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Milestones and trends in intellectual and industrial property 2021

Report
World Intellectual Property Day

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1 FOREWORD

Since 2000, 26 April has been World Intellectual Property Day, coinciding with the date of entry into force of the Convention establishing the World Intellectual Property Organization ("WIPO") in 1970. It is therefore a day of reflection on the importance of intellectual property as an incentive for innovation, cultural creation, and economic growth.

We are in a time of profound change. The digital transformation, accelerated by the pandemic, is testing the classic intellectual property systems and their capacity to adapt to an ever-changing environment. While the courts continue to interpret concepts that are essential for the development of any digital business model, the legislator is busy (and concerned) with regulating the new models and surviving those that are becoming obsolete, such as physical distribution. These issues, with a forward-looking approach, are the focus of this report.

ECIJA, as one of the leading *full-service* firms in the Spanish market in TMT, Intellectual Property and Data Protection, wanted to commemorate this day by reviewing the **most important milestones in intellectual and industrial property matters** that have taken place in the last year, **as well as trends in each of the 16 countries in which we have offices** and other territories of legislative relevance in Asia, Europe, and Latin America.

2 EUROPE

2.1 European Union

i) 2020 regulatory milestones

In 2020, the European Union has seen the end of the transitional period agreed with the United Kingdom in the **Brexit arrangements**. The departure of a member state that is particularly strong in the field of cultural industries (notably audiovisual) has put to the test in the context of Brexit the capacity of European legislation to adapt to a very special context.

In February 2020, the **European Digital Strategy** was approved, which, although it encompasses a very broad series of actions, contains a specific section to consolidate a competitive and fair economy in which coordination between intellectual property rights and competition rules will play a fundamental role. At the same time, the CJEU has issued some highly relevant rulings, such as the ruling in case C147/19-, according to which "it may be inferred that a phonogram incorporated in a cinematographic or other audiovisual work loses its status as a 'phonogram' to the extent that it forms part of that work, without that circumstance affecting in any way the rights in that phonogram if it is used independently of the work in question".

In general terms, 2020 has been the year of implementation of the major measures adopted in the immediately preceding years, such as Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market and amending Directives 96/9/EC and 2001/29/EC, pending national transposition in several States, and the regulations arising from the Digital Single Market, which, given the scope of its reforms, are still in a relatively low state of development.

ii) Trends for 2021



The trends for 2021 at EU level are clearly marked by the development of the European Digital Strategy, and particularly by two rules that will directly affect business models based, in part, on the licensing of rights.

1. **Digital Services Act (DSA):** the European Commission published its draft in December 2020, which will fundamentally regulate the role of intermediaries, establishing new control mechanisms on digital platforms, classified according to their level of importance.
2. **Digital Markets Act (DMA):** designed as a competition issue, it aims to ensure the fair and reasonable functioning of large internet platforms in the face of asymmetry between the "gatekeepers" to the internet.

2.2 United Kingdom

i) 2020 regulatory milestones

The consummation of Brexit as of 1 January 2021 has meant a series of forced changes across the whole spectrum of intellectual and industrial property, as well as the UK's exit from the Digital Single Market. This means several disruptions, especially for UK citizens, in sectors as important as audiovisual. However, the UK remains a party to the Council of Europe's European Convention on Transfrontier Television, which maintains a certain stability in terms of cross-border production of audiovisual works.

The main changes in this unusual event are as follows:

- Trademarks: automatic creation of UK national trademarks equivalent to pre-existing European trademarks.
- Designs: automatic creation of UK national designs equivalent to pre-existing European trademarks.
- No exhaustion of trademark rights when bringing goods into the European Economic Area.
- Disappearance of cross-border portability between the EU and the UK.

ii) Trends for 2021

It is expected that over the course of the year there will be certain readjustments, the definition of which remains to be seen in terms of specific matters related to intellectual and industrial property which, despite Brexit, for the time being shows a high degree of convergence with European regulations due to the material impossibility of major changes having taken place. For the time being, no major changes are expected in terms of the framework of intellectual property rights, nor are major changes expected in terms of patents (due to its national base and the UK's participation in the *European Patent Office*, which is not an EU agency) or trademarks.

2.3 Spain

i) 2020 regulatory milestones



2020 should have been a decisive year in Spain to promote the adaptation of the Royal Legislative Decree 1/1996, of 12 April, approving the revised text of the Intellectual Property Law, regularising, clarifying and harmonising the current legal provisions on the matter, to the provisions of the copyright directive, i.e. Directive (EU) 2019/790 of the European Parliament and of the Council, of 17 April 2019 on copyright and related rights in the digital single market and amending Directives 96/9/EC and 2001/29/EC, which contains important provisions on the control of protected content by platforms or remuneration for content aggregation and whose transposition deadline is 7 June 2021.

However, the standstill generated by the pandemic has led Spain to focus on emergency measures, such as the suspension of the theatrical release requirement for cinematographic films (CUD/807/2020) or the reform of the system of tax incentives for production provided for in Law 27/2014, of 27 November, on Corporate Income Tax. The rest of the measures share the spirit of helping the creative sectors most affected by the pandemic situation.

More recently, the signing of a protocol sponsored by the Ministry of Culture and Sport for the protection of intellectual property rights involving creators and industry has been announced.

ii) Trends for 2021

The trend is undoubtedly marked by the necessary debate on the transposition of Directive (EU) 2019/790, whose development is slower than expected, and which will reform few aspects of the current law, albeit of great importance. The uneven functioning of the current fair compensation for electronic content aggregation services and the stricter control of online content, and especially its alignment with the mechanisms already existing in Spanish law, will be at the centre of much of the debate.

