In order to invest and carry out commercial activities in Colombia, it is fundamental to take measures to protect and use your company, product or service’s intellectual property rights correctly. This ELANBiz InfoCard provides a general description of the intellectual property system in Colombia. It identifies some of the habitual problems, which your company can face in this area. It offers practical information in order to achieve the necessary protection, and it describes the Colombian institution in charge of accreditation, recognition and protection through current Intellectual Property regulation.

**What are intellectual property rights?**

Intellectual Property (IP) refers to trademarks, inventions, designs or any other form of creation, about which the person or company has legal rights. If IP has not been registered, the legal protection it can receive is very limited. It covers only elements such as copyright, confidential information or trade secrets. On the contrary, the registration is a necessary condition for the legal protection of other forms of IP such as patents, trademarks or industrial designs.

**What is the legal framework applicable in Colombia?**

Colombia is a member of the World Trade Organization (WTO) since April 30th, 1995 and signed the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). In consequence, its legal framework for recognition and protection of IP is, basically, similar to the one existing in the EU and other developed markets. Colombia has also signed a series of International Treaties, such as the Paris Convention (1996), the Bern Convention (1988) or the Patent Cooperation Treaty (2001). These facilitate the registration of trademarks and copyright, as well as the recognition of patent registrations among signatory countries. Colombia also signed the Madrid Protocol in 2012 about the international registration of trademarks, which regulates trademark registration recognition. The last part of this InfoCard includes links to consult the entire texts of these Treaties.

While there is a single intellectual property regime in the Andean Community of Nations (Comunidad Andina de Naciones – CAN) (Decision 486 of 2000 for intellectual property; Decision 351 of 1994 for copyright and related rights; and Decision 345 of 1994 for breeder’s rights for varieties of plants), there is no single community registration for such creations for their protection in all Member Countries. Therefore, due to the territoriality principle, the corresponding requests for each country in the CAN must be presented in
order to have protection in each country (unless in the case of copyright and related rights).

In relation to the registration of software IP, the Colombian legislation protects it under copyright “Derechos de Autor”, differentiating it from hardware, which is considered industrial property. This way, Law 33 of 1987 and Law 565 of 2000, ratify the international obligations for software protection as subject to copyright.

Lastly, it is necessary to mention that Colombia has been invited to become the 37th member of the Organization for Economic Cooperation and Development (OECD). The adhesion of Colombia will enter into force once it has completed its internal ratification procedures of the OECD Convention, and once it has deposited its adhesion instrument.

The OECD is an organism which follows closely the advancements of member countries regarding policies strengthening IP and innovation to face the economic and social challenges of globalization.

The Entrance of Colombia to the OECD generates an important impact to elevate protection standards for IP rights, given that Colombia is expected to improve its practices in science, technology and innovation policies.

**The Trade Agreement between the European Union and Colombia strengthens the existing legal framework**

Title VII of the Trade Agreement Colombia-European Union foresees the rights and obligations about intellectual property in the framework of the TRIPS agreement.

The Trade Agreement includes provisions complementing the TRIPS agreement in order to achieve a greater protection. In this way, the obligations already agreed upon by the parties regarding intellectual property are reaffirmed, and there is a special mention to complying with the main international agreements signed by Colombia. The Agreement also makes special emphasis on the importance of intellectual property in the internet. Additionally, it foresees particular provisions to establish responsibility for internet service providers.

This Agreement also establishes registration procedures for geographic indications, and it grants a particular protection to “notoriously known trademarks”. Designs and patents also have their particular regulation. As far as copyright, the Agreement introduces

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references to the protection of technological measures, the management of rights, and
the promotion of the artist’s rights to re-sell.

Lastly, and regarding the protection of traditional knowledge, the Agreement
acknowledges the importance and value of biological diversity and its components. And
the fact that innovations and creative expressions of indigenous and local communities,
including Afro-Colombian communities, constitute intellectual property.

