the DC, which states that "No one requires permission to publish their thoughts or opinions through the press, without prejudice to the responsibility of every person under the law. The people are not required to submit their thoughts or opinions for prior approval." The television and radio have the same rights as written in the constitution that there shall be no supervision of their content, but the rules concerning television and radio are laid down by act of Parliament. There are exceptions. As stated in Art. 7 of the Dutch Constitution, the holding of performances open to persons younger than sixteen years of age may be regulated by Act of Parliament in order to protect good morals.

The right of association is recognised by art. 8 of the DC and the right of assembly and demonstration is recognised by art. 9 of the DC (De Nederlandse Grondwet, n.d.).

People also have the right to respect for his or her privacy according to art. 10 of the DC. This includes privacy of the house, exchange of letters, communication through phone or other means of communication, the right to careful treatment of personal data etc.

The Dutch constitution is not the only law that recognises the right of personal enjoyment and/or sharing things with each other for Dutch citizens. The Netherlands has signed the International Covenant on Civil and Political Rights (ICCPR) which is based on the United Nations universal declaration of human rights, and the European Convention on Human Rights (ECHR). This makes the Netherlands a European member and a state party at the United Nations. By signing these two treaties, the Netherlands agreed on how its government will act to respect, protect, monitor, and fulfil the human rights and fundamental freedoms outlined in both treaties. These international treaties are superior to the Dutch national legislation. However, the signature on the treaty only means that the State Party agrees in principle and has the intention to be bound by the treaty (Bresner, 2015).

Art. 8 of the ECHR states that everyone has the right to respect for his private and family life, his home and his correspondence.

Art. 9 of the ECHR titled freedom of thought, conscience and religion states that everyone has the right to freedom of thought, conscience and religion; this includes freedom to change his religion or belief and freedom, either alone or in community with others.

Art. 10 of the ECHR states that everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Art. 11 of the ECHR states that everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests (Council of Europe, n.d.).

This is the same for the ICCPR.

How does this relate to copyright enforcement and enforcement of intellectual property in general?

Now how is this related to copyright enforcement? As stated above, the freedoms carry with it special duties and responsibilities and therefore may be subject to restriction provided by law. People have the right of privacy and the right of assembly. As stated in art. 10 of the DC, people have the right to respect for his or her privacy, this includes privacy of the house, exchange of letters, communication through phone or other means of communication, the right to careful treatment of personal data etc. Some privacy regulations are related to copyright. Take the exchange of letters for example. People have the right of privacy with the exchange of letters. But there is also copyright on the letter. The Dutch Copyright Act (DCA) states in art. 15 that the further making public or reproduction of a literary, scientific or artistic work made public by or on behalf of the public authorities is not regarded as an infringement of the copyright in such a work, unless the copyright has been explicitly reserved, either in a general manner by law, decree or ordinance, or in a specific case by a notice on the work itself or given when the work was made public. Even if no such reservation has been made, the maker retains the exclusive right to communicate a collection of his

works which have been made public by or on behalf of the public authorities. Therefore, a person is not allowed to make your work public without the author's consent.

A relevant case of law for example is the case R (Evans) v Attorney-General. In this case a Guardian journalist wanted to share the opinions of the Prince of Wales as he thought this was important for the people to see, so he made a request to see these documents. A tribunal had ordered production of the letters, but that order had been overridden by the Attorney-General (Hart, 2013). The divisional court was surprised to see that an attorney-general could override an existing adjudication of 3 members of the High Court, and eventually the Court of Appeal decided that the conversations between the various government departments and the Prince of Wales should be released as the attorney-general had no good reason for overriding the decision of the High Court (Hart, 2014).

It may seem that the Netherlands is one of the most liberal countries in the world. As previously stated in 2017 it was ranked at fifth place when it comes to freedom of speech and media, however that does not mean that there are no limitations. A relevant case of law related to this article is 'State of the Netherlands v Wilders', where Geert wilders, a Dutch right wing politician, was convicted with inciting discrimination and insult. Wilders asked a series of pre-orchestrated questions in form of a chant during an anti-Moroccan political rally, designed to elicit anti-Moroccan responses. The court went on to assess whether this incident concerned hate speech on race as defined in art. 137c and 137d of the Criminal code. Balancing the right to freedom of expression with the right to restrict it, The Court found that Wilder's statements were offensive and insulting to a minority, inciting discrimination against Moroccans. The court found the statements not strong enough to amount to hate speech. It was an unusual case as Wilders was a founder of a political party (The Party of Freedom), and therefore decided to declare Wilders guilty without imposing a fine or sanction (State of the Netherlands v Wilders, 2016).

Another example is visible within intellectual property rights. DCA is deemed to be the protector of intellectual property in the Netherlands. In other words, it is a collection of laws with a main purpose to protect the authors work against infringements. Furthermore, DCA ensures fair exploitation and inspiration of new ideas, by offering the author and his successors the exclusive right to communicate and reproduce said work to the general public. Luckily for the authors, no licenses are needed in order to fall under protection of DCA. This is due to Dutch involvement with Berne convention, which simply means that it is enough to create a work to own a copyright. Of course, some criteria do play a role, for instance the so called 'work' needs to be original and it needs to have a personal imprint. Otherwise not only the "work" is unprotected, but the author risks getting in trouble for copyright infringement, in which case legislative process will follow (Novagraaf, 2018).

Therefore, in case of infringement, author(s), copyright holder(s) (in case of joint copyright Art 26 DCA), heirs or legatees can choose between multiple legislation frameworks. One of which is claiming the property, in this case they become

both copyright and moral rights owners. Another possibility is to render the item as 'unusable', claiming a removal from circulation or even destruction or said item. When this is issued, the work which is determined to be plagiarized will no longer be accessible to the public (Art 28.1 DCA). This, however, does not apply in case of personal use, study purposes, reasonable parts, or any kind of non-financial self-benefit while providing authors name (Art 16, 16a 16b DCA).

On top of that the rightful owner can claim damages in form of money. For instance, if the imposed copyright is that of a play, exposition or anything that includes an entrance or viewing fee, there is a possibility to claim a sum from each fee paid (Art 28.2 DCA). In case of immovable property, like houses, ships, airplanes etc. the court may give time for said property to be changed as to no longer be in conflict with the copyright (Art 28.5 DCA).

When it comes to 'technological infringements', such as removal, temptation or distortion of system, the same rules on infringing any kind of work apply (Art 28.7 DCA). Thus, a person can request destruction or removal of circulation (Art 28.1 DCA). Another factor can also play a role here: whether the violator breached the copyright as a way of going around the law, also said as circumvention deliberately. If the answer is positive, then a breach of copyright was indeed committed, and the person must answer to their crimes (Art 29a).

Finally, in case of ruined work, the damages can be compensated financially. The claims themselves can be made until the expiration date of the copyright by the author 70 years after the author died, or after the expiration date of the copyright of the copyright holder or in case of mortality – heirs or legatees (Art 27 DCA). In addition, legal holders can also claim any profit made from said piece (Art 27a DCA).

While in the previous mentioned cases an author/copyright holder is responsible for the legislative process, the job can also be handled by Bargaining Societies. In other words, these "Bargaining societies" are responsible for enforcing copyright. In the Netherlands there are several known ones: Buma, who is responsible for music transitions to the public, its collaborative partner Stemra, who looks over mechanical rights; Sena, who deals with neighboring rights (Buma / Stemra, 2018); Lira is responsible for authors (Lira, 2018); Pictoright who protects visual artists (Pictoright, n.d.) and Norma who takes care of performing artists (Norma, 2018).

Thus, these societies have power when music or a performance is being communicated to the public without a permit (Art 30a DCA). As previously mentioned, communication in reasonable parts for educational purposes or personal use is legal, as long as no money circulates (Art 16, 16a, 16b DCA). Nevertheless, if capital circulation is visible, for instance, if music is being played in the café, the owner needs a permission from 'Our Minister of Justice.' This is taken care of by Buma / Stemra (Art 30.1a DCA). If not, the communication is considered unlawful and the already mentioned collective bargaining society – Buma / Stemra, has a right to fine the owner of said café (Art 30.2b DCA). It is quite logical, as music could have been a factor for sales success, having a license to communicate said music should be necessary.

For this reason, such societies as Buma / Stemra are assigned to interfere and are even permitted a monopoly position, ensuring deserved benefits for the artists (Art 30 DCA). In the end, without such collective bargaining societies, many artists would not be able to live off of their talent, never reaching the success that is now possible.

Conclusions

In our opinion personal liberties and copyright protection are both essentials for any respected society. After all, without the right of privacy in our own home (Art 10 DC), how is the person supposed to unwind? For this reason, a schism appears: while the Dutch Constitution states that a human being has a right of privacy in his own home, copyright says, that any unlawful communication of an item listed in article 10 is considered a violation of copyright and thus a crime. Now here is a question: what is considered to be unlawful communication or reproduction? How does a bargaining society know whether an unlawful communication or reproduction was committed if it's performed in the safety of a private home? Can they legally take any action?

Well to begin with, Dutch Copyright Act provides multiple descriptions of unlawful communication and reproduction. Generally speaking, act of communication is referred to as display of work, whether it is artistic or not it does not matter. Likewise, unlawful communication is when the work of the author's or copyright holder's is displayed without permission or without given credentials, in other words using as one's own accomplishment. This act can be done by making copies, or reproductions, of said work.

Dwelling on the topic of reproductions, many are indeed considered illegal. As already discussed in café's example, as long as money circulation occurs while music is playing, a communication of a song is considered to be unlawful (Art 30a DCA). Another reason for unlawful reproduction depends on its purpose: if it is meant for non-exclusive (closed family and friends circle) communication or self-development chances are – a permission from bargaining society is needed (Art 16; 16a; 16b DCA). To provide a proper illustration, when a house party with 100 guests is organized, the guests would either need to be in close relationship with each other or the music played should be copyright free. If not, a license from Buma / Stemra is needed, or you risk being in conflict with the law. The same rules apply regarding video sharing online. If the video contains any musical notes or was created for large audience, this means not sent in private, a permission from Buma / Stemra is crucial. We think this protection is correct and wouldn't change it otherwise. Someone made the song/ video and has the rights to earn money with it. If not people wouldn't be able to make money with creative work, making it people wouldn't put the effort in creating creative work anymore.

Additionally, there are cases when reproductions are legal. First and foremost, it is allowed to create a reproduction if it is used for self-enchantment. In other words, if the copy was created for study purposes it is allowed. This way the work will only

be used for self-enchantment, which is perfectly fine and won't harm the creator in any way. Speaking about study purposes, similar rules apply to any educational institution: if the material is needed to provide education, it can be used with regards of quantity and proper credentials given. Thus, all shown videos in class, played music and quoted authors are indeed rightful use of copyright communication.

Although it might seem like any kind of reproduction or communication is invalid until it is within the safety of your own home or educational institution, but that might not be the case. If referring to online content, such as viewing videos uploaded on YouTube, then yes, the communication is actually legal. If hinting towards the usage in a form of downloaded movies, which concerns piracy, then it is regarded as stealing, which is still highly illegal.

Now the question remains in case of copyright violation, can your right to privacy be put aside? Well if the court allows it, then yes. And while that does go against the right of privacy, it also goes against many other laws like copyright and even theft. Thus, while with a possibility of privacy breach, intellectual protection is also necessary. After all, if acted otherwise, many brilliant minds would suffer profit and individual name loss, resulting in a society without art. The Netherlands really takes care of personal liberties and the protection of one's intellectual property, and in our opinion other countries should have the same kind of protection.

1.2 Personal Liberties vs Protection of Intellectual property in Bolivia

Should we give more powers to enforcement authorities or should we take into account the rights of individuals to share and to enjoy?

Today the world is going through a daily transformation, where new sciences, new policies, new inventions are being generated and globalization generates that this development is on a large scale. In the law, new legal institutions are also being developed. This is the case of copyright, intellectual property, a very complex institute that is currently being studied at a theoretical level because of its great importance for writers, draftsmen, musicians and other artists, who generate great cultural contributions to society.

In relation to intellectual property, it is pertinent to make an analysis of the human right to personal freedom, specifically in the question of giving more power to the authorities responsible for the application and protection of copyright, taking into account the right of people to share and enjoy. Let us not forget that the intellectual property right protects the invention that creators and inventors have in relation to their works as a product of the human intellect. The purpose of this protection is to stimulate intellectual work and to make this production available to the public, guaranteeing the cultural, scientific and economic development of peoples (Ardiles, 2005). In effect, we will analyze the Bolivian norms on copyright to see what role the right to personal freedom plays in being able to share these artworks, as well as how the norm seeks to ensure that people enjoy them.

Personal liberty right

In the set of human rights, we have to take into account that the classical division by generations no longer exists, on the contrary, we understand that all human rights are part of a single and complex system, this perspective is called the Human Rights approach. In this research, however, we will look at the right of personal freedom applied in the field of intellectual property. For this reason, it is important to understand that personal freedom for the Royal Spanish Academy(R.A.E.) is: "Natural faculty that man has to act in one way or another, and not to act, so he is responsible for his actions". However, from a legal point of view, we understand that freedom is the set of rights and guarantees that the law grants, which allows people, as members of a society, to be able to do or not to do everything compatible with the legal system (Cabanellas, 2009). In general, we can understand freedom as the ability of people to voluntarily decide whether or not to perform an act within a social sphere.