On the other hand, **the forthcoming approval of the new General Law on Audiovisual Communication is expected**, which incorporates major changes in terms of the framework for audiovisual services and whose processing at the date of issue of this report is advanced but slowed down following the mandatory report issued by the National Commission for Markets and Competition in January 2021.

The non-application of the special measures by COVID-19 and the adaptation of the regulations to new realities such as the change in the paradigm of exploitation windows in the audiovisual universe are expected to generate new rules in the course of 2021.

2.4 Portugal

i) 2020 regulatory milestones

The regulatory titles applicable in Portugal regarding copyright and related rights, as well as industrial property, have not been modified during 2020, but it is worth noting that **in 2019, the new CPI Industrial Property Code (of 2018) came into force, which contemplates the solutions implemented by the new European regulations**, such as those related to trademarks and protection of *know-how* and *trade secrets* and some changes at a procedural level, although its structure remains very similar to the previous code of 2003.

In addition, changes to the law on disputes arising from innovation of industrial property rights, including precautionary procedures for reference medicines, entered into force.



These are now subject to voluntary arbitration, thus repealing the prior arbitration regime required for such disputes.

ii) Trends for 2021

In 2020, the number of patent applications increased by 72% and this trend is expected to continue in 2021. Also due to the pandemic situation we live in today, pharmaceutical companies are in a constant fight for innovation and its registration as a way to protect their rights as patent holders.

3 LATIN AMERICA

3.1 Argentina

i) 2020 regulatory milestones

Landmarks in the country are concentrated in:

1. New technological platforms for the filing of registrations for the protection of intellectual and industrial property.
2. New requirements for requesting the consent of the authors and/or owners of photographic works for the effective registration of these works.
3. Provisions concerning the traceability of ownership of copyright in contractually acquired works.

Although the enactment of new Intellectual and Industrial Property laws in Argentina is scarce, it should be noted that there is a broad Intellectual Property legal regime (Law 11723) supported by Regulatory Decrees, National Decrees and ratified International Treaties, giving it an Authorial Regime aimed, for example, at regulating the use of works from the repertoires in acts of an advertising nature.

In turn, Law 25.036 extends Intellectual Property rights to software and other digital content works. On the other hand, Argentina is internationally recognised as a great bearer of creatives, a condition that is reflected in the creation of civil associations such as SADAIC and/or ARGENTORES, which regulate the activity of creatives from all branches.

One of the latest notable updates are the sanctions of decrees 4/2019, 6/2019, 8/2019, 10/2019 which implement the complete digitisation of the procedures for filing records in the field, new requirements for renewing and returning unpublished works whose ownership derives from contracts, the incorporation of terms such as "native editions in digital format" and the adaptation in the regulation of the contemplation of digital works.

The requirement for authors and owners of photographic works to give their consent for registration has been incorporated so that the registration information can be sent to INTER ARTIS ARGENTINA (collective management society for photography).

It highlights the preservation of a "pro-author" criterion in line with the series of international treaties on the subject to which Argentina has actively acted to adhere.

ii) Trends for 2021

We are witnessing a dizzying rise in the value of intangible goods. This phenomenon, related to technological progress and its consequences on habits and preferences, has



accelerated in recent times with the massive irruption of virtuality. Therefore, the trends are concentrated around:

1. Valuation of intangible assets by economic actors and society.
2. Streamlining protection and registration processes through digitisation and legal reforms.
3. Protagonism of the INPI (National Institute of Industrial Property) in the resolution of conflicts; reduction of time, costs and less judicialisation.

3.2 Brazil

i) 2020 regulatory milestones

Both 2019 and 2020 were important years for Intellectual Property in Brazil. Some new laws were enacted to regulate intellectual property in health and new technologies. Regarding the health field, with the pandemic caused by COVID-19, the National Institute of Industrial Property (INPI) created the Observatory of Technologies related to coronaviruses with the aim of helping to combat the pandemic.

In addition to the creation of the Observatory, the INPI also amended Resolution INPI 239 of 2019 with the edition of ordinance 149/2020 to regulate the priority of patent processes in progress in Brazil, whose technology is related to the virus. On the other hand, the government also promoted the ordinance 2466/2020 that created the Committee on Intellectual Property in Health with the aim of proposing actions and subsidising the activities of the Ministry of Health in the field of Intellectual Property.

In the field of new technologies, taking into account today's hyper-connected world, it became essential to develop new legal disciplines to regulate the virtual space. In this context, new rules on *cybersecurity*, technology and data protection have emerged.

Similarly, the year 2020 was a very important period of adaptation for Brazil to the country's effective accession to the Madrid Protocol, which took place in 2019. The Madrid Protocol is one of INPI's main projects in the field of Brazil's integration into the international Industrial Property system.

Recent years have brought to Brazil a new and more simplified procedure for the protection of trademarks at the international level. The reduction of bureaucracy in the registration of trademarks represents a facilitating element for the internationalisation of Brazilian companies and an incentive for the protection of national trademarks abroad.

ii) Trends for 2021

With the advent of new businesses and new dynamic technologies, it is essential that intellectual property brings together the multiple applicable rights over human intelligence inventions, such as patent rights, copyrights, trademarks, trade secrets and others. In this context, the role of Intellectual Property becomes even more important when applied to technologies that impact different sectors of the economy.

It is worth noting that the federal government has been working to develop a stronger IP strategy through a working group within the Ministry of Economy (GIPI), with the purpose of proposing actions and coordinating actions in IP. And a new programme to encourage the generation of IP assets in the country and their use as a competitive advantage. In addition, the *boom in e-commerce*, online education, use of digital



platforms, blockchain, big data, IoT and AI applications will have consequences on the regulation of software, technology transfer and intellectual property rights.

