



COPYRIGHT PROTECTION IN PHOTOGRAPHY

LA PROTECCIÓN DEL DERECHO DE AUTOR EN LA FOTOGRAFÍA

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The central axes of this article are Copyright and its close bilateral link with the Arts, particularly with Photography. It was developed under various research methods such as the collection of information from both physical and digital bibliographic sources, theses, articles, as well as legal material, interviews with photographers and lawyers, which served to deepen the topics that are going to be addressed. The fine line that is established between the twentieth art and its legal protection in society will be exposed, being important for every artist when it comes to maintaining their work through all the legislative procedures that support said process.

El presente artículo tiene como ejes centrales el Derecho de Autor y su estrecho vínculo bilateral con las Artes, en particular la con Fotografía. Se desarrolló bajo diversos métodos de investigación tales como la recopilación de información de fuentes bibliográficas tanto físicas como digitales, tesis, artículos, al igual que material jurídico, entrevistas a fotógrafos y abogados, que sirvieron para profundizar acerca de los tópicos que van a ser abordados. Se expondrá la delgada línea que se establece entre el vigésimo arte y su protección jurídica en la sociedad, siendo importante para todo artista a la hora de mantener su obra mediante todos los procedimientos legislativos que amparan dicho proceso.

Keywords: Protection, Copyright, Photography

Palabras clave: Protección, Derecho de Autor, Fotografía

INTRODUCTION

With the change from analog to digital, not only has the way of doing things in the world of photography changed, but it has also changed its legislative codes where the protection of Copyright in Photography is an issue of utmost importance in the Today's world, in which technology allows us to easily capture images and share them in a matter of seconds. However, it is essential to understand that behind each photograph there is an author, someone who has invested time, effort and creativity in its creation, therefore enforcing his rights is of utmost importance.

Copyright is a set of legal rules that protects a person's original creations, granting them the exclusive right to use, reproduce and distribute their work. In the case of photography, the author is the person who took the image and, therefore, is the owner of the rights over it, even if it has been sold to natural persons or civic or cultural institutions.

Copyright protection in the photographic field is established automatically from the moment the image is created. It is not necessary to register it or add any type of trademark or copyright notice for it to be protected.

This means that anyone who wants to use another's photograph must obtain permission from the author and, if they do not do so, they would be violating Law No. 154/2022 "On the Rights of the Author and the Performer" which in Articles 86.1 and 86.2 *Gaceta de Cuba (2022)*, establishes that it is only legal to use a work without the consent of the author when it is done, for example: a library, a documentation center, a scientific institution or an educational establishment, etc. and always with a non-profit nature and that the number of copies is strictly limited to the needs of a specific activity.

And it can also be registered in accredited institutions in this regard, not only to protect them as copyright but also as its intellectual right.

It is important to mention that Copyright in Photography also protects the integrity of the work. This means that the author has the right to prevent any modification, alteration or distortion of his photograph that could harm his reputation or damage her image.

Therefore, if someone uses a photograph without the consent of the author and modifies it in any way, he would be violating his rights, particularly the image right which is evident in the 2019 Cuban Constitution.

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DEVELOPMENT

Copyright regulated in Law No. 154/2022 “On the Rights of the Author and the Performing Artist”, published in the *Official Gazette of the Republic of Cuba*, refers to scientific, artistic, literary and educational works of an original nature, that have been or may be made public knowledge by any lawful means, whatever their forms of expression, content, value or destination.

This covers two types of rights: economic rights that allow the rights holder to obtain financial compensation for the use of his or her works by third parties; and there are also moral rights, which protect the non-property interests of the author.

What does copyright protect?

Copyright protects a wide range of works, including:

- Written works - books, speeches, magazine and newspaper articles, novels, short stories, poems, essays, plays, textbooks, Web pages, advertisements, and dance notes.
- Musical works - musical compositions, song lyrics, phone ringtones, in all types of formats (musical scores, CDs, MP3 files, etc.).
- Artistic works - drawings, paintings, photographs, vignettes, sculptures, architectural works and maps.
- Dramatic and choreographic works - plays, operas and dance. Movies and multimedia products - movies, video games, television shows, cartoons.
- Computer programs - human (source code) or machine (object code) computer programming languages.