Normative Framework for Personal Freedom

The Universal Declaration of Human Rights recognizes in Article 3 that "Everyone has the right to life, to liberty" expressly establishes the right to liberty. Then we see that one of the rights most promoted by the universal declaration of human rights is the right to personal freedom, in addition to other species that this freedom contains such as freedom of movement, freedom of cult, freedom of expression, among others.

Article 23 of the Political Constitution of the Plurinational State of Bolivia states that: "Everyone has the right to liberty and security of person. Personal freedom may only be restricted within the limits set by law, to ensure the discovery of historical truth in the actions of jurisdictional authorities". The constitutional norm in this article encompasses freedom together with security, but it points out that this freedom obviously has its limitations, which the law itself points out.

In conclusion, the right to personal freedom is covered by international human rights and national laws, but there are limitations that are described by the same law, ensuring compliance and implementation by people in different areas such as freedom of movement, religion, freedom of expression, among others.

The freedom to share a work of art considered National Cultural Patrimony

On the other side, copyright has in its normative framework the personal freedom to share and enjoy, for this reason Supreme Decree 5918 in its article 16 indicates us that: "National Monuments, museums and collections in the hands of individuals, must fulfill a public function, conditioned to a schedule that does not harm the owner, but, being accessible at all times to researchers and scholars". We understand that this decree was issued with the purpose of protecting all the artistic works that are considered to be the nation's general treasure. For this reason, this article states that any work with this categorization must be accessible at an appropriate time, obviously without harming the owner of said property. For this decree, all the artistic works that have been elaborated in past periods are cultural patrimony. In

conclusion, we can understand that a person can have an artistic work, by different means for example; a sale, a donation, an auction, an inheritance, among others. This can be considered as cultural heritage if it was created in past centuries and it is in the obligation to be able to share this without interfering with their right to personal freedom.

The Legal Deposit as a form of conservation and disposition of works protected by intellectual property.

In the Bolivian legislation, the first article of Supreme Decree 16762 states that "Legal Deposit is understood to be a mechanism that, supported by a law, requires the free registration and delivery of a certain number of copies of all published, recorded or filmed works, for dissemination purposes, to the repositories designated for this purpose". It should be noted that this Supreme Decree mentions the obligation of having to register a work for dissemination, in reality this simply becomes a formality that authors can perform or not, since without the need for its placement in the legal deposit, they can disseminate their work independently or by means that promote artistic works such as a university, an exhibition, fairs, among others. Article 5 of the Berne Convention states that: "The enjoyment and exercise of these rights shall not be subject to any formality and both are independent of the existence of protection in the country of origin of the work".

On the other hand, for this decree, the artworks that have to enter the legal deposit are described in article 3 of said legal text, which are: "Object of Legal Deposit all the writings, plates, musical compositions and other documentary materials produced in multiple copies for dissemination purposes", in relation to the aforementioned works, article 4 adds "The obligation of Legal Deposit also applies to publications resulting from research studies (theses, reports and others) that are carried out in the country, privately and/or under contract with the public and/or mixed sector". The purpose of this legal deposit is the conservation and dissemination of artistic works, and the author can be assured that his or her work will not disappear, will not be modified and will finally be shared with the general public.

In conclusion, we understand that copyright does not require any formality for the exercise and enjoyment of the same, leaving the opportunity for its dissemination in a free and independent manner, however, the Bolivian regulations create the legal deposit as a formal rule. This rule generates two options for the author, the first one is to register his work in the legal deposit as a mere formalism, and the second option is not to register it, which does not generate any consequences when it comes to disseminating his work.

Right of reproduction and representation

The right to reproduction is the faculty that the author gives to a third party to be able to exploit a work either in its original form or by means of modifications, by any means that allows this communication.

This right of reproduction is regulated under the chapter on patrimonial rights in Decision 351 in its article 14, which states: "Reproduction means the fixation of the work in a medium that allows its communication or the obtaining of copies of all or part of it, by any means or procedure". In a previous article we see that the authorization or prohibition of the reproduction of an artistic work is in the hands of its author or of its beneficiaries.

In our law, the right of reproduction is regulated by article 16 of the Copyright Act, which states that

The right of reproduction consists of the multiplication and material fixation of the work by any means that made it known to the public, such as printing, photography, engraving, lithography, cinematography, phonography, magnetic tape with sounds, images or both or any other means of reproduction.

We can understand that the right of reproduction is oriented to the diffusion of a work through the means indicated by law, we understand that this reproduction is not only empowered for printing companies, but the author can decide the means used to disseminate their work, opening a range of possibilities, from doing so independently, through contracts, currently using computer media and platforms that allow this dissemination, but finally the decision is up to the author.

On the other side the rule also speaks to us of the right of representation, which is described in Article 17 of the Copyright Law which states: "The right of representation consists of the community of the work to the public by any procedure such as":

a) The performance of musical works, recitation, declamation, dramatic and musical representation, mimic sound, choreography, choral and orchestral groups.
b) Transmission by radio, television or similar systems.
c) Broadcasting by loudspeakers, wired or wireless telephony, or by the use of phonograms, sound, speech or image reproducing apparatus, including the reception of radio and television programmers.
d) Public presentation, exhibition and exhibition of pictorial, sculptural, photographic and similar works.
e) Public projection.
f) Public use by any means.

When speaking of the right of representation is not the classic figure, in which one person acts on behalf of another, on the contrary, when speaking of representation in copyright, we can see that the author can authorize the diffusion of his work by the means that the norm indicates so that his creation can enter a community where people can enjoy such work.

Modalities of Contracting to Share Intellectual Property

We must understand that copyright can be shared through contracts which grant a person the right to use their creation either in whole or in part. The Copyright Law and the Commercial Code grant us 3 types of contracts that are:

5.1 Publishing contract - This type of contract is understood as the Commercial Code states in its article 1216: "By the publishing contract, the author of a literary, scientific, artistic or didactic work, gives the original to a publisher who undertakes to reproduce it with the name of that person or his pseudonym". This contract then seeks to ensure that the author of a work gives a person the right to make copies of the work assigned for publication. Similarly, distribution of such copies must be authorized by the original author of the creation.

5.2 Phonographic inclusion contract - This type of contract is regulated by the Copyright Law, in its article 33, which states:

Under the phonographic inclusion contract, the author of a musical work authorizes a phonogram producer, for remuneration, to record or fix a work for reproduction on a phonographic disc, magnetic stripe, film or other similar device or mechanism, for the purpose of reproduction and sale of copies.

5.3 The contract of representation - this type of contract is not the classic contract of representation, on the contrary according to Article 36 of the Copyright Law this contract is:

A performance contract is a contract by which the author of a literary, dramatic or dramatic work - musical, choreographic or of any similar genre - authorises or an entrepreneur to perform it in public, in return for payment.

As we can see, this figure grants the faculty of representation of the author to a person or a businessman, regardless of the artistic genre, to represent him in public, with a remuneration.

SENAPI

Let us understand that copyright needs an institution that can protect, register, and authorize its use, among others, for this reason, article 4 of Supreme Decree 27938 states the mission of this institution:

SENAPI administers the Intellectual Property regime in all its components in a decentralized and comprehensive manner, through strict observance of the legal intellectual property regimes, the monitoring of compliance with them and effective protection of the exclusive rights relating to industrial property, copyright and related rights, the obtaining of plant varieties and access to and use of genetic resources; It is the competent national office for international treaties and regional agreements signed and adhered to by the country, as well as for the common rules and regimes adopted in the field of Intellectual Property within the framework of the Andean integration process.

After seeing this article, we understand the complex mission and general features of this body's powers, the doctrine as well as international standards suggest that there should be a body which regulates intellectual property law. With regard to the functions of this decree, it indicates an endless number of powers that this body has to protect, administer copyright, compliance, granting permits for use, registration of trademarks and patents, administrative procedures for their registration, and the protection of all these rights.

Chapter 2: The right to information and to freedom of expression

2.1 The right to information and to freedom of expression in the Netherlands

European Convention on Human Rights

The European Union elaborated a document called "European Convention on Human Rights" which applies to all member states and which sets a standard. In Article 10 of the document it is stated that freedom of expression is guaranteed. Thus, the right to receive information and ideas without interference from any public authority comes in play, however, states are entitled to require broadcaster's, cinema's, and enterprises to own a license. In Article 7-1 of The Constitution of Kingdom of Netherlands states: "No one shall require prior permission to publish thoughts or opinions through the press, without prejudice to the responsibility of every person under the law." Which means that everyone is eligible to communicate thoughts and opinions throughout the press. This Paragraph brings some limitations to the press regarding violating state security to insult members of a group of the population, members of the royal family or bringing blasphemies to individuals. Furthermore, exceptions will be made on the part of requiring prior permission if the country is at war (Bechtold, n.d.).

Article 7-2 states that no further supervision is needed for publishing content on Radio or Television. Further rules will be declared in the Act of the Parliament: "Rules concerning radio and television shall be laid down by Act of Parliament. There shall be no prior supervision (censorship) of the content of a radio or television broadcast."

Article 7-3 "No one shall be required to submit thoughts or opinions for prior approval in order to disseminate them by means other than those mentioned in the preceding paragraphs, without prejudice to the responsibility of every person under the law. The holding of performances opens persons younger than sixteen years of age may be regulated by Act of Parliament in order to protect good morals." Is extending the right mentioned in Article 2-7 for underage persons in limits of good morals.

Article 7-4 Commercial advertising is excluded from this rule "The preceding paragraphs do not apply to commercial advertising"

According to Article 110 from the Constitution of the Netherlands: "In the exercise of their duties government bodies shall observe the right of public access to information in accordance with rules to be prescribed" in other words in the Netherlands the citizens have the right given by the Constitution to information about the project of new laws and about adaptation of new rules.

Development of New European Legislation

Media plays an important role in the protection of the human rights. It is regarded as the fastest way to expose any violations of the human rights. Furthermore, media also holds a power when it comes to influencing the masses. On top of that there is a vast risk that the power holders of a country can influence the press, which is not in the interest of the protection of human rights. The duty of the press is to inform, analyse, investigate and communicate news to the public. The process itself can be easily jeopardized if the press is easily influenceable (Hammarberg, et al., 2012).

However, the right to express oneself, communicate and voice opinions to the public might be highly protected by multiple laws on both national and international level. Yet, this does not give any further protection for humans against being miss informed. Therefore, the European Union started showing interest into formulating legislation related to said matter. And although there is a long way to go and not too many people put their hopes into this it might seem like a starting point. (Funke, 2017)

Furthermore, it is explained that member states of EU started paying more attention towards protection of citizens' potential influence of the press. As a result, Germany adopted a law in October of 2017 against social media platforms, that do not control their content allowing misinforming material to spread, leading to hateful actions. (O'Donnel, Plucinska, & Scott, 2017). Moreover, a public consultation on fake news was already established in UK and Italy and EU already announced that European Commission created two initiatives to try and address the misinformation phenomenon. It is hoped that the Commission will be able to learn more about the magnitude and possible approaches of the problem. Appropriately strategy will be formulated and expected to be presented in the spring of 2018. (European Commission, 2017)

Universal Declaration of Human Rights

In Universal Declaration of Human Rights, Article 19, it is clearly stated that any human being has the right of expression, a right of opinion, the right of receiving information and being informed through the media: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Correspondingly the Dutch government signed the Human Rights Agreement and so, Chapter 1 of the Dutch Constitution, incorporates many human rights (government.nl, 2018).

Law Case CASE OF OBSERVER AND GUARDIAN v. THE UNITED KINGDOM

In 1990 the case was referred to the Court by the European Commission of Human Rights and later by the government of United Kingdom and Ireland. Amongst other infringements of articles, the violation of article 10 from the European Convention on Human Rights is claimed. As a result, the government did not allow the publishers to distribute Peter Wright's book called 'Spychartet' in the UK, due to considered display of state's secrets.

Nonetheless, it was found that by declining publications of 'Spychartet' the UK committed an infringement of the ART.10 of the ECHR and it is considered that the right to information, previously stated in the article, is disrespected by the government (European Court of Human Rights, 2018).

Copyright of Journalists

The Dutch Copyright Act

According to Section 10.1 from The Dutch Copyright Act: newspaper articles, reports and new media content fall under protection of the copyright. That is, of course, if they carry out personal imprint of the author and have own uniquely recognized character.

Section 7 of The Dutch Copyright Act states that if an individual is employed the copyright goes to the employer unless otherwise agreed on: "Where labour which is carried out in the service of another consists of creating certain literary, scientific or artistic works, the person in whose service those works were created is considered to be the author unless the parties have agreed otherwise." In this case, it means that if a reporter/journalist is not a freelancer or if his/her contract states differently the copyright of the work goes to the company that he/she works for.

This section is meant to offer protection to the employer. Considering that the employee will deliver a great amount of intellectual property, which might be used multiple times and might force the employer to pay substantially the employee. Moreover, it might not be convenient for an employer to have the employee use the material produced as an assignment part of his job in any personal means. Therefore, the purpose of Article 7 is to offer some protection for the employers (Williams, 2011).

Article 8 is also stating that institutions, associations and companies that publicly disclose any kind of creation protected by the copyright law is presumed to have the copyright owned by the institution, association or company if it is not specified otherwise.