Finally, for the year 2021, there is great expectation for the final decision of the Federal Supreme Court on the validity of pharmaceutical patents in Brazil, which is currently 15 or 20 years, but with the delay in the analysis of applications for the granting of the INPI, this period of validity may be longer. The debate will revolve around the direct action of unconstitutionality (ADI) 5529 filed by the Attorney General's Office, which argues that the sole paragraph of article 40 of the Intellectual Property Law (LPI) Law 9279/1996 is unconstitutional. We will have to wait for the decision of the Federal Supreme Court to assess the eventual impact on the pharmaceutical and technology industry.

3.3 Chile

i) 2020 regulatory milestones

The situation following the COVID-19 pandemic affected the adoption of legislative initiatives during 2020. Progress was made on some legislation, but no major IP legislation was passed.

In the field of intellectual and industrial property, the main legislative initiatives suffered a major stalemate due to the situation generated by the COVID-19 pandemic, which led to priority being given to measures related to the health crisis and to the postponement of those affecting other areas.

Thus, in 2020, a bill was introduced to regulate non-voluntary licensing of intellectual property for the prevention, diagnosis, and treatment of diseases in the context of a pandemic.

Also, during 2020, the process continued to approve an important amendment to the Industrial Property Law No. 19.039, which establishes the National Institute of Industrial Property, in order to improve it and bring it into line with international standards in the field. Among other measures, this amendment aims to do the following:

- a) Incorporate protection of new types of distinctive signs, including three-dimensional marks and odours.
- b) Enforce the effective use of registered trademarks, including non-use as a ground for revocation.
- c) Criminalising the offence of trademark counterfeiting
- d) Restoring the right of priority in patents
- e) Incorporate provisional applications for patent rights.
- f) Restrictions on the maximum extension of the term of supplementary protections.
- g) Incorporate patent counterfeiting action
- h) New limitations to patent rights, namely private non-commercial acts, experimental and/or educational acts and the preparation of prescription medicines in certain individual cases.
- i) Extension of the term of industrial design registrations from 10 to 15 years.
- j) Extending the concept of business secrecy
- k) Implementation of an abbreviated system of industrial design registration without mandatory substantive examination, among others.

ii) Trends for 2021



A law regulating the intellectual property rights of artists, authors and performers of visual still image works has already been passed in 2021. In addition, some of the most awaited regulations on e-commerce, data protection and cybersecurity are expected to be approved during the year.

So far in 2021, the bill establishing new rules on the intellectual property rights of artists, authors and performers of still image visual works has already been passed. Among others, the law prescribes that they constitute expressions of the visual arts; the author of visual works of fixed image, graphic or plastic works of art shall enjoy the unwaivable, inalienable and non-transferable right by acts between living persons to receive 5 percent of the resale price of such work; it states that works of art shall be considered original works if they have been made by the author himself or under his authority; it states that the purchaser of paintings, sculptures, photographs, drawings and other works of graphic or plastic arts shall not obtain any right other than that of exhibiting the work without lucrative purposes; and it also establishes that the reproduction through photographs of monuments, statues and, in general, of the artistic works that permanently adorn squares, avenues and public places or spaces that belong to the common cultural heritage, determines that the publication and distribution of such reproductions without lucrative purposes shall be licit and shall not be subject to remuneration.

Regarding the Trans-Pacific Partnership Agreement (TPP11), the Senate has not yet approved it. As far as intellectual property is concerned, the treaty aims to promote innovation, creativity and facilitate the dissemination of information, knowledge, technology, culture and the arts. But some negotiations are suspended, mainly on copyright and patents.

In the area of e-commerce, new rules are currently in the pipeline which aim to improve the current legislation:

- Electronic Commerce Regulation. Its main purpose is to protect consumers who purchase products or services electronically, so that suppliers provide more and better information.
- Pro-Consumer Law Project. Aims to facilitate the acquisition of products and services by consumers, as well as to guarantee their protection.

For its part, the Government's draft law regulating the protection and processing of personal data and creating the Personal Data Protection Agency continues its approval process and is expected to be finalised in 2021. The fundamental measures that are planned to be approved with this text represent a rapprochement of Chilean data protection regulations with the General Data Regulation of the European Union. These include:

- Creation of a Data Protection Agency with interpretative supervisory powers, both to receive complaints from citizens and to impose sanctions.
- Establishment of a system of fines and penalties for non-compliance.
- Expansion of the universe of lawful sources allowing the processing of personal data.
- Incorporation of new rights in favour of the data subject, such as the right of portability, which allows the transfer of data from one data controller to another.

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- s) New limitations to patent rights, namely private non-commercial acts, experimental and/or educational acts and the preparation of prescription medicines in certain individual cases.
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Regarding the Trans-Pacific Partnership Agreement (TPP11), it is still at a standstill in the Senate, which has not yet approved it. As far as intellectual property is concerned, the treaty aims to promote innovation, creativity and facilitate the dissemination of information, knowledge, technology, culture and the arts. But some negotiations are suspended, mainly on copyright and patents.



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- Expansion of the universe of lawful sources allowing the processing of personal data.
- Incorporation of new rights in favour of the data subject, such as the right of portability, which allows the transfer of data from one data controller to another.

Finally, a government bill is being processed to bring Chilean legislation on cybercrime into line with the Budapest Convention signed by Chile. This is an international agreement that seeks to equalise criminal offences for cybercrime in all member countries so that cybercriminals, who often operate from a third country, can be prosecuted transnationally.