**Copyright:** Although, according to the provisions in the Bern Convention, copyright
registration is not necessary, in order to obtain ownership of the right, it is highly
advisable to guarantee effective protection in Colombia. The period of protection granted
to this form of IP is 80 years from the death of the author, pursuant to Law 23 of 1982.
In the cases in which a literary or artistic work has a legal person as the owner, the term
for protection will be 70 years after the work’s first authorized publication (Law 1520 of
2012).

**Industrial Property:** This term covers all the main forms of IP, such as patents,
trademarks, industrial designs and utility models. The Organism responsible is the
Superintendence of Industry and Commerce (SIC), attached to the Ministry of
Commerce, Industry and Tourism (MINCIT). In order to guarantee legal protection
to these forms of IP in Colombia, it is necessary to carry out the registration in the country.
The “right to priority” acknowledged by the Paris Convention grants a temporary
protection in Colombia to the industrial IP registered in any other country having signed
the Agreement.

- **Trademarks:** due to the practice of “cybersquatting” –registration of known
  trademarks as internet domains with the intention of selling them to their
  proprietor– it is advisable to register the domains corresponding to trademarks
  well in advance. The validity term for trademarks is 10 years after the date in
  which they are granted, this is the date in which the administrative act granting
  the registration becomes official. It can be renewed for 10-year successive
  periods.

Likewise, it is important to have in mind that a trademark registration can be cancelled
before the Superintendence of Industry and Commerce in 3 cases:

- **For no use:** If the trademark registered has not been used in at least one of the
countries of the Andean Community, without justification, during the three years
prior to the date in which cancelation is requested.
- **For notoriety:** If the registered trademark is identical or similar to one that has
been notoriously recognized, pursuant to current legislation, at the moment its
registration is requested.
- For popularization: If the holder of the registered trademark provoked or tolerated that it became a common or generic sign to identify products or services for which the trademark is registered.

Through resolution No. 3718 of 2016 the SIC established the criteria for registration of:

- Three-dimensional trademarks
- Sound trademarks
- Color trademarks
- Texture or tactile trademarks


- Patents and utility models: they are protected by a maximum period of 20 and 10 years, respectively, since the request for registration is submitted. Pursuant to the PCT, of which Colombia is part, it is possible to request the registration of a patent to the WIPO (World Intellectual Property Organization) through the SIC. This has the purpose of requesting protection for the patent in multiple States simultaneously.

- Industrial designs: protection is granted for a period of 10 years from the registration request, and it is not renewable.

What are the most recurring IP problems in Colombia?

The compliance with the legal framework in Colombian when it comes to the protection of industrial property continues to be a problem, with very high piracy rates (especially with regard to digital content). This situation is fed by the weakness of the judicial system with an absence of judges specialized in this topic. There is also a lack of resources at the entities in charge of applying intellectual property rules, and a low efficiency in the police force regarding the prosecution of infringement of intellectual property rules. Infringement of IP rules is highly linked to the existence of an informal sector, which is still very important (an estimated 55% of the Colombian economy). The counterfeiting of products affects large European perfume brands, as well as leather products. These products can be manufactured locally or produced in Asia and imported through smuggling many times.

Notwithstanding, Colombia has been taking measures for the control and protection of IP. Besides the actions taken for the control of smuggling by the government, the SIC, through its Delegation for Jurisdictional Matters, performs duties related to consumer protection, and to protect Intellectual Property. In the same way, it receives unfair competition claims.
How to protect IP rights in Colombia?

The judicial resolution of disputes related to IP rights in Colombia can be slow and expensive. This is why it is always advisable to take a series of preventive measures, which can help hinder the violation of IP rights and to guarantee its effective protection.