According to Article 15.1 from The Dutch Copyright it is allowed to use reports or articles that have been published in newspapers, on the radio or TV to report news concerning various subjects without being considered as an infringement of the copyright. Yet with the condition that the use is made by a medium that has the purpose to communicate news. As a result the provisions of Section 25 will be followed, the source and the name of the author will be clearly indicated and the copyright will not be expressively reserved: "Using reports or articles on current economic, political, religious or ideological topics or works of the same nature which have been published in a daily or weekly newspaper or weekly or another periodical, radio or television programmed or another medium that has the same function, is not regarded as an infringement of the copyright in a literary, scientific or artistic work, if: 1°. the use is made by a daily or weekly newspaper, a weekly or another periodical, a radio or television programmed or another medium that has the same function; 2°. the provisions

of Section 25 are observed 3°. the source, including the name of the author, is clearly indicated; and 4°. the copyright is not expressly reserved.").

Article 15-2 also states that this section is applicable if the source is in a different language: "2. This section also applies to use in a language other than the original."

However, the journalists and editors are not very content with this right offered by The Dutch Copyright Act, since the material produced by them can be used by other publications without given permission and payments for the right to use it. Furthermore, the journalistic community from Europe opposes the Anglo-American system and requests for the rights of the journalistic community (European Foundation of Journalists, 2018).

Article 25-1 deals with the moral rights of the author even after assigning the copyright, in this case after someone makes use of said material communicating to the public with the rights of the journalistic article, the copyright holder has a right to:

a. the right to oppose disclosure to the public of the work without reference to his name or other indication as author, unless such opposition would be unreasonable;

b. the right to oppose disclosure to the public of the work under a name other than his own, as well as any alteration to the title of the work or the indication of the author, insofar as these appear on or in the work or have been disclosed to the public in connection with the work;

c. the right to oppose any other alteration to the work, unless the nature of the alteration is such that opposition would be unreasonable;

d. the right to oppose any distortion, mutilation or other impairment of the work that could be prejudicial to the honor or reputation of the author or to his dignity as an author."

Berne Convention

Berne convention states in Section 10 bis that it shall be at the choice of the member states and their legislation weather they want to permit reproduction and to which extent by the press to communicate to the public in the purpose of communicating news, but it is mentioned that it is mandatory to mention the source:" Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed" therefore the Dutch Copyright Act has Section 15 which deals with the quoting in purpose of communicating news.

Law Case

In the autumn of 2016, a case law has been ruled by the European Court of Justice between Sanoma Media, the Dutch publisher of Playboy and GeenStijl a website part of GS Media.

The case was constituted on the communication to the public by GeenStijl of pic-

tures copyright protected and owned by Sanoma Media and uploaded illegally on FileFactory. GeenStijl published a cutout of one of the pictures and the link to the rest of the material that was not published yet by the magazine.

After Samona Media urged GeenStijl to delete the content and after the website didn't take any action the publisher took proceded a legal law case. The case was brought to the European Court of Justice. The court noted that the website editor knew that the material was not published yet by the magazine and that sharing it through the FileFactory was unlawful. Due to the fact that the right holder did not grant the consent, communicating it further to the public is considered an illegal act. The key article used is Art 3-1 of the Directive 2001/29 on the harmonization of certain aspects of copyright and related rights in the information society.

The court noted that the EU laws have the purpose to protect the copyright owners. Those intending to "communicate to the public" must judge whether the actions they are taking are ethical therefore putting in balance legitimate news communication against copyright infringement. Therefore, the case was ruled as "unlawful communication to the public" and the Article 11 of the EU Character of Rights could not be used in this case.

GeenStijl argued that everything they have done reduces to the ability to communicate newsworthy information to the public, but the court underlined that by publishing the link and the cutout picture the website created traffic and in conclusion financial revenue which was created by using unlawful means.

European Commission introduced as a consequence of the case new rules for publishing copyright protected content (Liptak, 2016).

Opinion

Even if there are laws that protect the right of receiving information or laws that protect the freedom of expression, there will always be difficulties in making the right decisions between protecting the copyright of a journalist and respecting the right to be informed of the citizens. Freedom to receive information may come in conflict with each other or with other rules there won't be a prescribed solution, and it is far from being easy to know what judgment is required to be made in courtrooms or in the newsroom. Likely, EU started to develop new legislation to balance out the articles that deal with the freedom of speech, in order to prevent from hate publications or reporting the fake news.

In my opinion, there is a deep need of harmonization of the laws because most of the laws regarding journalism and the right to information are not developed to work in the same direction and confusion arises regarding the rights and obligations that one carries. I consider that being well informed is one of the fundamental human rights and at the same time, I believe that the law which is protecting the copyright of the journalists could be stronger. But in the end the motivation behind all the articles that make it so easy to communicate news to the public is very well motivated and I stand by it.

2.2 The right to information and to freedom of expression in Bolivia

Journalism and copyright

Journalism is a professional activity that consists in the permanent catchment and treatment of the information in any of its forms and varieties and being able to be written, verbal, visual or graphic. In the journalistic field, we find a subject very linked to it, which is copyright.

Copyrights are considered as the set of norms that regulate the rights that the law grants to the creators of an artistic work, whether it is musical, literary, cinematographic, computational, or other; granting natural or legal persons who wish to register their works, all the protection and rights of use so that it is not plagiarized or misused by third parties, protecting the author against piracy, receiving a payment for his work through recognition and a fair economic compensation

Political Constitution of the Plurinational State of Bolivia

The Political Constitution of the Plurinational State of Bolivia contemplates the right to information in its article 21, numeral 6, which mentions the following:

"Bolivians and Bolivians have the right to access information, interpret it, analyze it and communicate it freely, individually or collectively"

This article refers specifically to the right to information that any citizen has, without any distinction. In the legal body that we mentioned, we also have article 9, 106 and 107, in which reference is made to the right to information directed to journalists in the field of social communication.

Article 106, refers in its first paragraph that the State, through all its powers must guarantee the right to communication and the right to information in relation to journalistic work. In the third paragraph it is mentioned that the State guarantees to the workers of the press, the freedom of expression, the right to communication and information.

Subsequently, it is again mentioned that the State has the duty to guarantee all Bolivians the right to freedom of expression, opinion and information, to rectification and reply, and the right to freely express ideas by any means of diffusion, without prior censorship. Losing this paragraph the specificity of the journalistic scope, since it covers the entire population that exercises its right to information and everything that comes to contemplate.

Printing Law

The law of the press is an instrument of protection for Bolivian journalism. In this law, freedom of the press is indicated and protected, as a right that journalists have to inform and be the bearers and means of information, freedom of expression is also mentioned, as the right belongs to any other citizen.

This law serves as a counselor and as a support to the journalism that is exercised in Bolivia, stipulating the right to press freedom, its restrictions and the respective penalties when exceeding the limits.

The present law created the press courts for the prosecution of journalists in the event that their work becomes erroneous, manipulate, distort, lie and affect the dignity of the person.

Law No. 1322: Copyright Law

In Bolivia, copyright is regulated and contemplated mainly by Law No. 1322 of 1992: Copyright Law. In its article 6, clauses a) and b), the works that will be protected belonging to the journalistic activity are specifically indicated, which are:

- Books
- Brochures
- Articles
- Other writings
- Conferences
- Speeches
- Lessons
- Sermons
- Comments

Registration of works

In Bolivia, when a journalist wants to register the work he does, he has two options, which we will describe below:

In the event that the journalist works in any media, presuming that he is a member of the editorial and production staff of the media, the work that the person carries out is considered to be assigned to the media to which he belongs, provided that a contract that contains a clause that stipulates the transfer of copyright that merits the work done.

In the case that the journalist works independently, he or she must register his or her work by contacting the National Intellectual Property Service, where he will proceed to carry out the following steps:

1. Note addressed to the Director of Copyright and Related Rights, specifying the type and title of the work to be registered.
2. Copies of the Copyright Form, in which all the data of the work must be consigned and must be signed by the owners or applicants.
3. Copy of the voucher of the Banking Deposit to the fiscal account of the National Intellectual Property Service, according to the type of procedure requested.
4. Copy of the Bank Deposit voucher in the name of the Official Gazette of Bolivia for the publication of the request made.
5. Copy of the Identity Card of the applicants.

Once the aforementioned steps have been completed, the effective registration of the journalist's work will be carried out.

International Regulations

The right to information has a first recognition in the Universal Declaration of Human Rights and acquires greater protection in other international regulations with the passage of time. Being in Bolivia, the right in question, supported by the following regulations:

1. Universal Declaration of Human Rights - Article 19

"Every individual has the right to freedom of opinion and expression; This right includes the right not to be disturbed because of their opinions, to investigate and receive information and opinions, and to disseminate them, without limitation of borders, by any means of expression."

2. American Declaration of the Rights and Duties of Man - Article 4

"Everyone has the right to freedom of research, opinion and expression and dissemination of thought by any means"

3. International Covenant on Civil and Political Rights - Article 19

I. No one can be bothered because of their opinions

II. Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and disseminate information and ideas of all kinds, regardless of frontiers, either orally, in writing or in printed or artistic form, or by any other procedure of their choice.

III. The exercise of the right provided for in paragraph 2 of this article entails special duties and responsibilities. Accordingly, it may be subject to certain restrictions, which must, however, be expressly set by law and be necessary to:

a) Ensure respect for the rights or reputation of others

b) The protection of national security, public order or public health or morals."

4. American Convention on Human Rights - Pact of San José de Costa Rica - Article 13

I. Everyone has the right to freedom of thought and expression. This right includes the freedom to seek, receive and disseminate information and ideas of all kinds, regardless of frontiers, either orally, in writing or in printed or artistic form, or by any other procedure of their choice.

II. The exercise of the right provided for in the preceding paragraph may not be subject to prior censorship but to subsequent liabilities, which must be expressly established by law and be necessary to ensure:

a) Respect for the rights or reputation of others, or

b) The protection of national security, public order or public health or morals.

III. The right of expression cannot be restricted by indirect means or means, such as the abuse of official or private controls of newsprint, radio frequencies, or equipment used in the dissemination of information or by any other means aimed at preventing communication and the circulation of ideas and opinions.

IV. Public shows may be subject by law to prior censorship with the sole purpose of regulating access to them for the moral protection of childhood and adolescence, without prejudice to the provisions of paragraph 2.

V. Any propaganda in favor of war and any apology for national, racial or religious hatred that constitutes incitement to violence or any other similar illegal action against any person or group of persons, for any reason, including of race, color, religion, language or national origin. "In order to explain the right to information, we will use article 19 of the Universal Declaration of Human Rights, which stipulates the following:

"Every individual has the right to freedom of opinion and expression; This right includes the right not to be disturbed because of their opinions, to investigate and receive information and opinions, and to disseminate them, without limitation of borders, by any means of expression."

This right is understood, according to the aforementioned statement, as that every individual has the right to freedom of opinion and expression; This right includes the right not to be disturbed because of their opinions, to investigate and receive information and opinions, and to disseminate them, without limitation of borders, by any means of expression. For which we can reach the following conclusion, being this that every individual has:

- Right to research information and opinions
- Right to receive information and opinions
- Right to disseminate information and opinions

Berne Convention

The Berne Convention for the Protection of Literary and Artistic Works emerged in Switzerland in 1886, which had its last correction in 1979, so as to be able to contemplate everything related to copyright in literary and artistic works. In Bolivia, the present agreement entered into force on December 4, 1993.

This agreement contains the following essential elements:

- Conformation of the union for the protection of authors of literary and artistic works.
- Reciprocity of protection, conditional on compliance with the legislation of the country where the work will be presented.
- It is considered the country of origin of a work where it is published for the first time; and in the case of an unpublished work, in the author's country of birth.
- The agreement will be enjoyed without distinction of nationality.
- Limits are established in the translation and presentation, following the author's criteria.
- The translation is protected 10 years after the original publication of the work.
- Protection of all works that had not entered the public domain.
- Application of the agreement to all the colonies of the countries of the union.
- The office of the international union for the protection of literary and artistic works is created.
- The seizure of works that are fraudulent and violate intellectual rights will be established

Decision 351

Decision 351 contemplates the Common Regime on Copyright and Related Rights, which has the scope to give an adequate and effective protection to the rights of authors, over the works of the genius, in the literary, artistic or scientific field, whatever the gender or form of expression and regardless of the literary or artistic merit or its destiny. This decision comes to define and explain the content of copyright, its period of protection, limits and exceptions, which is the patrimonial right and moral right.

It also establishes which are the specific objects to which the scope of protection will reach, being these:

- The works expressed in writing, that is, the books, brochures and any type of work expressed by means of letters, signs or conventional marks
- Conferences, speeches, sermons and other works of the same nature
- Musical compositions with or without lyrics
- Dramatic and dramatic-musical works
- Choreographic works and pantomimes; Cinematographic works and other audiovisual works expressed by any procedure
- Works of fine arts, including drawings, paintings, sculptures, engravings and lithographs
- Architectural works
- Photographic works and those expressed by a procedure analogous to photography
- Works of applied art
- Illustrations, maps, sketches, plans, sketches and plastic works related to geography, topography, architecture or science
- Computer programs
- Anthologies or compilations of diverse works and databases, which by the selection or disposition of the materials constitute personal creations.