3.4 Colombia

i) 2020 regulatory milestones

In 2020, the IP regime in Colombia was not modified in law, but several regulations were issued in this area:

- Decree 1650 of 2020 (modifying the integration of the Intersectoral Commission on Intellectual Property);
- Decree 474 of 2020 (extending the validity of the Colombia Film Fund and establishing the right to apply for Audiovisual Investment Certificates in Colombia);
- Resolution 361 of 2020 of the Ministry of Science (adopting the Intellectual Property clause to be included in public calls for proposals issued by the Ministry);
- SIC Resolution 59671 of 2020, amended by SIC Resolution 62571 of 2020 (amending or adding Chapter One of Title X of the Sole Circular of the Superintendence of Industry and Commerce ("SIC"), in relation to the application for registration of trademarks) establishing, among others, new requirements for claiming colour in mixed, figurative, three-dimensional, etc. trademarks (except for those of colour); as well as for the registration of sound, colour, position, and animated trademarks (these amendments came into force in September 2020). (except colour marks); as well as for the registration of sound, colour, position, and animated marks (these amendments entered into force on 25 September 2020).



Law 2080 of 2021 amended the Code of Administrative Procedure and Administrative Disputes, establishing that nullity actions on Industrial Property matters will have two instances (and not a single instance before the Council of State): the first before the Administrative Court of Cundinamarca and the second before the Council of State. This amendment will enter into force as of 26 January 2022.

The highlight of 2020 was the implementation of incentives for audiovisual investment in Colombia through the granting of CINA certificates (Decree 474 of 2020) issued by the Colombia Film Fund, which provides income tax discounts of up to 35% of the value of the investment made in the country and maintains the income tax exemption (law 1943 of 2018) for orange economy companies incorporated before 31 December 2021.

There were also several positive changes for the digital registration of trademarks, particularly the strengthening of virtual procedures for the registration, renewal, and cancellation of trademarks through the virtual platforms of the Superintendence of Industry and Commerce.

Finally, it should be noted that in 2020 the Superintendency signed collaboration agreements with the Inter-American Association of Intellectual Property with the aim of adopting measures to promote and train in the use of consultation and dissemination of industrial property through technological tools, further facilitating access to intellectual property protection services despite the difficulties arising from the outbreak of Covid19.

ii) Trends for 2021

The trend of encouraging and promoting intellectual property registrations is expected to continue. In the last months of 2020, the Superintendence of Industry and Commerce granted trademark protection to 86 signs, and there has been an increase in the number of trademark applications at the national level, which shows that entrepreneurs are increasingly valuing their intangible intellectual property assets.

We expect the incentives for the country's creative industries, the preservation of the FDC (Film Development Fund) and the tax incentives of law 814 of 2003 for investors and donors to the national film industry to be maintained. We also foresee that the quotas for the incentives of law 1556 of 2012 (Cash rebate and CINAS) for audiovisual works (film, television, video games, web series, advertising, among others) will be preserved and maintained. Calls from Colombia Crea Talento (CoCrea), a corporation associated with Decree 697 of 2020, charged by the Ministry of Culture with carrying out the calls for the application of the tax incentive of deduction for investments and donations to creative economy projects, corresponding to 165% of the actual value invested or donated for the taxable period in which the investment or donation is made.

Support for economic reactivation, specifically support for the orange economy industries, is vital and indispensable for overcoming the sectoral and economic crisis generated by COVID-19.

In our opinion, this economic reactivation will generate an exponential increase in the number of registrations of distinctive signs, especially trademarks, since in recent years entrepreneurs have become more aware of the value of industrial property in their businesses. Virtuality has helped to facilitate these procedures for entrepreneurs and has also influenced the discounts granted to small and medium-sized enterprises, but it has not yet been possible to position the protection of intellectual property as a priority when setting up companies. We hope that, with the strengthening and boosting of investment in the creative industries, industrial property will be one of the fastest growing areas in the country.



3.5 Costa Rica

i) 2020 regulatory milestones

There have been no new laws, however, there is a draft law 22.304, Law on the attraction of film investments in Costa Rica since 13 November 2020. Also, on the occasion of the pandemic, the President of the Republic, in collaboration with the World Health Organisation (WHO), launched the "COVID-19 Rights Repository" (CAP), a major milestone for our country in terms of intellectual and industrial property.

The "CAP Repository" is a platform for sharing data, knowledge, intellectual property and facilitating equitable access to life-saving health products against COVID-19. The President's launch of the repository with the WHO put Costa Rica on the map, as the call for solidarity was intended to benefit, without distinction, all nations facing - and still face - the SARS-COV2 crisis.

This, coupled with advances with convalescent serum treatments and other initiatives in the field of innovation, brought the importance of intellectual property to the table. On the other hand, while Bill 22.304 does not go directly to the heart of intellectual property, it does relate to an industry that has intellectual property at its core.

This, in addition to being indicative of the interest of our Legislative Assembly in this matter -which in itself is a great achievement-, we consider that it opens the door to other initiatives that seek, in parallel, to strengthen the existing legislation in the face of the new challenges that a growing film industry will face, and even to reactivate bills that have been dormant in our Legislative Assembly for several years.

ii) Trends for 2021

Nor did 2020 bring significant progress on intellectual/industrial property, as the priorities of the legislative apparatus focused on the pandemic and public employment reform, as a fundamental and necessary requirement of Costa Rica's agreement with the International Monetary Fund (IMF), seen as a palliative to the country's fiscal crisis.

3.6 Ecuador

i) 2020 regulatory milestones

In 2020, no new laws were passed in Ecuador to regulate and modernise aspects of intellectual and industrial property. However, there are important aspects to highlight.