Copyright does NOT protect ideas or simple facts.

Copyright protects the way ideas are expressed. This expression is the original way in which words, musical chords, colors, etc., are chosen and presented. What gives originality to a work is expression. This means that there can be many different works about the same idea and that they will all be protected by copyright, as long as they express that idea in an original way.

Is copyright the same around the world?

The specific rights granted to authors through copyright depend on the laws of each country. Therefore, the rights of authors in one country may not be exactly the same in other countries. Therefore, the use of the works can be somewhat confusing, especially in a world where works from different countries can be easily accessed, for example, via the Internet. To reduce this confusion, many governments have signed international agreements that attempt to close differences in their copyright laws and facilitate the use of works around the world.

The first international agreement that attempted to reduce the differences in the rights granted to authors in different countries was *The Berne Convention*, which has 163 members, being the most signed and recognized worldwide. It has three fundamental principles that are aimed at protecting the works and rights of authors, offering the means to control who uses their works, how and under what conditions, collected in the World Intellectual Property Organization (WIPO). Victor Hugo, the famous French author of *Les Misérables*, contributed to the creation of that Convention. He and other authors wanted to ensure that their rights were respected in countries other than their own. Victor Hugo contributed to the creation of *the Berne Convention*.

Since the adoption of the *Berne Convention in 1886*, authors enjoy a series of common rights in the more than 160 countries that have signed the Convention (its Member States). Each member state of the Berne Convention has to offer the same protection to the works of authors of other member states as it offers to the works of its national authors. An exception to this is the shortest term rule. Under this rule, a Member State is not obliged to offer protection to works by a foreign author for a period of time longer than the period of protection granted to those works in the author's country of origin. Furthermore, according to the *Berne Convention (1886)*, works do not have to be registered to be protected by copyright. Copyright protection is automatic from the moment the work is created.

What is copyright infringement?

Infringement occurs when a work protected by copyright is used (reproduced, translated, adapted, publicly displayed or performed, distributed, broadcast, or communicated to the public) without the permission of the rights holders and such use is not covered by any of the limits to copyright. Copyright infringement reduces the ability of authors to earn income from their works, and it harms us all by reducing the motivation of authors to continue creating works that we can all enjoy.

What is plagiarism?

Plagiarism is the act of copying a work, in whole or in part, pretending to be its original author. As we have seen in the previous section, ideas themselves are not protected by copyright, therefore, there is nothing wrong with writing about an idea that we find in another work. However, to avoid plagiarism, we have to express the idea in a personal and unique way. Sometimes an author has expressed an idea so well that we cannot express it better in our own words. In these cases, we can copy the original text word for word as long as it is enclosed in quotes or italics. These quotation marks or italics inform the reader that this specific text is taken from the work of another author. The original

author must be mentioned in the text, before or after the citation, or with a footnote. Most colleges, universities, and companies have strict rules against plagiarism. Although it is easy, on the Internet, to copy and paste someone else's work and say that it is your own, the consequences of plagiarism can be very serious, even when using the abused term postmodernist work.

The Photograph

Photography as defined by Michael Landford in his book *Photography step by step* (2004) as the procedure or technique that allows obtaining still images of reality through the action of light on a sensitive surface or on a sensor.

However, Vicente Aguilera Cerni in his book *Possibility and Impossibility of Art* (2017) maintains that photography, as an artistic medium, has its own specificity. That is to say, it is part of the modern creative expressions of man without being confused with any artistic manifestation temporarily prior to it such as painting or sculpture.

Photography is a technique for capturing images but its important aesthetic character cannot be ignored. However, "for a long time the status of photography" (Lipszyc, 1993) as a work of art was discussed. Photographic techniques have fundamentally changed since the invention of the daguerreotype, which turns 184 years old this year in 2023.

Today it is possible to capture images using cell phones, tablets or cameras. The digital era only represents a different way of photographing using new technologies. All of these expressions find their protection in legal regulations. For WIPO, photography means a fixed image produced on a surface sensitive to light or other radiation, regardless of the technical nature of the procedure (chemical, electronic, etc.) used to make the image (Lipszyc, 1993).