Agreement on Aspects of Intellectual Property Rights Related to Trade – TRIPS

This agreement is Annex 1C of the Convention by which the World Trade Organization- WTO was created, signed in 1994. It consists of 7 parts related to intellectual property issues. In relation to copyright, these are contained in the second part and include the following topics in relation to intellectual property:

- Copyright and related rights
- Trademarks
- Geographical indications
- Industrial designs
- Patents
- Layout drawings of integrated circuits
- Protection of undisclosed information
- Control of anti-competitive practices in contractual licenses

Chapter 3: The right to privacy/family life vs portrait rights/copyright on pictures

3.1 The right to privacy/family life vs portrait rights/copyright on pictures in the Netherlands

These days' privacy is a widely discussed topic. With a risk of 'constant monetarization' slowly becoming reality, more and more people are beginning to take notice. One of which is the journalist and "No place to hide" book author Glenn Greenwald, who explores cases of government invasion on personal human lives. One of the cases Greenwald touches upon is the notorious instance of National Security Agent subcontractor Eric Snowden, who is responsible for leaking NSA surveillance activities back in 2013 Glen Greenwald focuses there on scandal and violations of privacy invasion. "Human beings, even those of us who in words disclaim the importance of our own privacy, instinctively understand the profound importance ", explains Greenwald at TED Global event in 2014. But does understanding the importance of said privacy actually mean something? On multiple occasions Greenwald even points out, that many people do not mind being monitored, since they do not commit any crimes and 'have nothing to hide'. Yet what happens when the 'leaked information' clashed with the violation of your private life? What happens when your portrait is used without your knowledge? And what framework is provided to protect our privacy?

A well-known example here in the Netherlands is the case of TV-star Patricia Paay. Her being a widely known celebrity figure, shook the Netherlands in February of 2017 when a video of a sex tape was leaked. She was recorded having intimate sexual interactions with a man. This video was shot at a private occasion and was meant to only be seen by the people involved. However, someone decided to publish the video anyways. This was seen by the court as a violation of her privacy and personal life. The video was also seen as defamation where the person who published it tried to damage the reputation of Patricia on purpose. As a result, the video was taken off the internet.

Framework of privacy law

It is no mistake that many of us have secrets we wish to keep safe and away from the rest of the world. A spread of such information could potentially ruin any kind of opportunity for a brighter future. Destroyed reputation, spread hatred on family and decline of personal business can all occur if certain private information is revealed to the public. Thus, to protect such information a right to private and family life holds an important place in the Dutch Constitution (hereafter DC). According to article 10 DC, everyone has the right to privacy without prejudice to restrictions laid down by or pursuant to Act of Parliament. According to article 11 DC, everyone also has the right to inviolability of his person. Article 12 DC states that everyone has the right to have

a home that should not be entered without permission. These rights together form the framework in the Dutch constitution to secure everyone's privacy and family life.

On a higher level of law, the European government also formulated several directives. These directives are to be followed by the member states of the European Union. In article 8 of "European Convention on Human Rights" (hereafter ECHR) It states that each and every person has a right for respect of his private life, family life, home and correspondence. An exception is being made, when it is in the interest for public safety. Citizens of the European Union also have the freedom of expression, according to article 10 ECHR.

The Netherlands are also connected to the United Nations. The United Nations have also stated directives on how to handle privacy in the International Covenant on Civil and Political Rights. As article 17 ICCPR states: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

An example of violation of private life can be found in the case of an unnamed petitioner, who was previously convicted for sexual abuse of an underaged person. Due to this he spent some time in prison. After some time, the offender was GOOGLE INC, which means he could be found on Google in connection to his crime.

When the petitioner googled his name, he found some URL's that had pictures, a video and webpages about him. He asked Google to delete the URL's and Google declined. Therefore, the petitioner went to court with his request.

The petitioner said that Google violated his personal life by exploiting these URL's. His personal information should be protected based on Article 8 lid 5 from the European directives. According to article 16 of the law protection of personal data, no personal, criminal data is allowed to be processed. He claimed Google broke his right of having a personal life. Google defended itself by saying to have the freedom of speech and their users have the right to information.

The Judge firstly holds Google accountable for the URL's. Google is seen as the exploiter of the information. After that, the judge explains that the right to privacy and the freedom of speech would usually have the same value. In this case though, since the articles are in conflict, the judge decides that the right to privacy has the preference over the freedom of speech. He decides so while taking into account the financial benefits that Google strived after. They said Google has to remove the first URL or will be fined otherwise.

The first URL contained information about the criminal past of the petitioner. As stated before, according to article 16 of the law protection of personal data, this information is not allowed to be shared. The other three URL's, however, contained information about the former company of the petitioner. The petitioner published the information found on URL's himself, or they were published with his knowledge. The court did not see an invasion of his privacy in these URL's and decided that these URL's were allowed to be found on Google.

Copyrights of a photographer

So far, we have seen that every individual has the right to a private life. This means that it is not permitted to invade the private life of a person by taking videos, pictures or other media of this private life and publish it. But what happens to the rights of the person who took the picture? How are his copyrights regulated in the matter of privacy of the portrayed person?

In the basics, the photographer has the same copyrights as any maker of a work of literature, art or science. The photographer has the explicit right to reproduce and make the work public. This is, because in article 10-1 DCA, photographic works are mentioned as a part of the Act, literary, scientific or artistic works.

Portrait rights

A limitation on the copyright of the maker applies, if the picture shows images of people, according to 19-1 DCA. This is only if the portrait is in behalf of the portrayed individual. If the same portrait shows more individuals according to 19-2 DCA, this limitation extends to all of the portrayed. In this case, the author of the work is in need of a permission of the portrayed individual(s), or their relatives in case of less than ten years of passing, to either reproduce the work or make the work public (20-1 DCA). On the other hand, according to 19-3 DCA, the portrayed person can make the work public if the name of the author was mentioned. Again, this limitation only applies if the work was made on commission or as a part of assignment of the person portrayed (19-4 DCA).

To give a clear example of the difference between a portrait as part of an assignment and a portrait not part of an assignment, the following pictures have been added.

Image 1: Photo as part of an assignment (Bosscher, 2016)

Image 2: Photo not part of an assignment (Creative Commons CC0, 2016)

The first picture shows a man with a clear background. The photo can be used for official documents like a passport. The man obviously posed for the picture and he probably also paid the photographer to have his picture taken. Therefore, this picture

has been made as an assignment of the portrayed person. The photographer will need permission of the man if he wants to publish the photo.

The second picture shows a man on a bike. He is on the streets and shows no interest in the photographer nor is he posing for the picture. He also does not look like a model or any special person. It can therefore be assumed that the person portrayed did not ask for his picture to be taken. It is a portrait not part of an assignment of the portrayed person. The photographer will therefore not need the persons permission to publish the photo.

Reasonable interest

The only way of opposing publications can be done through submitting proof of reasonable interest. A reasonable interest on its own includes violation of privacy or financial damage. This is apparent from jurisprudence of previous cases. Of course, a reasonable interest occurrence has a higher likelihood when someone was photographed in their house or their private environment rather than someone being photographed on the streets. But what are the limitations of this reasonable interest? Where does jurisprudence draw the line? What is allowed to be published and what is not?

An example of jurisprudence concerning reasonable interest occurred in a case between an unknown petitioner and a company named Hollandse Hoogte. Hollandse Hoogte is a company that collects and sells graphic designs and photographs. They own an online database with 3,5 million pictures. One of the photos that was posted on their website was an image of the unknown petitioner, where she was jogging with a baby car wearing headphones of an mp3 player. The photo was taken in a park without permission of the petitioner and she also did not give permission for publishing it. The photo was bought by the consumers association and appeared in a research about mp3 players. This displeased the petitioner and she went to court.

Image 3: Photo of petitioner (Danko, 2008)

The petitioner stated that this was an invasion of her privacy and that she has the right to be left alone. She does not want to be used for commercial purposes. She wants Hollandse Hoogte to stop using her picture and demands a fee of €5.000.

However, to be admitted the fee, the court has to decide whether or not there is a reasonable interest. Admitting privacy depends on the situation. The picture is not showing any nudity or other offensive content. The photo was taken in public without the interference of the portrayed. She is not famous, nor can she show that her portrait has money value. The court therefore decides that the portrait rights are not admitted.

In a similar case, a reasonable interest of privacy was admitted. In this case, an unknown petitioners picture was used by the newspaper Het Parool. The picture was used to support an article about homosexual men that are seropositive and that have unsafe sex. The photo was taken during a party and published on the website of the party. The image showed two men kissing, one was recognizable, the other was not. The right of privacy and the freedom of publication are therefore in conflict. The court decided that the right of privacy weighs heavier because of the delicacy of the article's topic. The petitioner will be associated with the topic. Het Parool had to stop publishing this picture and had to pay a compensation to the petitioner.

Some other examples of violation of privacy can occur when a picture of an accident is taken.The second reason for reasonable interest are financial damages. In this case, the person portrayed has to be able to prove that he/she suffered significant financial loss due to the publication of this picture. A perfect illustration can be found in the case of the iconic football player Edgar Davids where a company, called Riot Games, made him into a character of League of Legends, called Striker Lucian. This character had the same characteristics as Edgar Davids, a Dutch soccer player.

Image 4: Edgar Davids and his character (Kist, 2017)

The skin color, athletic figure, hair, glasses and even style of playing of Striker Lucian were similar to Edgar Davids'. The soccer player did not appreciate this, since they should have asked for his permission and should have provided him with a decent compensation.

The court agreed with Edgar and the portrait rights were admitted. Normally, Edgar can ask money for the commercial use of his portrait. Edgar suffered financial damage from the character, since Riot Games should have paid him to use his appearance as a model. This is also an example of the wideness of the definition of a portrait. It does not have to be a picture. As long as the person is recognizable, the image can be seen as a portrait.

Another good example of the wideness of the word portrait was within the case of Katja Schuurman. A guide of telephone numbers used her picture on the front of the magazine. She posed for this picture and got paid, so this was all fine. A problem occurred when a commercial company decided to take a similar picture, but from the back. This was a picture of a different woman, but similar to the silhouette of Katja Schuurman. The court

Image 5: Katja Schuurman and look alike (Meindersma), Portret Sabine Uitslag gebruikt voor reclame (Kruidvat, 2016)

therefore decided that this was also a recognizable image of Katja and admitted it as a violation of her portrait rights. If they wanted to use this image, they should have asked Katja to model for them and provide her with a decent compensation.

Some other examples can include financial loss due to divorces.

Democratic Kingdom of Netherlands has one exception – the Royal family the privet life of the royal family is taken a bit further than the private life of any other individual. As everyone else, the royal family is protected by normal portrait rights. Photos of them in public areas are allowed to be taken, unless privacy or financial damage play a part. The reasonable interest of privacy, however, is broader. Their private life is interpreted as all moments where the royal family are not executing their official function. This is stated in the media code that was made by the RVD (Rijksvoorlichtingendienst). This means that for example school time, practice of a hobby or going on a vacation is seen as private life. Images of these activities are not allowed to be published. Going outside on Kingsday is not seen as their private life, since they are executing their official function.

Journalists can choose whether or not they want to sign the media code. If they sign it, they can be present at planned photo moments with the royal family. Pictures taken on these moments are free to be published. Besides these moments, the journalists agree to leave the royal family alone and respect their personal life.

Image 6: Royal family at official photo moment (Rijksvoorlichtingendienst, 2017)

If a journalist decides not to sign the media code, it is not allowed to be present at the official photo moments. These journalists sometimes take pictures of the royal family outside of these moments. It is up to the court to decide whether or not the picture is legal to be published.

There are some examples where pictures taken of the private life of the royal family were seen as legal to be published. In these cases, the news value is seen as more important than the privacy of the royal family. An example of this is the first picture

taken of princess Beatrix and her fiancé arm in arm. It was a sneaky picture, but the news value was high enough.

Image 7: First picture of princess Beatrix and Claus (Rooy, 1965)

Concluding analysis

While conducting the analysis we saw that there seems to be a contradiction between fundamental and portrait rights. Fundamental rights 10, 11 and 12 state that privacy should be respected at all costs, however when it comes to portrait rights, privacy is a limited privilege. Furthermore, the United Nations, the European government and the Dutch Constitution all hold a prominent place for privacy in their legislation. There they state that not only privacy of an individual should be respected, but that everyone has the right to a personal life. This means that an individual has a right to live their entire life in private without interference from society and without their life being publicly released. This, we feel, is an important right to have, since it gives us freedom to express ourselves, even if it is only inside the comfort of our own home.

Said paradox appears when looking at portrait rights. In the basics, anyone can take a picture of any individual in a public area and publish it. When walking on the streets, no privacy is granted, thus taking pictures of other people is legal, unless a reasonable interest opposing disclosure of said picture is filled by the person portrayed. This reasonable interest can be either financial or privacy related. However, interest in privacy is not admitted easily. A statement like 'I do not want my picture to be taken or published' is simply not enough. You will have to proof that the photo intrudes your private life, which can be quite difficult in the eyes of the law. Nonetheless, such instances as traffic accidents, links to diseases or other negative associations do stand a chance of publication prevention. That, of course, is if the picture was taken in a public area.

Furthermore, prevention of publication will be admitted in case the photo was taken in the private environment, for example school or home. This connects and supports the fundamental right that provides everyone the right to have a home that

shall not be entered without permission. On the other hand, the private environment of a public figure is considered wider than that of a regular individual. Thus, resulting in the Dutch royal family owning most rights considering their private area.

You might think that the fundamental rights would have the main authority, but jurisprudence tells us otherwise. Statements from Dutch judges show that a regular individual cannot oppose their photographs from being published if it was taken in a public area. To put it in plain English: by going outside a person is at risk of having their photo taken and potentially published without a possibility of objection.

In our opinion, these rules seem quite extreme. While we agree that pictures taken of individual's private lives should not be shared without approval. Moreover, we appreciate and acknowledge the possibility of opposition of publication. However, what is agreed to as private life might have to be reconsidered. To provide an example of the jogging woman: should a company be able to earn money from a person's photo who clearly is not in an agreement for publication? We do not think so.