Currently in the National Assembly of Ecuador, the Draft Organic Law that Reforms Various Legal Bodies to Strengthen the Prevention and Combating of Illicit Trade, Strengthen National Industry and Promote Electronic Commerce is being processed for second debate and will soon be approved.

The main objectives of this legislative initiative are: to guarantee the intellectual property rights of natural and legal persons, as a transcendental instrument for the development of the country; to reduce the consequences of illegal trade in counterfeit goods, which affect and damage intellectual property rights; and, finally, to promote intellectual construction, through a clear legal framework that protects know-how, technology and



intellectual capital, fundamental instruments for competing in a globalised market economy.

ii) Trends for 2021

Ecuador is close to approving the ratification of the "Protocol of Amendments to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)" in accordance with its internal legislation.

The ratification of the amendments to this Protocol brings great benefits mainly for those countries whose pharmaceutical production is scarce and to guarantee the right to public health of their citizens must resort to compulsory licensing. Thus, the amendment to article 31 bis mentions such authorisation and is presented as one of the TRIPS flexibilities, which allows the issuance of compulsory licences, i.e. a licence without the authorisation of the patent holder, under certain conditions, one of them being to supply the domestic market.

According to data from the Ministry of Public Health and the National Service for Intellectual Rights (SENADI), despite the fact that compulsory licences are already regulated in Ecuadorian legislation, there is currently not a single licence in force, hence the need to amend the Protocol.

3.7 El Salvador

i) 2020 regulatory milestones

There are currently no new laws or reforms to the regulations already in force in El Salvador.

ii) Trends for 2021

With the entry into force of the law on electronic commerce, electronic signature and other regulatory bodies currently under discussion, we expect to see an increase in demand for intellectual property services relating to copyright (web developments, applications), licensing and domain protection (through the industrial property system).

3.8 Guatemala

i) 2020 regulatory milestones

The latest legislation on intellectual and industrial property that has been approved in Guatemala dates back to 2014. These are Governmental Agreements 95-2014 and 148-2014 related to the implementation of the Association Agreement with the European Union.

In Guatemala, for several years now, the Congress of the Republic has been obliged to approve legislation derived mainly from the free trade agreement with the United States (DR CAFTA), however, the Congress of the Republic of Guatemala has not been willing to include it in the legislative agenda.

ii) Trends for 2021

This year, the Guatemalan legislator is not clearly inclined towards any specific Intellectual / Industrial Property matter. The Guild of Lawyers specialised in Intellectual



Property has dealt with the issue of plant varieties several times in a doctrinaire manner, since in Guatemala they were regulated in the Industrial Property Law, however, on the part of the Congress of the Republic, no adequate initiative has been seen.

In Guatemala, the Industrial Property Law was reformed in 2014, however, this reform did not become effective, as it was repealed before coming into force, so there is no current legislation on plant varieties. Several times the issue has been discussed by different IP lawyers in Guatemala, however, Congress has not made any concrete proposal related to the issue, nor has it been seen to support any other intellectual property trend.

3.9 Honduras

i) 2020 regulatory milestones

During 2019, the only film law in Honduras was approved. The objective of this law is to protect and promote the national creative initiative in film production, due to its nature associated with the cultural heritage of Honduras and the formation of collective identity, film and audiovisual activity is of social interest, therefore, it is the object of the law, the development of the industry including all sectors and activities to convene the conditions of participation and competitiveness in the national cinematography.

The trends we expected in the country during 2020 were aligned with **greater protection and regulation of intellectual property rights in the Fintech sector**, as well as an increase in dispute resolution through alternative methods such as conciliation and arbitration, since the consequences of COVID-19 will increase the development of business through digital platforms and the Law for the Promotion and Protection of Investments in force since 2011 in Honduras, provides that **intellectual property disputes must be resolved primarily by arbitration**, unless otherwise agreed.

ii) Trends for 2021

- Improving the Electronic Platform for the Filing and Monitoring of Industrial Property Applications
- Adaptation of the Trademark Register to the Eleventh Edition of the Nice Agreement.
- Greater protection of Intellectual Property Rights that are disseminated over the internet, especially through social networks.

As a result of COVID-19, the Government of Honduras implemented an Electronic Platform for the Filing and Follow-up of Industrial Property Applications, since previously the procedure for filing such applications was exclusively physical and in person. Although this is a great step forward, there are still difficulties in the technical handling of the platform and the obligation to file physical documentation remains.

Likewise, in accordance with the progress made by the World Intellectual Property Organisation, the study and implementation of the Eleventh Edition of the Nice Agreement for the Registration of Marks in Honduras is required, in order to standardise the criteria for the Classification of Marks, as is being done in other countries.

Finally, in Honduras there is no specific regulation that adequately protects copyright, related rights, and industrial property rights in the face of infringements arising from technological advances and constant changes through the internet, social networks and websites that allow video sharing, hence the need for the government and the authorities of the judiciary involved in the protection of these rights to establish measures to monitor complaints and lawsuits that arise in this area.



3.10 Mexico

i) 2020 regulatory milestones

On 1 July 2020, the new Federal Law for the Protection of Industrial Property (LFPPI) was published, repealing the previous Industrial Property Law (LPI). On the same date, the reform of the Federal Copyright Law was published, regarding technological measures for copyright protection and internet service providers.

The new LFPPI entered into force in November 2020. Below, we highlight some relevant aspects: The validity of trademark registrations will now be computed from the date on which such registration was granted (art. 178).

It is confirmed that the filing of the declaration of trademark use in the third year is mandatory only for trademark registrations granted as of 10 August 2018 (eleventh transitional provision). The prohibitions for the registration of trademarks that are contrary to morality are eliminated, however, the prohibition of those that are contrary to public order is maintained (art. 12).