Personal image and Copyright

There are four possible protection systems for photographic works, namely:

- a. Protection by Copyright regulations without the requirement of particular requirements.
- b. Protection by Copyright regulations with the requirement of specific requirements for this.
- c. Protection by Copyright regulations in works considered artistic and protection as a related right for simple photographs (Lipszyc, 1993).
- d. Protection by specific protection norms (Lipszyc, 1993).

The Copyright regulations, being Law No. 154/2022 published in the *Gazette of Cuba* "On the Rights of the Author and the Artist Performer", protects both the moral rights and the patrimonial or economic rights of the photographer who is the author of the photograph. In relation to the first, moral rights, the photographer has the

right to decide whether or not to make his work known (right of disclosure), to have his paternity recognized (right of attribution) and to have it not altered (right of integrity). It is common in the case of photography that the right of attribution is violated, particularly in the virtual sphere, by not mentioning the author of the image by name or pseudonym.

In the same way, the right to integrity is violated in sectors such as the press, advertising or fashion through the use of image retouching with and without the consent of the photographer. In these cases, computer programs are used that range from very simple to highly sophisticated.

Perhaps the best known with a software license is Adobe® Photoshop® which allows the creation and editing of digital images, although this is not the only program that exists and even cell phones offer, among others, the possibilities of altering the brightness or focus among other forms of digital editing.

Copyright in Cuban Photography

Cuba enjoys having a very rich cultural heritage, mainly in the arts, hence the immediate need for the authors and creators of the works to protect them and register them in the corresponding association that protects said need. For this purpose, the Visual Authors Agency (ADAVIS) was created in 2001, with the mission of managing in the national and international territory the rights generated in favor of the owners by the use that a visual work may be subject to. It is the fundamental purpose of the institution to ensure that the greatest number of Cuban plastic artists become part of the repertoire of the Agency of Visual Authors, and to continue legitimizing their work in the international arena. ADAVIS is not only a possibility for artists, but also an alternative for those who need to use images and make use of the works of creators within a framework of legality.

ADAVIS is responsible for protecting, through the Law, the images of the creators of the visual arts. As an agency, it negotiates, controls and manages with those interested in purchasing its products, the possibilities of using the images of the visual works, in addition to dedicating itself to the distribution of the proceeds that come from this use to the owners of the work, in addition to offering guaranteed institutional, commercial and legal security, signing reciprocal representation agreements with similar institutions around the world.

Located in the building of the Center for the Development of the Visual Arts, in the Plaza Vieja of Old Havana, ADAVIS issues various contracts such as the General Transfer of Rights, the Transfer of Public Communication Rights (direct or indirect), the Transfer of Reproduction and Distribution Rights and the Contract for the Transfer of Transformation Rights.

It also offers among its services, the Image Bank in which authors register the works they wish to protect; the Contract System to which clients interested in reproducing a work can access, the Claims System in cases in which the integrity of that heritage is damaged or copyright is violated, the Advisory Council which is made up of important plastic artists who guide and help in decision making and a financial system that operates in the two currencies that circulate within the Island.

CONCLUSIONS

Copyright protection in photography is a very important issue that must be taken into account by all photographers, whether professional or amateur. In this work we have seen how copyright applies to photographs and what legal measures photographers can take to protect their works.

It is evident that piracy and unauthorized use of images are increasingly common problems in our digital society. For this reason, it is essential to be informed about our rights as authors and know how we can defend them.

The photographs are protected by copyright. In most countries, photographs are considered creative works and are protected by copyright. This means that the author of a photograph has exclusive rights over its use, reproduction and distribution.

The author of a photograph has the exclusive right to authorize or prohibit its reproduction, distribution, exhibition and modification. This applies to both analog and digital photographs. While not required, registering a photograph with a copyright office can provide greater legal protection in case of infringement.

There are certain exceptions to copyright that allow legitimate use of photographs without the author's permission. These exceptions vary by country and may include educational purposes, journalistic use, criticism and comment. Photographers may license the use of their photographs through contractual agreements. These licenses allow third parties to use the photograph in accordance with the terms established in the contract. Copyright in photography is protected internationally through international treaties and conventions, such as the Berne Convention. In conclusion, we must always remember that our photographs have artistic and intellectual value and deserve to be legally protected.

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