

TRANSLATION

Sociedad de Recaudación de Derechos Fonomecánicos (FONOPERU) S.A.

Representative of the Autor's Societies: ADDAF (Brazil) - AMAR (Brasil)-
AUSTRO MECHANA (Austria) - CMRRA (Canada) -MCPS (England) - NCB
(Denmark) - SABAM (Belgium) - SDRM (France) - SIAE (Italy) - SPA (Portugal)
- SODRAC (Canada) - STEMRA (Holland).

FILE Nr. 000159-2000/ODA

AMENDED APPEAL

From April 18th, 2001

TO

INTELLECTUAL PROPERTY COURT

INDECOPI'S TRIBUNAL OF COMPETITION AND

INTELLECTUAL PROPERTY

The **SOCIEDAD DE RECAUDACION DE DERECHOS FONOMECHANICOS (FONOPERU) S.A.**, duly represented by its Manager Director Rubén Alberto Salaberry Perrone, under power of attorney presented at the right time, with address at Emilio Althaus N° 121, Office 803, district of Lince, Lima, in the administrative complaint lodged by Discos Independientes S.A., Distribuidora y Ventas S.A., Universal Music Perú S.A., Producciones Iempsa S.A. and Sony Music Music Entertainment Perú S.A., because of a supposed infringement to Copyright rules as it is considered that our company carries out functions of a collective administration organization without being duly authorized for it, we address to you in order to inform the following:

We refer to Resolution Nr. 307-2000/ODA-INDECOPI dated December 20th, 2000 in which its SECOND article determines: "TO FORBID TO SOCIEDAD DE RECAUDACION DE DERECHOS FONOMECHANICOS (FONOPERU) S.A., operating as a collective administration organization.

Although this pronouncement of the Copyright Office is a sophism we agree with it because FONOPERU S.A. neither operated nor it has never operated as a collective administration organization, as we have proved in our document of Appeal dated April 18th, 2001 and in the following complementary foundations:

1.-Although the repeated aim of the Copyright Office for labeling our operation as a collective administration organization, FONOPERU S.A. is an incorporated company. The articles of the Law express clearly that for being a collective administration organization it must be a non-profit organization.

2.-Contrary to the article 146° of the Copyright Law, FONOPERU S.A., as it is recognized by the informing companies themselves, is neither an author's society nor a neighboring rights society (interpreters, performers, etc.) but an incorporated company made up by partners that do not have either legal condition of authors or of owners of neighboring rights, that is why the rules concerning collective administration societies are not applicable to it. Consequently, neither the previous authorization regime, in charge of the Copyright Office, nor later administrative control of the Copyright Office, nor all the articles of the section IX of the Copyright Law regarding the COLLECTIVE ADMINISTRATION and their paragraphs are applicable to FONOPERU S.A.

The presumption of the Copyright Office that FONOPERU S.A. operates as a "collective administration organization" and the reading of the articles on COLLECTIVE ADMINISTRATION, on the Law, make that we come to the

conclusion that the Copyright Office wants that FONOPERU S.A.:

a.-be converted into a Collective administration organization, WHAT IS LEGALLY IMPOSSIBLE.

b.-be dissolved, liquidated or ended.

The Copyright Office objected the operation of FONOPERU S.A. at the beginning of 1999. Although we sent several documents, they finally answer us with the letter Nr. 163-1999-ODA-INDECOPI from October 5th, 1999 and they recommended us: "...to apply for the authorization pointed out in the Legislative Decree 822 to be able to collect rights of our repertoire administered". This letter of the Copyright Office surprises us because by RESOLUTION N° 014-1998-ODA-INDECOPI, from February 10th, 1998, the Copyright Office itself, recognizes our capacity to execute the use of musical works, by third parties. We do not understand the present position of said Office that changes its opinion although the copyright legislation has not experienced any change.

3.-On March 15th, 2000, we lodged a REMEDY OF COMPLAINT, against Dr. Rubén Ugarteche Villacorta, Head of the Copyright Office, for delaying excessively the answer to our communications.

This fact badly affected our economic incomes as it caused the informing companies refuse to pay the musical works that were duly documented to be collected by FONOPERU S.A.

In the case of another multinational company, another great infringement to the copyright was committed, as since 1996 it has only made one payment on account of US\$1,000.00 and its debt was more than US\$25,000 00.

The Office of Internal Audit of your Tribunal of Competition, through the

document dated April 25th, 2000, informed us that our REMEDY OF COMPLAINT, against the Head of the Copyright Office, "turned out well founded."

4. FONOPERU as its name indicates in a descriptive way, is a collection society of mechanic rights that works for collective administration societies or foreign authors' societies. FONOPERU neither represents authors, nor interpreters, nor performers but foreign collective administration societies. FONOPERU is plainly and simply a collecting agent that receives a percentage fee for its services that are restricted to collect royalty payments derived from phonographic reproduction, and from the import of works that their principals represent. In these conditions it would not be able to comply with the demands imposed by Copyright Law to collective administration societies, as for example: "The possible effectiveness of the Management abroad regarding the repertoire that aspires to administering...", stated in section e) of article 150, of the Copyright Law and other articles.

5.- FONOPERU does not represent either any Peruvian author or any foreign author, for this reason it is not able to consider mechanisms of participation of them in the management of their company, as stipulated by the Law concerning this matter in section c) of article 151.

6.- The collection of Performing Rights is an exclusive power of the collective administration organizations or author's societies. This defines the difference between collective administration organization and FONOPERU S.A., as the latter is not mandatory of the foreign author's societies that represents for collecting PERFORMING RIGHTS. FONOPERU S.A. is just authorized by its representation agreements for COLLECTING MECHANIC RIGHTS.

7.-It is symptomatic to note that the Copyright Office, with the Resolution N° 307 – 2000 / ODA-INDECOPI from December 20th, 2000 and their objections to our power of collection of mechanic rights in previous documents, is bringing about that the Asociación Peruana de Autores y Compositores (APDAYC) (Peruvian Association of Authors and Composers), the sole collective administration organization in Peru, controls and receives mechanic rights of foreign works, by its new body of collection, called LATIN AUTOR, which has begun operating from OCTOBER 2000 in the same area of FONOPERU S.A., and with the approval of the Copyright Office.

In this respect, if the power of collection of mandatory agents of foreign author's society, as FONOPERU S.A., is disowned, the freedom for contracting is being harmed, creating a monopoly in favor of APDAYC, what is forbidden in the Peruvian Constitution and therefore it is forcing to the foreign author's societies represented by FONOPERU S.A., such as:

ADDAF (Brazil) - MCPS (England) - NCB (Denmark) - SABAM (Belgium) - SDRM (France) - SIAE (Italy) - SODRAC (Canada) - STEMRA (Holland) to empower APDAYC to collect the mechanic rights of foreign works.

Now said foreign societies, to which we have been informing about the situation created by the Copyright Office against FONOPERU S.A., have not canceled the mandates to our company, in order to support our rights and because they trust your Tribunal will define this controversy doing justice.

THEREFORE:

We apply to the Court of your Presidency to have into account the foundations pointed out when you have to resolve and declare well founded our APPEAL.

Lima, November 16th, 2001