

PRESIDENT
Tracey ARMSTRONG

CHIEF EXECUTIVE & SECRETARY GENERAL
Anita HUSS EKERHULT

Brussels
28 June 2024

Honorable Mr. Heraclito Landinez Suárez
Camara de Representantes
Piso 2 - Capitolio Nacional

Re: Article 2 of Proyecto de Ley Número 427 de 2024 Cámara

Dear Mr. Heraclito Landinez Suárez,

I am writing to you as Secretary General and CEO of the International Federation of Reproduction Rights Organisations (IFRRO), along with the Colombian Center of Reprographic Rights (CDR). [IFRRO](#) is the global industry body for collective management organisations (CMOs) in the text and image sector. We facilitate, on a global basis, the collective management of reproduction and other rights – such as making available, rental and lending rights – in text and image works through the co-operation of our 150+ member organisations drawn from more than 85 countries around the world. Our members represent many millions of authors, visual artists, and publishers of books, journals, newspapers, magazines, and printed music. IFRRO is proud to have as a member CDR from Colombia, who informed us about the recent proposal through which the book ecosystem in Colombia is to be strengthened.

We are deeply concerned about the impact of this reform especially in relation the direction taken on the notion of author. In Article 2 of the PL 427 of 2024 which was approved in the first debate in the Colombian Congress, a risky stance on authorship is noted. Particularly, in the context of the proposed reform, an author is defined as any person or intelligence producing a text, whether informative or fictional (original text: *Autor es toda persona o inteligencia productora de un texto bien sea de carácter informativo o ficcional*).

This proposed definition raises multiple concerns in the creative sector and beyond, since it may ultimately allow providers of AI models to exploit the copyright regime that is in place to protect human authorship. The juxtaposition of "intelligence" alongside "any person" creates ambiguity about the status of authorship, potentially opening a Pandora's box of legal and ethical issues.

The recent development and expansion in use of Artificial Intelligence technologies has opened a long and ongoing discussion on whether the final product produced by these technologies should be protected and in which form. It must be noted that Generative AI and its large language models (LLMs) are built on vast collections of copyright-protected works. The training process for these models remains highly opaque, despite global calls for increased transparency to ensure right holders know how their works are used and whether proper licenses were obtained (e.g The Council of Europe AI convention, The Bletchley Declaration).

The Colombian legislator's intention might allow room for developers and providers of AI-generated works to misuse the definition in order to protect their content by copyright, which has been the product of a series of copyright infringements and lacks/ or it is almost impossible to verify the extent of human creative intervention embedded in it, is perceived as particularly risky.

It is worth noting that Colombia is a contracting party to the Berne Convention (Accession December 4, 1987/ Entry into force: March 7, 1988). Despite the Convention not defining the notion of 'author' in its text, there is a consensus, supported by key indications, that only human beings can be considered authors.

Based on the developmental history of the Convention, the afforded protection primarily focuses on the author rather than the work itself, which by extent emphasizes that only natural persons can be regarded as authors. This promotes the idea that the creative process and the rights of the human author are paramount. The principle of protecting authors themselves is embodied in Article 1 of the Convention which reads as follows: "The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works". Accordingly, the inclusion of moral rights in Article 6bis of the Convention clearly indicates that the minimum standards of copyright protection are granted only for works created by humans.

Additionally, it is important to highlight that intellectual property rights are fundamental human rights. According to the Universal Declaration of Human Rights (which Colombia voted in favor of), specifically Article 27, everyone has the right to the protection of the moral and material interests arising from any scientific, literary, or artistic production of which they are the author. This implies that within the UDHR, authorship is strictly attributed to human creators.

Finally, recent judicial developments in various jurisdictions have firmly established that copyright protection is reserved exclusively for natural persons, clarifying the stance on the potential for AI authorship. In the notable [Thaler v. Perlmutter](#) case, the U.S. District Court for the District of Columbia sided with the Copyright Office, which determined that only human beings qualify as authors under U.S. copyright law. Similarly, the [Czech Court](#) recently emphasized "Copyright is an inherent right belonging to an individual. If the image in question was not created by the applicant personally, but by artificial intelligence, it cannot, by definition, be considered a copyrighted work".

IFRRO strongly opposes the Colombian legislator's attempt to potentially broaden the notion of authorship, which could inadvertently allow AI providers to exploit copyright protection due to ambiguities in the proposed definition. Developments in other jurisdictions have demonstrated that such significant alterations do not align with the core principles of copyright protection and the essential role of human creativity in the creation of works as they undermine the fundamental principles of the global intellectual property ecosystem. Respecting and protecting human work and cultural skills must be of our common interest and goal to ensure that culture will continue to exist and grow.

Yours sincerely,
Anita Huss Ekerhult
Secretary General and CEO, IFRRO