We also understand that it is quite difficult to draw a line between what is allowed and what is not. Additionally, the right to privacy often comes in conflict with other fundamental rights, like freedom of speech. In those situations, the judge has the difficult task to decide which right weighs heavier. As a result, in some cases privacy will not have the high ground.

To conclude this chapter, the Dutch legislation provides us with fundamental rights concerning privacy. Likewise, it protects us from unwanted publications, as was seen in the cases of the unknown petitioner against GOOGLE and of another unknown petitioner whose photo were used supporting a healthcare article. Furthermore, jurisprudence on portrait rights confesses that privacy is not considered as extensive as you might think. Thus, resulting in most situations that happen in a public area, not being regarded as private, thus, not falling under protection of fundamental right articles 10, 11 and 12. Aforementioned is something to take into account when leaving your private environment.

3.2 The right to privacy/family life vs portrait rights/copyright on pictures in Bolivia

Privacy and the right to privacy

The relation between "family life" and "right to private life" is quite narrow, since both rights were linked in the legal recognition of different countries, which in the future would lead to their almost universal recognition under the right of privacy. Now, what is privacy? It is understood as "that area of the personal life of the individual, which (according to the will) is developed in a reserved space and must be kept in confidentiality" (Vargas Lima, 2013, p. 3)

> The principle that protects personal principles and any other production of intelligence or emotions is the right to privacy. And the law does not have to formulate a new principle when it extends that protection to

personal appearance, to expressions, acts, to personal, domestic relationships and any other. (Warren and Breadis, 1890).

Samuel Warren and Louis Breadis, who were the lawyers who included the term "right to privacy" in American law, would first express that the protection of property-understood as possession of goods-was not the only thing that should be Paramount to an individual, but the protection of the personality-referring to intellectual property, artistic authorship, and the interference of mass media-(in Corral, 1999) should be more thoroughly seen.

If a clearer concept of privacy rights can be extracted between all this, it can be indicated that it is the power or faculty that every person has to keep in reserve, certain facets of his personality, having as one of its essential elements, the Inviolability of private life, referring to the stage or physical space in which it is developed, such as domicile, the means of communication and correspondence, as well as objects containing manifestations of will or knowledge, not originally intended for the access of outsiders or strangers, which involves books, photographs or other writings. (Verbauwhede, 2006).

Individual and family privacy

It can be noted that family privacy becomes essential in the search to guarantee protection of the privacy of the individual person. When we refer to the person's private life, according to Martín, "it is family life, personal life of man, his inner, spiritual life that he carries when he wants to keep the door closed" (Martín, 1959, p 330). But in this case, when it comes to family, you should also analyze the public family, as private, because there are families of which, because they interest to structure society.

Now to know what the specific aspects of family life within privacy are, there are different visions: Lindon indicates that within the private family life what he understands are "the filiation, his marriage, his or her divorces" (1989, p. 276), while Novoa indicates that "aspects unknown to strangers of family life, especially those of an embarrassing nature for the individual or for the group" (Novoa, p.45), would be included. Regarding the subject that is being analyzed, according to Corral, there are aspects of the family that are private in society "The documents that account for the episodes or images of family life (life journals, photo albums, family filming)" (p.68) As previously indicated, this does not mean that the protection of family privacy is absolute, but that if there is a judicial need, third party interference with this information will be allowed.

It is clearly stated that the family is not recognized as a legal entity, but that does not mean that it lacks all subjectivity. The international media refer to it as a legal institution and grant it as such a certain protection of rights

The copyright in the photographs.

All photographers and users of photographs should be careful when publishing or taking photographs. Many photographers of design, modeling and lifestyle, include in their photographs, sculptures, handicrafts, jewelry, paintings, architectural works,

in order to give more prestige or make more striking said photography. The problem occurs when it is discovered that these photos are actually protected by copyright, whose owner is the one who has the right to exclusive use of the work, because the moment that image is used is a form in which it is reproduced. This simple action that many people do not take into account, it can mean the payment of a remuneration for the use of said work, and the compensation of the damages that have been caused in a more extreme case. (Verbauwhede, 2006)

The first question one asks about this is: What does the intellectual property right do to the work? For this is responsible for patent, copyright, and trademark protection of the work that has arisen from the intellect of a person, and get an economic remuneration if it has been reproduced by a person who is not the author. The works normally protected in a photograph are usually

1. Literary works (such as books, newspapers, catalogs and magazines);
2. The artistic works (such as cartoons, paintings, sculptures, statues, architectural works, and works of art made through laser or computer);
3. Photographic works (such as photos, prints and posters);
4. Maps, globes, navigation charts, graphs and technical drawings;
5. Commercials, commercial forms, billboards and labels;
6. The imagined images (such as movies, documentaries, and television commercials;
7. Dramatic works (such as dance, theater and mime);
8. Applied works of art (such as artistic jewelry, wallpaper, carpets, toys and fabrics). (Verbauwhede, 2006)

Although, as can be seen, in a photograph there are many elements that may be protected by the author's property, in reality it is not applied as drastically as one thinks. For a person to be violating the copyright of a work, he must use a substantial part of the work in his photograph, which means that the distinctive, important or essential part must be used. But neither can one be trusted in this respect, since the substantial part is something valuable, and in many cases where this infraction is analyzed, the quality usually weighs more than the quantity of the work.

For example, if you want to use picture "the son of man" by René Magritte, which represents a man whose face is covered by an apple, the use of the face alone can already be a reason for copyright infringement, because that part of the work represents the essence of it. But taking a photograph is not the only way to infringe the intellectual property of a work, but other forms are also established such as:

1. Make a copy of the work, digitize it, photocopy it, reproduce digital works, etc.
2. Make a collage of different photographs or images.
3. Add new artistic elements to an existing work (for example, coloring a black and white photograph.
4. Photograph the work of a person and expose the work to the public (for example, display it in a gallery, distribute it to the public reproductions of postcards, and place them on Web sites. (Verbauwhede, 2006, p.3)

Who should be asked to reproduce the work?
Regularly the permission would have to ask the right holder, but sometimes this is usually difficult, because the author is not in a place nearby. In this case there are companies that are in charge of directing and controlling the use of the protected work on behalf of an artist. If for some reason you do not know who the work is, you will have to decide whether to take the risk of using the photograph or not, because if the author of the work finds out about it, you can initiate a process against the person to avoid its use and / or require the compensation of damages produced.

Brand Photography
The same company brands can represent a dangerous issue when taking a photograph. Unlike copyright, the use of marks in a photograph is not prohibited, but the use of it that creates confusion about the author's relationship with the image, if prohibited. In this sense what is going is that if a photograph with the Adidas brand was placed on a garment, if it would be violating the right of trademarks.

Photographs of People
Although there is no general requirement to obtain the permission of a person to be able to photograph it, there are situations where photographs can provoke a crime, controlled by national legislation, which prohibits their inappropriate use. In the first instance it is allowed to photograph a person, but this is where you enter the privacy, where the person cannot feel that their privacy or dignity are compromised through photography.

The care must also run in the clothing or accessories that the person uses when photographing it. Since it may be infringing any work or trademark protected by intellectual property.

But when a picture is taken unexpectedly, there enter into conflict two fundamental rights of every state: the freedom of expression by the photographer, as well as the right to privacy by the person who appears in the photograph. There are different factors to consider:

First, photographers incur the violation of the right of privacy of any person, when they enter intentionally and offensively into the person's private life through the photo they take. In general, a person can be photographed in a public place, but it cannot be done in a private or intimate place.

Neither can the information corresponding to a person's private life be disclosed. Distributing or publishing photographs that make offensive allusions to a person's privacy should be avoided. Normally here the photographs of sexual relations, or established debts that violate the right of privacy of people, come into conflict. For example, if a girl's image is used for a brand of cigarettes without her permission, she can claim a violation of her right to privacy, since she does not want it to be known that she consumes cigarettes

Exceptions

Although it seems that infringement of copyright in a photograph, as any rule, this also has its exceptions, although these are not the same in all countries.

The use of photography for commercial purposes

Many countries indicate that people have the right to publicity, which, differing from the right to privacy, indicates that every person has an economic value, and that this is the result of their efforts, for which each person has the right to exploit their own image. Therefore, if a photograph is taken

Therefore, a person who takes another photograph and uses it for commercial purposes without the consent of the person in the photo would be committing an infraction. Everyone has the right to avoid the inappropriate use of their image. But it is difficult for a "normal" person to demonstrate the economic value that is given to a photo, this refers to the fact that it is easier for a famous person to be able to indicate the economic value of his image. That is why it is quite important to obtain the permission of any person who would like to use their image.

An example that will allow identifying better: Imagine the Swiss tennis player Roger Federer, possibly the most valued tennis image of recent years, raising the US OPEN trophy, if this picture appeared in a sports magazine, it would not infringe this crime, since in fact it is done with an informative purpose. But if a person say to make posters with that photograph and begins to sell them, then Roger Federer would have all the power to file a lawsuit for violating his right to publicity

Another example, but now referred to a "normal" person: José, who had to work as a gardener because of monetary need for the summer, discovers that he uses a photograph of him doing this work on the part of a service company on his WEB page and in their offices. Joseph's right to privacy would have been violated and therefore he can file a lawsuit demanding the removal of this. If a photograph was modified in any way, to expose a person to hatred or ridicule, or to give a false impression. This is also liable to a legal action for violation of the privacy rights of the person, and a civil claim seeking compensation for the damages caused.

The right to privacy in International Agreements and Treaties

In the field of international law, the right to privacy is present in international treaties and conventions such as the Universal Declaration of Human Rights (1948), which in article 12 states that "no one shall be subjected to arbitrary interference in their private and family life ", as well as the American Declaration of the Rights and Duties of Man (1948), which likewise in its article 12 indicates" Everyone has the right to the protection of the law, against abusive attacks ... to his private life and family". At the same time, the International Covenant on Civil and Political Rights (Article 17.1) and the American Convention on Human Rights (Article 11.2), indicate in Article 6 that no one may be subject to arbitrary interference that endangers their private life or family.

The right to privacy and copyright of photography in Bolivian legislation.
The Political Constitution of the State also makes reference to this right in different articles: In article 8, in establishing the values on which the State is based, it establishes as one of them the human dignity, from which human rights emanate; In addition, article 9 indicates that it is an aim of the State to guarantee the protection and dignity of the people and to guarantee the principles and values of the Constitution. More specifically, it refers to the right to privacy in Article 21, indicating that every Bolivian has the right to "privacy, privacy, honor, honor, self-image and dignity"; also, Article 25 is important, because it states that "Everyone has the right to the inviolability of their home and the secrecy of their private communications in all its forms, except judicial authorization II. The correspondence, the private papers and the private manifestations contained in any type of support are inviolable ". The latter becomes important as it indicates. that the person has the right to privacy of their correspondence and private papers, as well as to all forms of communication, whether written, oral or audiovisual.

- Defense action against breach of the right of privacy (Habeas Data or privacy protection action)

Bolivian legislation has provided as a guarantee to the right of privacy of every person this action which raises in article 130 the following

Any individual or collective that believes to be unduly or illegally hindered, of knowing, objecting or obtaining the elimination or rectification of the registered data by any physical, electronic, magnetic or computer means, in public or private archives or data banks, or that affecting their fundamental rights to privacy or personal or family privacy, or their own image, honor, or reputation, may file the Privacy Protection Action.

Analyzed this can be seen that the Privacy Protection Action is an effective, rapid, simple and immediate constitutional defense mechanism with the object of protection of individual rights referring to personal or collective privacy and privacy, in its own image, honor and reputation, as well as protecting computer restrictions that by law or for the national security of the State are threatened or have been violated by action or omission of any natural or legal person, whether by authority, servant or public servant, whose scope of protection is circumscribed with respect to those fundamental rights that are not protected by the others specialized protection mechanisms of the constitutional order or ordinary jurisdiction (Canedo, 2015, page 384).

Copyright Law and the protection of photographic works.
The copyright law of 1992 clearly states in article 6, that this law protects the copyright "on literary, artistic and scientific works, whatever the mode or form of expression used and whatever its destination". In numeral h) indicates "the photographic works to which are assimilated those expressed by a procedure analogous to photography".

In Article 16 indicates that "The right of reproduction consists of the multiplication and material fixation of the work by any procedure that allows to know the

public such as photography, printing, lithography, cinematography, phonography, magnetic tape with sounds, images or both, or any other means of reproduction. "

In article 17 the same refers to the fact that the right of representation consists in the communication of the public work, through any procedure, such as: Presentation, exhibition and public exhibition of pictorial, sculptural, photographic and similar works.

The protection of a patrimonial work has a duration of the author's life and 50 years after his death in favor of heirs. Regarding the photographs, it will last 50 years of fixation, exhibition, publication, transmission and use. You can assign the rights of use of these works to companies, under contract of employment.

Chapter 4: Intellectual Property vs Criminal Law

4.1 Intellectual Property vs Criminal Law in the Netherlands

The value of DCA

Every author is the sole owner of the exploitation rights to his works. Breach of copyright occurs when an interference of the rights of an author/creator happens. In such a case, the originator can operate a default, an elimination/recall or can claim damages. When it comes to copyright violation, it is mostly a matter of disrespecting the moral and exploitation rights.

If there is an unauthorized duplication or dissemination, the creator can take legal action, being responsible for taking action: "Apart from claiming that the infringer be prohibited from infringing and be ordered to pay compensation, the owner can also claim that all counterfeit products be recalled and full compensation for legal costs. This is exceptional in the Netherlands as it is standard practice that only a part (according to a fixed rate) of the legal costs is awarded to the winning party." (AMS Advocaten, 2018).