A series of helpful recommendations is offered as follows:

- Register your IP rights in Colombia. The processing of registration requests has improved in a substantial way in the last years (6 to 9 months for the trademark to be registered or rejected, 38 months for patents). License contracts for trademark use do not require registration before the trademark office for it to be opposable to third parties. The registration request can be presented virtually before the SIC at the address: [http://sipi.sic.gov.co/](http://sipi.sic.gov.co/)

  In the same way the SIC, through Resolution 70252 of 2018 adopted the mechanism of “Accelerated examination of formal requirements in trademark and trade motto requests” with the purpose of making the process faster, and to reduce registration times. This guarantees efficiency and efficacy for national and foreign users of the industrial property system. [http://www.sic.gov.co/sites/default/files/normatividad/092018/resolucion_70252.pdf](http://www.sic.gov.co/sites/default/files/normatividad/092018/resolucion_70252.pdf)

- At the time of trademark registration, keep in mind the Nice international classification, which classifies products and services. It has 34 classes of products, 11 of services, and its eleventh edition entered into force on January 1st, 2017.

- Use the tools the SIC has put at the users’ disposition, such as: the Madrid Goods and Services Manager MGS, TMCLASS and TM5 ID List. These are harmonized data bases for products and services terms with the purpose of exchanging information, and establishing a better cooperation among the trademark offices in the world.

- For information and specific inquiries see the EU portal “IPR helpline” “developed in the framework of the Latin America IPR SME Helpdesk program”. Through this online service “IPR Helpline” provides free answers to inquiries about protection and implementation of IP for European SMEs that work or want to operate in Colombia, as well as other Latin American markets.
Answers are given within the following three business days, and in 5 languages, EN-SP-FR-GE-PT). For more information about this program: info@mercosur-iprhelpdesk.eu

- Obtain advise from lawyers specialized in IP regulation in Colombia before beginning commercial operations in that country.

- Consult with European organisms with presence in the country, such as Trade offices, and Chambers of Commerce, which can offer you helpful advice, as well as aid in case of a dispute.

- Establish good relations with local economic and corporate organizations.

- Talk to other companies present in Colombia or with previous experience in this market.

- Always consider mediation as a previous step to a judicial claim.

- Carry out an appropriate due diligence assessment before signing a contract or initiating a corporate relation with a Colombian partner.

- Include express non-compete, confidentiality, and protection to trade secrets clauses in your contracts.

- Be careful when deciding to allow your partner or client to register your IP rights on your behalf.

- Verify fees and costs of registration through the Resolution issued by the SIC each year.

- Periodically check online for new requests presented before the SIC’s Distinctive Signs Office in this address: http://serviciospub.sic.gov.co/Sic/ConsultaEnLinea/2013/index.php

Links of interest

International Treaties


- Patent Cooperation Treaty
• Bern Convention for the Protection of Literary and Artistic Works
  http://www.wipo.int/treaties/es/text.jsp?file_id=283700

• Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)

• Frequent questions about TRIPS
  https://www.wto.org/spanish/tratop_s/trips_s/tripfq_s.htm

• Text of the Trade Agreement Between the European Union and Colombia/Perú:
  (In this address you can find the agreement translated in all European Union languages).

National laws

• CAN Decision 486 de 2000:

• Industrial Designs:
  http://www.sic.gov.co/drupal/disenos-industriales

• National Copyright Directorate: www.derechodeautor.gov.co

• Copyright Manual:
  http://www.derechodeautor.gov.co/documents/10181/331998/Cartilla+derecho+de+autor+(Alfredo+Vega).pdf/e99b0ea4-5c06-4529-ae7a-152616083d40

• Law 23 of 1982:
  http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=3431

• Law 1520 of 2012:
  http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=46942#6

• Colombia and the WTO:
  https://www.wto.org/spanish/thewto_s/countries_s[colombia_s.htm

http://www.wipo.int/pct/es/texts/articles/atoc.htm
Public organisms in the country

- Superintendence of Industry and Commerce, Distinctive Signs Office

- Colombian Copyright Center:  

- IPR Helpline  
  [Helpline@mercosur-iprhelpline.eu](mailto:Helpline@mercosur-iprhelpline.eu): free answer to inquiries within 3 business days in 5 languages (EN-ES-FR-DE-PT).

Law firms with specialized lawyers

It is recommended to contact European organizations present in Colombia (embassies, trade offices, and bilateral chambers of commerce) to have access to specialized lawyers in IP matters.

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