Likewise, the obligation to submit trademark use licences to the IMPI for registration in order for them to be effective before third parties is eliminated; however, it may be advisable to do so according to the study of the specific case. It will be possible to bring partial cancellation actions against trademark registrations granted under the terms of the LFPPI (art. 258).

When a trademark infringement proceeding before the Mexican Institute of Industrial Property (IMPI) has been initiated, the latter may determine the amount of damages caused and the corresponding compensation (art. 398).

The IMPI will not admit trademark nullity proceedings, if opposition has been previously filed, when the arguments and evidence are the same, in respect of which it has already ruled (art. 259). The IPL Regulation (1994) will remain in force until the new regulation is issued (fourth transitory provision).

ii) Trends for 2021

Currently in Mexico, modifications to the legal framework (mainly health) are being discussed in relation to allowing certain uses of cannabis (medicinal, recreational, commercial, industrial).

This may prompt revisions to the intellectual property regulatory framework, in particular with regard to the granting of trademarks, patents, plant varieties and protection of traditional knowledge.

Interest in patents related to cannabis uses is increasing internationally.

Within this context, Mexico is considered to have a great commercial potential in relation to the exploitation of cannabis and its derivatives. In contrast to the above, the LFPPI prohibits the granting of patents, registrations or authorisations relating to any of the figures in the law that are contrary to public order or contravene any legal provision. Therefore, amendments to the legal framework that allow for the protection of cannabis-related products and services are necessary.



Furthermore, research in the field is also increasing interest in related forms of protection, e.g. plant varieties. Mexico previously signed the 1978 version of the International Convention for the Protection of New Varieties of Plants (UPOV), which gave rise to the Federal Law on Plant Varieties, which has been in force since 1996.

Since Mexico signed the Trans-Pacific Partnership Progressive Integration Treaty (TIPAT) and recently the Treaty between Mexico, the United States and Canada (T-MEC), Mexico is obliged to accede to the 1991 version of the UPOV Convention. This means that the legal framework for plant variety protection will have to be updated. The growing interest in cannabis protection may provide an additional impetus to update the legal framework.

3.11 Nicaragua

i) 2020 regulatory milestones

Legislation in the country is relatively modern and in conformity with average international standards. Sustained legislative efforts have been made over the years to reflect the best international standards.

During 2020, Law No. 1042, **Special Law on Cybercrime** (La Gaceta, Diario Oficial No. 201, 30 October 2020) was adopted. Among other offences, it criminalised conduct relating to:

Offences related to the integrity of computer systems (inter alia: improper access to computer systems; improper access to computer programmes or data; interception of communications and transmissions between IT systems; improper tapping of other people's IT communications; interference with the computer system or data; alteration of or damage to data integrity and availability; damage to computer systems, possession of equipment or provision of services to breach computer security).

Computer-related offences (inter alia: computer fraud; computer espionage; tampering with records; fraudulent manipulation of smart cards or similar instruments; improper obtaining of goods or services by means of smart cards or similar means; breach of confidentiality; impersonation and misappropriation of computer identity; transfer of classified public information

Computer-related crimes related to sexual freedom and integrity, among others: use of children, teenagers, or persons with disabilities in need of special protection in pornography through the use of information and communication technologies; corruption of persons under 16 years of age or persons with disabilities in need of special protection through the use of information and communication technologies; harassment through the use of information and communication technologies.

ii) Trends for 2021

There is no known legislative agenda to resume the efforts that have been made to comply with international conventions in this area. The following table shows the legislation and international conventions signed by Nicaragua:

Brands

- Law 380 Trademarks and Other Distinctive Signs
- Law 580 Reforms and Additions to Law 380
- Criminal Code
- Decree 83-2001 Regulation to Law 380
- Decree 25-2012 Amendment and Addition to the Regulation



- Ministerial Agreement 22-2011 Nice Classification (Goods and Services)
- Paris Convention for the Protection of Industrial Property
- Inter-American General Convention on Trademark and Trademark Protection
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994)
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration
- Chapter XV Free Trade Agreement between the United States of America-Central America-Dominican Republic CAFTA-DR
- Trademark Rights Treaty (TLT)
- Ninth Edition Nice Classification (Goods and Services)

Our **trademark legislation** was drafted based on a WIPO model law, so that, for its legislative approval, an old Central American Convention for the Protection of Industrial Property, which did not reflect modern universal standards, had to be repealed. With the disappearance of the old requirement of the sign's visibility, the registration of sound, smell, taste and tactile marks is now permitted.

Similarly, according to Article 15 of the TRIPS Agreement (TRIPS), the legality of the trademark has nothing to do with the legality of the product. Article 6 quinquies of the Paris Convention was also incorporated, which allows the registration of the trademark "as registered" in another EU country (there are specific exceptions, relating to public order and unfair competition).

The exhaustion of the exclusive right to the trademark deriving from the first international use of the trademark was also incorporated, which goes far beyond the European parameter that is restricted to the first use of the trademark within the Community.

However, there is inconsistency between the law and its regulations regarding the accreditation of the use of the trademark to avoid a cancellation action: the law requires that the use be accredited within the national territory and the regulations establish that such use can be extended to WTO member countries.

The law introduced the novelty of the "certification mark", which is the Spanish equivalent of the "guarantee mark", thereby extending the function of the trademark system beyond the international parameter, so that it serves to express not only the origin of the product but also its quality.

Similarly, the law incorporated most of the provisions of the "Joint Recommendation of the Paris Union and WIPO concerning the Protection of Well-Known Trademarks of 1999". Thus, in our legislation, protection is extended to this type of trademarks without requiring their registration, nor restricting them by the principle of specialty. It does, however, require that they be known - by the relevant sector - within the country. In order to prove the use of a well-known trademark, its use as a domain name can be invoked. Similarly, in the event of a conflict between a well-known mark and a domain name, protection is granted to the former.