Intellectual property is valuable because it brings progress in the global environment in any kind of field.

An individual who does not dispose of moral and copyright protection for his creations is not able to take legal action (Marsh, 2018).

The authors rights in case of copyright infringement

Firstly, the author/creator himself has the right to take action against a violation. Possible consequences for the infringer are stated in the Dutch Copyright Act (hereafter: "DCA") Article 27 and Article 28 with sub-articles. These Articles explain what an author himself can do if his copyright is violated. There are further articles in Chapter II of the DCA, where it is explained what public ministry can do to investigate infringements. This is going to be explained later.

Secondly, the author has the right to claim damages in court and to demand the handing over of his creation, reproductions and made profits. He can also demand to let the reproductions destroyed even if they have not been made public. If copyright infringements occurs after the authors death, his heirs will have the right to do so. In case, there has been done infringement on "goods" like immovable property, ships or aircraft, alterations can be claimed which have to be done on those things, to not be "copied" anymore.

Case Law

A few years ago, there was the case in Gelderse Zelhem, where a security company had to remove stripes from their company cars, because their cars looked too similar

to police cars. They had blue-orange stripes on them in similar shape and with white background like the police. Although, the color combination is not the same as that of the police, according to the judge the company still violates the copyright that is in the hands of the State. The court of Zutphen decided that an interlocutory proceeding filed by the State (De Volkskrant, 2012). This is an example of such alterations which have to be made in order to not infringe copyright anymore.

All of the rights mentioned shall be implemented for the right-holder to protect his rights (DCA).

Criminal offence and punishments

Not only can a copyright owner himself take action against infringement, but also public ministry can take action against it.

Chapter II "The exercise and enforcement of copyright and criminal law provisions" (Art 26 to Art 36) of the Dutch Copyright Act deals with the current regulations to criminally enforce violations of copyright and other areas of intellectual property.

A "crime" as in copyright violation occurs when a person who is not the right-holder of the copyright, intentionally.

In chapter II of the DCA there are several definitions of a crime. According to general dictionaries, a crime is "an action or omission which constitutes an offence and is punishable by law.". According to the DCA a crime is infringement of copyright in any way.

There are distinctions made for different levels of infringement and their punishment. This includes a person who fails to fulfill the obligation to file application for when importing, is liable to a fine of € 4,100 (Art. 30b-2). A person who violates copyright intentionally though, can even end up going to prison for up to six months or be required a fine of € 20,500 (Art. 31).

When a person makes something available for public, reproduces, imports or exports, or makes profit out of something where he does not have the rights of, the consequence can be as high as one-year imprisonment or a fine of € 82,000 (Art. 31). For example, when a third party uses a photographer's pictures to print and sell them, that would be considered a criminal offense and lead to those consequences.

The jail time can even increase to four years when the person does not commit this crime as an individual but for business purposes (Art. 31b). For example, when a company that sells prints in general sells motives of a photographer who did not give permission. Four years imprisonment is the longest period to which it can come.

There are also distinctions being made between specifically knowing that the act infringes another person's copyright and only accidentally infringing. When it can be proven that the defendant must have known he is committing breach of copyright law, he is obliged to pay a fine of € 8,200 (Art. 32).

In case of removal of a technically protecting mechanism, which was being intended to protect an intellectual property, there can follow a punishment of six months

prison time or a fine of the fourth category, which is € 20,500 (Art. 32a). An example for this case is when a third party removes the password function for a personal blog and shares the link via Facebook etc. to publish it, without permit of the author, infringes Article 32a of the DCA.

When a person does alterations of another person's written work, for example when an editor of an author's book changes the title or the story in the book, before sending it to the publisher, this is also considered a serious offence and will be punished with imprisonment up to six months or a fine of € 20,500.

After every article has been stated in chapter II "Such an act shall constitute a serious offence." which is basically another term for crime and shows the importance of those rights in The Netherlands.

There are copyright infringements that are considered not that serious offences which are stated in Art. 35 and 36b. That means that several factors are being considered when judging the case. The case when someone publishes a portrait of someone without permission is one of those. Also, when a person who performs as a commercial agent and has to do with music without the permission of the Minister of Justice, counts into those. The two mentioned cases are being punished with a fine of € 20,500.

When a person gives false information to an application or a writing to a legal person on which basis money amounts are determined, would be imprisoned for three months or charged a fine of € 8,200. (Art. 35)

Not only documents or data can contain copyright infringement. Also, music is legally protected under copyright. The institution accountable for investigating infringement in music copyright in The Netherlands is Buma-Stemra. This is a collective rights organization which manages the copyright rights of their 25.000 members in The Netherlands.

On their website, they have a "question and answer" not only to copyright law, but also to use of music and registering music. This does not look as reliable as a law collection but is valid for the members. For example, simply giving false information to BUMA, is considered a crime. They have a guideline in case someone detects breach of copyright in form of plagiarism. What can be done in this case, is to contact the plagiarist and coming to a solution together without going to court. If no solution results, they can turn to the court of law which has jurisdiction, which would be the court where the defendant is domiciled (Buma/Stemra, 2018).

"The Public Prosecution Service offers the option of criminal prosecution in case of intentional infringement. Some infringements are even considered crimes. The court may impose a prison sentence of no more than four years or a fine" (Beroepkunstenaar, 2013).

The current possibilities for public ministry to criminally enforce copyright infringement are therefore fines up until of the fifth category (€ 82,000) and imprisonment up until four years.

Powers of investigators

In Article 36 DCA it is stated what powers the police has to detect infringements. They have the right to access documents or other data belonging to the person who is in suspicion of copyright violation at any time. There does not have to be a reason for investigation before, because being an international business dealing with import/export, reproduction, literature, or any other way to communicate to public, is enough to be controlled. This is only allowed for officers investigating copyright infringement. The police have the power over the private right of the person being investigated, which means they can ask the police for help if necessary to get access to the property where they want to search for the data they need access to (36b-1.). In Art 36b-3 DCA it is stated though when the occupant denies entry "They shall not enter a house against the will of the occupant except on presentation of a special warrant in writing from or in the presence of a public prosecutor or an assistant public prosecutor. An official report of such entry shall be drawn up by them within twenty-four hours.".

"If prosecution of the copyright infringers is important for the public interest, criminal law can be applicable. Then the privacy related issues are different. In criminal law, personal information regarding telecommunication can be collected from a database which holds information of all ISPs. Criminal investigators that are authorized by The Dutch Law for Criminal proceedings (het Wetboek van Strafvordering: hereafter WvSv) can collect this information for cases mentioned in the WvSv, in the case of a criminal offence (Art. 126 WvSv), like a copyright infringement. It can be concluded that this procedure includes less privacy issues than the civil procedure. The right holder can only turn to criminal law when this is important for the public interest, so criminal law will only be applicable in exceptional cases. This means that in most cases the privacy issues remain." (Jong, 2010)

The so-called Bijzonder Opsporingsambtenaar (BOA), translates to investigating officer, but is not exactly a police officer, but a person who ensures order in cities in The Netherlands.

Copyright infringement can be discovered by investigating officers. To enter a property for investigations, the responsible person has to have a search warrant. Otherwise, it would be a case of trespassing, which is defined as when a person enters somebody's personal property without permission and is violating human rights of privacy. So, if they have permission from the owner, they are allowed to search for suspicious material in the house. If they do not get permission, they can apply for a search warrant and if that is going to be accepted, depending on how relevant the search is for the investigation, they can enter the house without permission. (Art. 36a DCA)

"Also it is possible for copyright collecting societies to sue for infringement. This follows from Directive 2014/26/EU on collective management of copyright, which requires member states to allow for the existence of collecting societies. Examples of such societies in The Netherlands are Buma-Stemra for musicians, and VEV AM for directors of audiovisual works. Under the Directive, once copyright holders have

granted the collecting society the right to act on their behalf, they can no longer individually enforce those particular rights." (Rijsdijk, 2018)

Statistics on the copyright sentences

The Netherlands has a really low number of prisoners in general.

The Dutch government states that "The Public Prosecution Service orders the investigation of more serious crimes. The police, government, municipalities and judiciary work together to prevent and combat crime." (Government of The Netherlands website, 2018). This is very broad, on the one hand a "serious crime" can be heavy theft, child pornography and further (Government of The Netherlands 2, 2018) or, as stated in the DCA, crimes mentioned in Articles 30 to 34 are constituted serious offences.

Copyright cases are not really popular in The Netherlands, they are not really being reported, which make them seem less serious than other crimes. Therefore, there cannot be found much about cases specifically where criminals got sentenced for copyright infringement.

Argumentation – Should more be done to protect creation nowadays in the media?

In "this digital age", one needs to have proof for intellectual property in order to receive copyright protection, as the Dutch Copyright Act states in Article 4. The person who publishes work, is seen as the author of the work, which gives this person copyright protection also in cases where it is not the real or original owner when that contrary cannot be proven. In "our digital age" where media is predominantly influencing, it is easier to "steal" ideas protected by copyright than it used to be. Many people are sharing their pictures, videos, music, designs, etc. on social media and blogs which can easily be stolen from there and used for one's selves. This would violate copyright protection of the authors intellectual property. In cases where the author cannot prove the originality of his work, it is not possible to take legal action. Therefore, it is risky to put any creations on the internet in general.

In my opinion nothing can be done. Taking legal action and having protection by law is regularly only possible by bringing proof, as is known proof is the most important item in legal issues. Of course, it would be great if it was possible to get your rights without proving anything. In that case, it would be possible to steal intellectual property when a person asserts that it was "his idea first". Even though that is not true if there is no evidence the right cannot be demanded.

There should definitely be more regulations in order to help creators protect their intellectual property. I am considering an online guide which explains exactly what to do when it is desired to communicate creations through media. By using such a guide the risk of having one's property stolen is dominated considerately. For example, when a photographer shares their pictures on his website for marketing purposes, this picture is easily accessible on his website. When a person wants to use

this picture, he usually has to have permission, or has to have an agreement with the photographer (for example a payment). But it is not easy to find out if or who uses this photo. If there would be a guideline, especially for photographers who want to share their pictures on their own website, and they follow it, it would be safer for them. One point of this guide especially for that case could be that the photographer has to put a watermark on his picture before sharing it.

As mentioned earlier, copyright infringement can be discovered by investigating officers. And for that, they often need to enter someone's property, which they cannot without permission. I think this is a good regulation because everyone's private property should be protected in that manner. On the other hand, it makes it harder to prosecute violations of copyright and other crimes.

I think it could also be helpful if investigators can access cases through a medium, where they do not have to enter a person's property. That they get the permission to access a person's computer from somewhere else.

In German law for example the copyright act is more specified than the Dutch in that way, that it states more specific cases and what law applies then. More specified cases can also be helpful when investigating copyright crime cases. For example, it is also stated what the customs authorities can do in cases in subchapter 3. They can not only search for suspicious things, they can revoke a seizure of the searched for object (UrhG).

The Netherlands has a really low number of prisoners in general. In 2016 and 2017 world news reported about too many empty prison cells in The Netherlands, that they were closing prisons (Ash, 2016) or renting them to other countries, or turning them into asylums even (Bilefsky, 2017). This can be the result of two reasons. Either defendants can choose to pay the specific fine for their cases or go to jail, where in most cases people would choose the fine "Dutch judges often use alternatives to prison such as community service orders, fines and electronic tagging of offenders." (Ash, 2016), or crimes are not being followed enough so that there are no criminals found in the first place. Maybe the laws and regulations work out well on paper but are not taken so seriously as said so there are only few convictions.

There is a possibility that The Netherlands should send more people to jail. Of course, it is possible that there are just no criminals. On the other hand, it can be that the Dutch government is not doing a good job by leaving criminals in the society.

As can be read in the BBC article (Ash, 2016), a Dutch deputy governor of a high security prison said, the way The Netherlands treats criminals is not only punishing them but solving the ground of the problem. He mentions that when someone has a problem which leads to criminal activities, they help them to solve it. I think this is a very good way to prevent crimes from happening again, by solving the causes, instead of just frightening criminals of punishment. "Sometimes it is better for people to stay in their jobs, stay with their families and do the punishment in another way" says Angeline van Dijk, Director of the prison service. So, this is the way how The Netherlands treat crimes and the reason why there are not many prisoners.

On the other hand, people can end up in prison for copyright violation which is considered a crime in The Netherlands in the first place.

So, the system to go after copyright infringements is already pretty strict and it might be surprising that the punishment for this kind of crime is so high.

It is important that copyright is taken so seriously here and so it is good that the regulations are relatively specific because there are many cases where questions come up about copyright and where people have to pay attention on what they can do and what they cannot, which is all formulated in the DCA.

4.2 Intellectual Property vs Criminal Law in Bolivia

Introduction

Digital technologies had an unusual development in society, the emergence of the Internet and the expansion of the possibilities of communication and access to information; have modified our knowledge and our way of interacting in society (UNESCO, 2016). The internet went from being a service to a vital tool; this statement is true, if we compare the world population that amounts to 7.5 billion people with the number of users on the Internet that is 3.5 billion users (International Telecommunications Union, 2016). People use the Internet to disseminate information, but often obtaining and transmitting it can be the result of illegal behavior, as there are not specialized control mechanisms. Thus, the importance of making responsible use of information is generated, given that, by having unrestricted access to Internet content, the rights belonging to intellectual property are seriously threatened, in the case of copyright and related rights. Consequently, before the new technological age, States must adopt necessary measures to ensure the protection of copyright, within its territory as well as outside it.

The purpose of this chapter is to analyze the behaviors typified in the Criminal Code, which constitute crimes against copyright, resulting in a punishment, through a judicial process; in addition to others of administrative protection mechanisms established by National Intellectual Property Service (SENAPI). This will allow us to determine if the protection measures to holders of copyright and related rights are sufficient to face the risks generated by the new digital age in Bolivia.

Protection of Copyright in Bolivia

The Political Constitution of the State of Bolivia (CPE) and the components of constitutional formed by international treaties and rules of community law protects copyrights in the Bolivian legal system. Next, by the internal legislation that has a specialized law: Law No. 1322 on Copyright; however, the highest degree of protection is given through criminal sanctions, in the case of conducts that are classified as offenses in the Penal Code; similarly, the power to claim compensation for damages may be exercised in civil or criminal proceedings. Regarding the resolutions of an administrative nature that regulate the Author's Rights, these emanate from SENAPI as

a specialized administrative body. Therefore, Bolivia has judicial and administrative mechanisms aimed at the exercise and protection of Copyright.

International agreements on copyright as part of the Bolivian legal system

Bolivia is part to several agreements on Intellectual Property such as the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, which establishes the constitution of the Union for the protection of the author's literary and artistic works; the countries to which this instrument applies form this institution (Article 1 of the Berne Convention, 1886). Also, part of the Bolivian legal system is the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done at Rome on October 26, 1961, which establishes an Intergovernmental Committee composed of twelve representatives of the Contracting States (Article 32 Rome Convention, 1961). We can conclude that, in these agreements are general provisions, so that member countries have a similar concept of what are protected copyright, the duration of these rights and minimum protection mechanisms.

At the regional level, after the Creation of Andean Community (CAN) with the signing of Cartagena Agreement on May 26, 1969, as a regional integration organization, the Member Countries, including Bolivia, agreed to harmonize of economic policies and coordination of development plans. The countries undertook to adopt progressively a strategy for the achievement of the objectives of the Sub region (article 53 of the Cartagena Agreement, 1969). For this reason, the pronouncements of CAN that are made through "Decisions" are binding for the Member Countries this means that compliance is mandatory. One of the objectives of CAN is the regulation and protection of Intellectual Property, so that there are common provisions in this area applicable in the region.

Indeed, Decision No. 351 was adopted by CAN on December 17, 1993, establishes a Common Regime on Copyright and Related Rights, this rule is intended to recognize adequate and effective protection for authors and other owners of copyright. These rights are exercised over the works of the mill, in the literary, artistic or scientific field, whatever the genre or form of expression and regardless of the literary or artistic merit or its destination, likewise, neighboring rights are protected (article 1 Decision 351, 1993). This standard defines copyright as "any original intellectual creation of an artistic, scientific or literary nature that may be disseminated or reproduced in any form" (Article 4, Decision 351, 1993). In addition, it recognizes the moral and patrimonial rights that authors enjoy over their creations and promotes the autonomy and modernization of the competent national offices for the protection and application of Copyright and Related Rights, as well as information systems and services.

Therefore, the CPE determines that International Agreements related to the protection of human rights, such as copyrights, are part of the Constitutionality Bloc, this means that they are norms of constitutional rank (Article 410 CPE). In the same way, Decision 351 of the CAN has this normative hierarchy, since it is a norm of

community law; it also enjoys direct and preferential application to the national laws of each member country of the Andean Group (Vega, 2010). In that sense, the laws of the lower hierarchy can never contradict the content of the CPE and the components of constitutional; on the contrary, they must develop and grant operation to these normative precepts.

Internal legislation on copyright in Bolivia

Bolivia's internal legislation for the protection of copyright is formed by a specialized law: Law No. 1322 on Copyright of April 13, 1992, which regulates the regime of copyright protection; the Penal Code that typifies the conducts that cause damages to the author's rights and constitute as crimes. In addition, the Civil Code allows compensation for damages in favor of holders of copyrights and related rights, when their economic and moral rights are injured; however, people can file a claim in a criminal proceeding. In the same way, there are resolutions of an administrative nature aimed at the protection of copyright, which emanate from the National Intellectual Property Service (SENAPI). Finally, Law N ° 2341 of Administrative Procedure regulates administrative procedures.

Law No. 1322 of April 13, 1992 on Copyright

Law No. 1322 of April 13, 1992 on Copyright aims to regulate the regime of protection of the right of authors over the works of the original character, whether of a literary, artistic or scientific nature and the rights related issues that it determines (Article 1 Law No. 1322, 1992). This law establishes that "copyright includes the moral rights that protect the paternity and integrity of the work and the economic rights that protect the economic use of it" (Article 2 Law No. 1322, 1992). Through this law protects the rights of the authors on their literary, artistic and scientific works, regardless of the mode or form of expression used and whatever their destination.

To be the owner of these rights, you must have the authorship, in accordance with Article 8, only "the author is the individual, however, the State, public law entities and legal or legal persons can exercise the rights of author as holders of the derived copyright, in accordance with the rules of this Law ". This law also determines the presumption of authorship of a work, the person whose name, pseudonym, initials, acronym or any other usual sign, that people may observe in the work, in accordance with the provisions of article 9, unless proven otherwise. It also determines the duration of the protection of these rights, throughout the life of the author and 50 years after his death, in favour of his heirs, legatees and assigns.

This law in Title XIV "Copyright Violations" provides two procedures to follow in the case of copyright infringement:

A) Judicial process: Penal Sanctions and its Procedure

This law in its Article 68, gives a list of behaviours that constitute violation of copyright, According to Article 67, determines that when there are violations of copyright and related rights, the holders of rights, they should go to the criminal

jurisdiction. Therefore, there is a direct referral to the criminal jurisdiction for judicial protection of those rights and there will be applied article 362 of the penal code, which sanctions those conducts.

B) Administrative Procedure: Conciliation and Arbitration

Article 71 establishes an administrative conciliation and arbitration procedure by mutual agreement between the parties, prior to the trial, under the competence of the Directorate of Copyright and Related Rights of SENAPI.

Judicial protection of Copyright

3.1.1 Protection granted by the criminal law to intellectual property.

The penal code identifies as crimes the behaviours that violate the rights of the author and grants them a sanction; we can infer that the highest degree of protection of these rights is in the ordinary jurisdiction. Article 362 governs the protection of copyright through criminal law. In order for this offense to be established, it must meet several requirements, before the judge grants a sanction. For this reason, continue; perform an analysis of this criminal type.

3.1.2. Criminal type: Violation of copyright.

Article 362 °. - (Violation of Copyright).

Who for profit, to the detriment of others, reproduce, plagiarize, distribute, publish on screen or television, in whole or in part, a literary, artistic, musical, scientific, television or film, or its transformation, interpretation, execution artistic by any means, without the authorization of the holders of intellectual property rights or their concessionaires or amount, export or store copies of such works, without the aforementioned authorization, will be punished with imprisonment for three months to two years and a fine of thirty to sixty days of the minimum wage.

Analysis of the type:

A) Structure of the Type: objective and subjective.

This type of crime protects the property of the community; the conduct that produces the crime must comply with the requirements of objective and subjective structure that the law determines, so that the judge can give a penalty.

In objective structure, the active subject, that is, the person who performs the act can be any person who reproduces, plagiarizes, distributes, publishes on screen or television, in completely or in part, a work or transforms, interprets through any medium. In addition, the passive subject, in other words, the person affected by the fact, are the holders of the copyright or its concessionaires.

In subjective structure this criminal type is configured when there is fraud, that is, the intention to commit the typical action prohibited by law (Binder, 1999), as a result, this displaces a guilty behavior that has been committed without such intentionality. In addition, as a subjective budget, there must be a profit motive and that derives to the detriment of others, in this case the owner of the copyright.

B) Punishable stages of crime:

The violation of copyright constitutes a crime of result, doctrinally this means that the content of the offense consists in the production of a separate effect space-temporarily of the conduct and the production of that result constitutes the formal consummation of the type (Binder, 1999). There must be a causal relationship between the action and a material result, in this case the reproduction, plagiarism, distribution, publication, a work, through any means, without the authorization of the owner, must be material and effective.

In this crime are not sanctioned the ideation, the preparation, the attempt. The consummation if sanctioned and configured with the reproduction, plagiarism, distribution, publication on screen or television, in whole or in part, a literary, artistic, musical, scientific, television or cinematographic work, or its transformation, interpretation, artistic execution through any means, without the authorization of the holders or concessionaires of the right. This crime does not admit the withdrawal and repentance to be a crime of result.

C) Punishment:

The punishment consists of imprisonment from three months to two years and a fine of sixty days. In this crime there are not conditions that aggravate the penalty, and does not admit the legal absolutist excuses, which are causes established strictly by law, in which they exclude the sanction.

D) Process:

- Action:

According to the process established by the Criminal Procedure Code in Article 16, the criminal offense is a crime of "Public Criminal Action", that is, it is not necessary that there be a complaint by the victim, but rather that it begins under the responsibility of the Public Prosecution. The Judge in matters of punishment will know the process, through the action of the Prosecutor's Office as a representative of the community, which becomes an accusatory party in the process, but also the affected holders may be part of the trial. Therefore, given that they are supra-individual crimes, this means that the interests of the victim and the State are affected.

- Process development:

Public criminal action is subject to common procedure, two stages form this procedure: the preparatory stage and the stage of collecting evidence. Book one of the second part of the Code of Criminal Procedure grants the rules for the development of the process.

The Preparatory Stage consists of the investigation and collection of evidence by the Prosecutor's Office, to determine if the act has existed and if the accused participated in the crime. If the Prosecutor's Office is not sure of these elements, it will no longer continue with the process, otherwise, the prosecutor issues an accusation and goes to the other stage of the trial process.

In the Judgment stage, the legal status of the accused is determined. After the development of the public, oral and contradictory hearing; the judge will issue an

acquittal sentence; in the case that is not demonstrated by the evidence generated in the process that the accused committed the crime; or in its absence a condemnatory sentence in which it is proven that he committed the crime.

- Imposition of a punishmentand compensation for damages and losses: Once the trial ends, the judge will proceed to issue a judgment, either the deprivation of liberty or the imposition of a monetary fine. In addition, the victim can request compensation for damages caused by the violation of copyright, which has the consequence of damaging the economic and moral rights of the holders of copyright and related rights. The victim can claim financial compensation for the damages generated to his patrimony, in the same criminal process; however, compliance with this obligation may be required before a judge in civil matters, in accordance with the rules relating to civil liability of the Civil Code and its rule of procedure.

Administrative Protection of Copyright

National Intellectual Property Service (SENAPI) has the mission of administering the intellectual property regime, all its components, must monitor its compliance, and the effective protection of the rights of exclusivity referred to industrial property, copyright and related rights (Article 2. Supreme Decree No. 28152, 2005). SENAPI is the competent national office regarding the international treaties and regional agreements subscribed and adhered by Bolivia, in the matter of intellectual property.

Registration as a means of protection

Among the most important functions of SENAPI, is the administration of the integrated system of Intellectual Property, formed by the rules of industrial property, copyright and related rights, with the scope recognized to these matters internationally (Article 4. DS28152, 2005). In this context, it receives and processes requests for Intellectual Property rights, to subsequently register and certify them, in accordance with the Law.

SENAPI performs the registration of copyright, which has a declarative nature (Article 15. Regulations of the Directorate of Copyright and Related Rights SENAPI, 2016), this means that the registry recognizes the pre-existence of rights, granting them publicity so that they are opposable to third parties. Registration begins with an application for registration, submitted to the Directorate of Copyright and Related Rights belonging to SENAPI, complying with the requirements established in articles 18 and 19 of its administrative regulation.

The procedure ends with an administrative resolution that determines the registration of the rights in the registry; failing that, it denies solitude, declares the abandonment or withdrawal of the procedure (Article 28. Regulations of the Directorate of Copyright and Related Rights SENAPI, 2016). In the event that the author does not agree and considers that this resolution affects his rights, he may challenge that decision in the same administrative venue.

Mechanisms to challenge administrative resolutions

Revocation Resource

In case, the author of the work feels that the Administrative Resolution is violating his subjective interests. SENAPI establishes as defense mechanisms of the author's rights in administrative headquarters, the impugnation of the resolution, through the Recall Remedy, which consists in submitting a claim to the same authority that issued the resolution so that and makes the review of the appeal, this may modify or confirm its decision (Article 44. Regulations of the Directorate of Copyright and Related Rights SENAPI, 2016).

Hierarchical resource

In the same way, if the author considers himself affected by the resolution that resolves the recourse of revocation, he may file the Hierarchical Appeal before the same authority that issued the resolution of revocation, and this authority shall submit the background of the process for its knowledge and resolution to the Executive Director of SENAPI. The superior authority has the power to confirm, modify or annul the resolution. (Article 46. Regulations of the Directorate of Copyright and Related Rights SENAPI, 2016).

Dispute Resolution

SENAPI foresees alternative means of resolving conflicts related to copyright and related rights, which may be generated between the holders of rights and third parts that affected their interests patrimonial or morally. In this way, an administrative conciliation and arbitration procedure is established, which proceeds prior to the ordinary court instance, with the main requirement that the parts voluntarily submit to these processes. The rules for the development of these processes are set forth in Title V of the Rules of the Directorate of Copyright and Related Rights SENAPI.