Author

- Law 312 Copyright and Related Rights
- Law 577 Amendments and Additions to Law 312
- Law 322 Protection of Programme-carrying Satellite Signals
- Law 578 Amendments and Additions to Law 322 Law on the Protection of Satellite Programme-carrying Signals
- Penal Code
- Political Constitution
- Decree 22-2000 Regulation to Law 312
- Decree 24-2006 Amendments to Decree 22-2000



- Decree 44-2000 Regulation to Law 322
- Berne Convention for the Protection of Literary and Artistic Works (1886)
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961)
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms (1971)
- WIPO Copyright Treaty WCT (1996)
- WIPO Performances and Phonograms Treaty WPPT (1996)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994)
- Chapter XV Free Trade Agreement between the United States of America-Central America-Dominican Republic CAFTA-DR

Our **copyright legislation** dates back to the year 2000. An important novelty it introduced, following the Spanish law of 1996, was the inclusion of software or computer programs within copyright; protection that extends to the source code or program and includes both the original program and its successive versions.

Our copyright law does not define databases, however, they are covered by its protection. In addition, a number of international treaties adhered to by the country are applicable, such as TRIPS (art. 10); WIPO (art. 5) and the Berne Convention itself (art. 2). To these must be added the free trade treaties concluded by the country with the USA, Mexico and Taiwan.

Patents

- Law 354 Patents of Inventions, Utility Models and Industrial Designs
- Law 579 Amendments and Additions to Law 354
- Law 634 Reform and Addition to Law 354
- Law 324 Protection of Layout-Designs of Integrated Circuits
- Criminal Code
- Decree 88-2001 Regulation to Law 354
- Decree 16-2006 Amendments to Decree 88-2001
- Decree 38-2001 Regulation to Law 324
- Ministerial Agreement 082-2002 International Classification of Marks and Patents
- Patent Cooperation Treaty (PCT)
- Regulations under the Patent Cooperation Treaty (PCT)
- Strasbourg Agreement International Patent Classification
- Locarno Agreement International Classification for Industrial Designs.

Our **patent law**, which also dates from 2000, includes the protection of inventions, utility models, industrial designs, trade secrets and the prevention of acts constituting unfair competition. The previous law dated back to 1899. Among other novelties, this legislation introduced:

The introduction of absolute patentability requirements (universal novelty, inventive step and industrial application). The previous law (1899) did not contemplate either the inventive step or the requirement of universal novelty, a relative step being sufficient.

The law requires the scope of the invention to be limited by means of claims. It also establishes the limitations to the patent right and the exhaustion of the patent right.

The law regulates inventions made by contract and the recognition of the moral rights of the inventor; it also regulates utility models and industrial designs.



With regard to the protection of rights, the law provides for reasonable parameters, regulating infringement and claim actions, precautionary measures and border measures. Unfair competition and trade secret actions.

Following the principle of non-discrimination established in the TRIPS Agreement (TRIPS), our legislation extends protection to sectors such as pharmaceuticals, as all fields of technology are covered, provided that the inventions are new, involve an inventive step and are susceptible of industrial application.

Similarly, in compliance with art. 39 of the Agreement on Trade-Related Intellectual Property Rights (TRIPS), the data supplied to the registration authorities (toxicological information, clinical trials, etc.) relating to the health registrations of pharmaceutical products are protected.

Vegetable Varieties

- Law 318 Protection for New Plant Varieties
- Decree 31-2000 Regulation to Law 318
- International Agreement for the Protection of New Varieties of Plants UPOV 1978 Act

3.12 Panama

i) 2020 regulatory milestones

There have been no regulatory changes in 2019. The last regulation issued in Panama was Executive Decree No. 85 of 4 July 2017, regulating law no. 35 of 10 May 1996 on industrial property, as amended by law no. 61 of 5 October 2012.

ii) Trends for 2021

The advancement of technology brings benefits, and because of the pandemic, brand presentation processes have been digitised as well as improved brand management systems.

Regarding trends, we can mention that incentives for innovation have been strengthening and organising strategies that boost technological development and, therefore, intellectual property, thus promoting the protection of knowledge and the transfer of technology.

3.13 Puerto Rico

i) 2020 regulatory milestones

In general terms, the rules applicable to Intellectual Property were not altered in Puerto Rico during 2020.

There are several reasons for this, including the fact that legislative efforts have focused on the Island's economic recovery from the socio-economic impact of the COVID-19 pandemic, on controlling the spread of COVID-19, and on the health of its population.

ii) Trends for 2021

They are expected to raise legal disputes related to the misappropriation of *trade secrets* due to the large number of companies that have moved their operations entirely or partially in-house. In addition, legal disputes are expected over the scope of patent



protections afforded by the patent system to entities that have applied for products and processes related to combating COVID-19. On the other hand, controversies are expected to arise in the area of trademark law for medical cannabis products.

The COVID-19 pandemic is expected to impact intellectual property law, as it is expected to raise legal controversies related to the misappropriation of trade secrets due to the large number of companies that have moved all or part of their operations to the home because of COVID-19. Remote working has opened the door for an entity's confidential information to be accessible to people who would not normally have access to it.

In addition, also tied to the impact of the pandemic, legal disputes are expected over the scope of protections afforded by the patent system to entities that have applied for patent protection for products and processes related to combating COVID-19. Similarly, patent infringement litigation is expected to increase because of the pandemic.