Conciliation procedure

The competent authority is the Director of Copyright and Related Rights of SENAPI to participate in the conciliation hearing as an impartial third party, in charge of guiding the process; and as an observer in the arbitration process according to the established legal formalities (Article 50. Regulations of the Directorate of Copyright and Related Rights SENAPI, 2016).

The conciliation begins at the request of one or both parts, through the presentation of a memorial or note in the offices of SENAPI; after being admitted, the conciliation hearing is convened to the parts involved, having as headquarters the main office of SENAPI in La Paz, Bolivia (Article 51 and 52. Regulations of the Directorate of Copyright and Related Rights SENAPI, 2016). In the development of the hearing, the parts proceed to present their arguments and possible solutions to the dispute, with the intervention or direction of the competent authority.

The conciliation ends when the parts and the Director of Copyright and Related Rights prepare an Act, in this document the total or partial agreement to which the parts have arrived is recorded. If the parts have not reached an agreement, they can access the arbitration instance. In case the parts decide not to submit to the arbitration procedure, they will record the resignation in the conciliation hearing record and leave save the rights of the parts to go to the appropriate judicial channel, being concluded the conciliation and arbitration process (Article 58. Regulations of the Directorate of Copyright and Related Rights SENAPI, 2016).

Arbitration Procedure

The arbitration proceeds after the conclusion of the conciliation hearing, if the parts voluntarily wish to submit to this procedure they must present to the Directorate of Copyright and Related Rights the list of the arbitrators, one by the complainant, another by the defendant and a representative of the Directorate of Copyright and Related Rights (article 60. Regulations of the Directorate of Copyright and Related Rights SENAPI, 2016).

The Director of Copyright installs the hearing and Related Rights, verifying the presence of the parts and the arbitrators, in the course of the hearing, proceeding to read the background, and then the parts present their arguments and present evidence. Finally, the arbitrators will present their report, in which they will announce their decision; the parts may adopt the decisions of the arbitrators or request that the SENAPI authorities send the case to the judicial courts. (Article 61. Regulations of the Directorate of Copyright and Related Rights SENAPI, 2016).

In this way, once the conciliation and arbitration process is completed, the administrative body is exhausted, which means that SENAPI cannot intervene in the resolution of disputes. The parts may initiate a criminal trial, if the acts of the third parts constitute a crime against copyright and demand compensation for the damages caused, whether patrimonial or moral, caused to the holders of the rights, in the same trial criminal or demand this compensation in a civil trial.

Chapter 5: Conclusions

5.1 Personal Liberties vs Protection of Intellectual Property

In terms of personal liberties Bolivia and the Netherlands have the same rights. The Netherlands has multiple articles in their constitution stating liberties, such as freedom of speech, the right of association, the right of assembly and the respect of privacy. Moreover, there are also international laws, such as the International covenant on civil and political rights (ICCPR) and the European Convention on human rights (ECHR) that cover said personal liberties in the Netherlands. On the contrary, Bolivia has the Political Constitution of the Plurinational State of Bolivia and the international law and the Universal Declaration of Human Rights (UDHR) which declare that everyone has the right to life, to liberty and personal security.

The difference becomes visible while looking at protection of the copyright and the personal liberties. There the Netherlands has an 'advanced' looking copyright system, that offers a lot of protection. Let us use an example of DVD sales. In the Netherlands there are specific stores (video stores or online websites) who have the license to distribute them, otherwise it would come in conflict with copyright law. So, when or if someone would try to sell a DVD on the street, that person would be quickly caught and fined. Thus, disallowing illegal communication. However, different situation is seen in Bolivia, where the only law that is relevant is tort. Hence, if a person is able to prove that their intellectual property has been damaged, they can be liable of compensation.

On the other hand, while in the Netherlands there are different means by which the law provides for the protection of intellectual property in case of damage to the author, in Bolivia it is reduced to proof of damage, which includes damage to copyright. This difference creates insecurity for the author, since in the Dutch system, if it falls within the specific means, protection can be generated immediately, which also motivates the authors to continue producing works of art, whereas in Bolivia any damage is obtained simply by demonstrating that damage, which is sometimes very difficult.

In Bolivia, intellectual property protection is lower, making copyright vulnerable to infringement, but in the Netherlands, protection and control are stricter, requiring enforcement and copyright protection. In Bolivia, informality and free dissemination make it difficult to comply with the law, however, if we look at control and informality in both countries, we can understand that in the Netherlands there is a limitation to the right to freedom of personality, since there are means by which this intellectual property can only be shared in places authorized for the sale of books and films, but this generates more security about artistic works. On the other hand, in Bolivia, informality is understood as a freedom of dissemination of artistic works by unauthorized persons, which generates damage to authors with respect to their work, going to extremes such as piracy, which discourages authors from creating more works.

By this we can already establish a conclusion, in Bolivia protection of intellectual property is taken lighter than in the Netherlands. That in no way means superiority of one or the other country. Simply, Bolivian habitants have more freedom when it comes to sales and reproduction. Thus, making local businesses blooming. On the other hand, while people in the Netherlands do live with several restrictions, it does benefit the creators financially. Furthermore, it does lead to fair distribution, communication and all together the feeling of safety.

5.2 The right to information and to freedom of expression

In Bolivia the right of information is regulated by "The Political Constitution of the Pluractional State of Bolivia" and some international regulations like the "Universal Declaration of Human Rights", "The American Declaration of the Rights and Duties of Man", "International Covenant on Civil and Political Rights" and "American Convention of Human Rights". On the national level, there is a specific law called "Printing Law" which was elaborated in 1925, which is defending the right to information but has not been updated ever since. Therefore, there is a lack of legislation which defends the right to truthful information offered to the citizens.

The Netherlands has paid much attention to guaranteeing its citizens the access to the right of information through national law and international treaties and conventions that takes part of, such as: "European Convention on Human Rights", "The Constitution of Kingdom of Netherlands" and "Universal Declaration of Human Rights". European Union is developing new laws which will automatically apply to The Netherlands. The European Union is investing a lot of resources into updating and improving the convention in order to fit the daily life to the EU citizens.

Copyright of Journalists

The Bolivian legislation on copyright is not very developed yet, however in 1992 the country adopted the Copyright Law called "Law No. 1322: Copyright Law". The law does not specifically mention anything regarding journalist's rights besides how employees in media companies give away to the employer their copyrights. Bolivia is part of the Decision 351 and the Agreement of Aspects of Intellectual Property Rights Related to Trade, unfortunately the Journalists Rights are not mentioned within these two laws.

Netherlands has a legislation called "The Dutch Copyright Act" specifically designed to define and protect the copyright owners. It has specifically articles referring to the Copyright of Journalists. There can be noticed a similarity with the Bolivian Law regarding employers owning the copyright of the works realized by their employees. Moreover, The Netherlands is part of Berne Convention just like Bolivia.

Law Cases

In the Netherlands and in the European Union there are multiple examples of journalists copyright cases which can exemplify how the law can be applied while list in Bolivia there has never been registered a case related with Copyright of Journalists.

Opinion

We consider, that both The Netherlands and Bolivia need harmonization of the law in order to balance the rights of information of the citizens and the of copyright of the journalists. However, The Netherlands is more structured and has more content when it comes to legislation, having examples of law cases. Anyhow, the laws don't fully protect the right of humans to be properly informed and the journalists copyright is not really protected since it can be recommunicated. The Bolivian law is more undeveloped and needs updates regarding the modern digital age The Printing Law is the only specifically law on journalism, but it is too old and needs updates regarding media world.

5.3 The right to privacy/family life vs portrait rights/copyright on pictures

Privacy laws in the Netherlands and in Bolivia are quite similar. This is because privacy is seen as an international right and written down in a lot of different international legislations. The Netherlands follow the United Nations, that have formulated directives on how to handle privacy of an individual. The Netherlands also follow the directives of the European government and have an important place for privacy in the Dutch Constitution. Bolivia also follows the directives of the United Nations. Bolivia also follows the Organization of the American States and has implemented privacy laws in their constitution. To summarize this, both countries follow international human right treaties.

The copyright of the photographer is also comparable. A photographic work is protected by the Dutch Copyright Act in the Netherlands and by Bolivia's copyright law and the Andean Community of Nations in Bolivia. This means that the photographer has the exclusive right to reproduce and communicate the picture.

As for portrait rights, there are some differences. A big difference is that the Netherlands makes a distinction between portraits as part of an assignment of the person portrayed and portraits as not part of an assignment. If a portrait was made as part of an assignment of the persons portrayed, the photographer will always need permission of the person portrayed to reproduce or communicate the picture.

The Bolivian law does not make this distinction. They consider every picture, as the Netherlands consider a picture that was not part of an assignment. In this case, a picture is free to be reproduced or communicated. This is unless the person portrayed has a reasonable interest.

Within the reasonable interest, we found differences. In Bolivia, any person portrayed that does not agree with their photo being reproduced or published can go to court to ask for it to be taken down. In the Netherlands, this reasonable interest will only be seen as financial damage or privacy. In this case, privacy is seen as an invasion of the personal environment of a person. A regular photo shot on the streets is not seen as an invasion of privacy.

An exception that is seen in the Netherlands is the royal family. Since Bolivia does not have a royal family, all legislation concerning the privacy and portrait rights of the royal family is distinctive. The Netherlands have formulated a media code for journalists to sign. This means that the photographers can be present at the official photo moments of the royal family. Photos taken of the royal family when they are executing their official function, like on Kings day of during state visits are also legal to be published or reproduced. Any other pictures are seen as an invasion of the privacy of the royal family. An exception appears when a sneaky picture has a very high news value, in which case the court can make an exception.

In our opinion, the Dutch legislation is more structured and specific then the Bolivian legislation. Comparing them, the Bolivian laws could improve more in specifying certain aspects of portrait rights, like what is considered a portrait, when do you need permission to publish it and when it can be taken down. On the other hand, we believe it is good that there is more room for the opinion of the portrayed person on the photograph in Bolivia. In the Netherlands it is very difficult to remove a picture you do not want to be published. It would be good to see more flexibility in this area.

5.4 Intellectual Property vs Criminal Law

In conclusion, through the analysis of the legal system of Bolivia and the Netherlands, it has been possible to know the mechanisms of protection, its scope and procedure to protect the rights of the author; the holders can assert their rights in the judicial courts and in the administrative Headquarters. We can infer that in the criminal field is the greatest protection of these rights, since the State through its criminal policy has determined that the violation of copyright, not only affects the victim, but the entire community. For this reason, it should not be strange that the other protection mechanisms granted by the State can derive directly or indirectly from the criminal courts.

In the legal system of Bolivia and the Netherlands, it has been possible to establish the differences that exist in the mechanisms of defense of copyright, which we present these conclusions:

Laws that punish the violation of copyright:

In Bolivia, article 362 is the only article that contains behaviors that violate the rights of an author in the Penal Code. This would suggest that in Bolivia, there is little regulation on this issue; however, this article has a general character, this means that many actions of people can be part of this type of crime and be punished.

In comparison, the Netherlands has a specific law for the protection of copyright, the Dutch Copyright Act has 10 articles that accurately develop the different behaviors and cases that violate copyright, and this law determines the punishment for each case.

In spite of the great difference in the number of articles that the Dutch legislation contains, we can affirm that the articles that protect the author rights in the Nether-

lands with the Penal Code of Bolivia have a very important similarity. The DCA has the same acts that violate copyright in different articles because they are more specific, not only with the description of the behaviors, but also with the penalties to impose, but they contemplate the same assumptions of fact.

The punishment:
In Bolivia, the generality of article 362 of the Penal Code is observed in the punishments to the typified conducts, since it only establishes that the sentence of 3 months to 2 years in prison and a fine according to the minimum wage.

In the Dutch Copyright Act, the penalties and fines are specified for each of the behaviors that infringe the copyright, therefore the authorities apply the law directly and do not resort to a personal and subjective judgment of the judge as in the case Bolivian.

In general, compared to the Bolivian punishment, the Dutch is higher. In Bolivia, the highest punishment for imprisonment is 2 years and, in The Netherlands, it is 4 years. A fine that has to be paid depending on the cases is as high as 60 days of salary in Bolivia but the hightest amount to pay in The Netherlands is 82,000euros, which are about 656.000 bolivianos.

The violation of copyright usually does not have a punishment in jail
In Bolivia there are not many cases in which people go to jail for committing this type of crime. Since it is very difficult to prove the subjective element established by Article 362, which consist of the intention that the subject had to generate an injury to the author of the work, so that the judge may order the sanction in jail. However, in order not to leave these crimes unpunished, the judge determines the payment of a fine.

Also, in the Netherlands people are not usually imprisoned for committing crimes against copyright, there are very few cases, but the authorities provide heavy fines to offenders as a measure of repression.

Administrative protection of copyright
In Bolivia, SENAPI is an administrative institution that provides general protection to copyright and related rights, provides the solution of conflicts through the conciliation and arbitration process. When people exhaust this regulation, SENAPI sends the cases to the Criminal Courts.

In the Netherlands, there is BUMA-STEMRA, which is an institution only for music and the rules only apply to members. A case of infraction goes to trial but the laws of the DCA apply.

The protection of copyright in the digital age
Bolivia despite the fact that article 362 of the Penal Code establishes that the violations of the copyright can be made by the use of any means of diffusion of information, in

the enter the internet as a means of diffusion of works; is not ready for the digital era. Since there is no law that regulates the use of personal or public data on the Internet, it also does not have specialized institutions and mechanisms to control the access and use of information on the Internet. Therefore, the works found on the internet are susceptible to be used without author authorization, without even the author knowing the identity of the person who violated his right.

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