On the other hand, with a significant increase in the number of patients registered as authorised to receive medical cannabis treatment in Puerto Rico, the medical cannabis industry in Puerto Rico has developed rapidly. In this regard, it is expected that controversies will arise in the area of trademark law.

At the same time, due to Puerto Rico's efforts to attract foreign capital to invest in the island and the consequent establishment of technology companies, it is expected that a much more protective regulatory framework than the current one will be established. Therefore, it is possible that intellectual and industrial property legislation in this sector will be updated in the coming years.

3.14 Dominican Republic

i) 2020 regulatory milestones

The Dominican Republic, during the year 2020 and due to the pandemic, we are facing, approved Resolution No. RO-193-20 issued by the National Office of Industrial Property (ONAPI) on 29 July 2020, which regulates the issuance of digital certificates corresponding to applications for distinctive signs filed through the digital platform of the ONAPI, known as E-SERPI.

Before the suspension of the ONAPI's in-person service, the following services could be performed in person or through the E-SERP digital platform: **(i)** applications for trade name, sign or emblem, trademark and slogan registrations; **(ii)** request for change of address of the registration holder; **(iii)** special certifications; **(iv)** duplicates of registration certificates; and, **(v)** payment of trademark and slogan publications.

However, once the face-to-face service was suspended due to the pandemic, the E-SERPI platform became the rule for new applications for distinctive signs. In addition, ONAPI expanded the services available through its online platform, adding the following services: **(i)** renewal of trademarks; **(ii)** applications for changes of manager; **(iii)** application for registration of multiclass trademarks; and, **(iv)** improvements in payment allowing the user to group applications in a single payment.

In addition to streamlining these processes, ONAPI declared through Resolution No. RO-193-20 that the digital registration certificates of applications processed through the electronic filing platform E-SERPI, have all the legal effects granted by Law No. 20-00 on Industrial Property. Consequently, this regulation has fulfilled the purpose for which it was



implemented, by streamlining the trademark registration process and taking advantage of information and communication technologies for the benefit of citizens.

ii) Trends for 2021

The milestones for 2021 in the Dominican Republic will be articulated around the **promotion of measures to boost SMEs.**

In view of the undoubted need to recover the global economy, which has been affected by the Covid-19 pandemic, the World Intellectual Property Organisation (WIPO) has selected SMEs as the protagonists of World Intellectual Property Day 2021.

Currently, in the Dominican Republic there are several government programmes through which training and advisory services are provided to entrepreneurs and SME entrepreneurs so that they can learn about the initiatives and services offered for the benefit of the sector. The National Industrial Property Office (ONAPI) is part of several of these programmes.

To mention a few, since 2011, ONAPI has had a National Academy of Intellectual Property (ANPI), created with the support of WIPO, to provide training, education and relevant information on Intellectual Property to SME entrepreneurs, students, associations of producers and exporters, and the general public with an interest in the subject.

Together with other government institutions, ONAPI carries out routes to all provinces of the country to offer SMEs formalisation services, registration of trade names, graphic design, SME certification, specialised consultancy, as well as talks and workshops on business development. This programme is known as "Ruta MiPymes" and has been running in the country for more than five years.

As well as these government programmes, there are others that seek to boost the growth of SMEs through the tools of the industrial property system. However, entrepreneurs are still finding it difficult to formalise their industrial property rights.

By implementing the mandatory use of ONAPI's digital platform for the registration of distinctive signs, people without access to computers, or with little or no knowledge of the use of technology, are unable to access these services. According to the Encuesta Nacional de Hogares de Propósito Múltiples (ENHOGAR) 2017, only 12.8% of Dominicans own a computer. Although ONAPI offers computers and assistance to applicants who come to the institution, the institution only has one office, located in the country's capital, which becomes a major obstacle for people who reside outside the capital.

In 2021, it is expected that the Dominican Republic will continue to create favourable conditions for people with new ideas to use industrial property rights to create stronger, more competitive and resilient businesses.

4 ASIA

4.1 China

i) 2020 regulatory milestones



- a) Amendment of China's Patent Law (17/10/2020): the amendment mainly consists of three aspects, improving the protection of patent holders' rights, promoting the implementation and enforcement of patents and improving the patent licensing system. The main highlights are:
 - a. Raise the minimum liability limit from RMB 10,000 to RMB 30,000 and the maximum limit from RMB 1 million to RMB 5 million.
 - b. Establishment of a drug patent linkage system, which protects drug patent holders at the drug approval stage.
 - c. Extend design patent protection to 15 years.
- b) Amendment of the Copyright Law (11/11/2020) to raise the minimum liability limit to RMB 5,000 and the maximum limit to RMB 5 million.
- c) Entry into force of the Chinese Civil Code on 1 January 2021, which introduced numerous provisions relating to intellectual property rights and technology contracts, a total of 52 articles, in order to provide greater protection and increase the cost of infringement.

ii) Trends for 2021

The main trend we foresee is to improve the intellectual property protection system. During 2020, the Chinese government has revised and introduced a series of intellectual and industrial property policies and laws, which not only set important standards for the protection of rights, but also provide an important legal framework and policy strategy to improve the level of creation, enforcement, protection, management and services of intellectual property rights.

In 2021 a number of national laws and regulations on intellectual property rights will enter into force, such as the entry into force of the Civil Code, the amendment of the Criminal Code, increasing the penalties for intellectual property offences etc.

An important context is the trade and technology war between China and the US, where the Chinese government wants to demonstrate to the world its commitment to improving the intellectual property protection system and is also a commitment it has made in this major confrontation with the US.

There is still work to be done and it will not be easy, but the Chinese government is demonstrating its commitment to improving the scope of protection of intellectual and industrial property rights.

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