

GLOBAL INFORMATION SOCIETY WATCH 2011

INTERNET RIGHTS AND DEMOCRATISATION

Focus on freedom of expression and association online



This edition of Global Information Society Watch is dedicated to the people of the Arab revolutions whose courage in the face of violence and repression reminded the world that people working together for change have the power to claim the rights they are entitled to.

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COLOMBIA

SOCIAL MOBILISATION FOR THE DEFENCE OF DIGITAL RIGHTS AND AGAINST THE “LLERAS ACT”



Colnodo

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Introduction

The governmental interest to control the use of the internet has become a reality in some countries through the introduction of controversial laws such as the Sinde and Hadopi Laws in Spain and France,¹ respectively, or laws introduced – albeit with public consensus – in Chile and Canada. International organisations have warned about the danger of restricting access to the internet without careful consideration of the implications, given the relevance the internet has for democracy and people’s rights.²

The Colombian government has submitted a bill as part of the preconditions to sign the Free Trade Agreement (FTA) with the United States (US), known as the Lleras Bill. It has been widely criticised by many sectors of society because it goes against basic rights such as the freedom of expression and civil and political rights. The response from these sectors has been to organise a campaign against the bill using the internet and the media.

Policy and political background

The protection of intellectual property rights (IPR) has been an ongoing issue related to trade, at the national and international level. In Colombia this issue has been discussed in the National Council for Social and Economic Policy (CONPES)³ plans and documents on intellectual property for 2008-2010.⁴ According to many sectors these ignore the new uses and trends of digital media, such as free software and free licences among others, and only address traditional entertainment and cultural media.⁵

Likewise, in the present government’s National Development Plan, intellectual property is defined as strategically necessary to promote innovation in the country and essential to negotiate and establish international trade agreements – therefore the need to make the required adjustments to the law.⁶

In the FTA with the US there is a chapter on IPR with an annexed letter on the responsibility of internet service providers (ISPs) to fulfil the function of protecting IPR.⁷

As a response to this requirement included in the FTA, on 4 April 2011, the Colombian government submitted Bill No. 241 of 2011, better known as the Lleras Bill. This bill aims to regulate the responsibility for infractions of the law regarding copyright and related rights on internet. Many sectors have opposed the bill, especially those that have been working for the promotion of Creative Commons licensing and GPL (General Public License), among others.

At the same time, a joint declaration on freedom of expression and opinion on the internet issued by representatives of the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS) and the African Commission on Human and People’s Rights (ACHPR) has contributed with strong arguments for the defence of citizens’ digital rights.⁸

Challenging the control of the internet

On 4 April 2011, Minister of the Interior and Justice German Vargas Lleras tweeted the following on his Twitter account @German_Vargas: “Let me tell you that today we have submitted the bill on copyrights. No more piracy on the internet. Authors, singers, composers are supporting us.”⁹

Soon his message was retweeted and people reacted either with alarm¹⁰ or jubilation.¹¹ The bill

1 alt1040.com/2011/01/ley-francesa-antidescargas-ley-sinde

2 Joint Declaration on Freedom of Expression and the Internet. www.cidh.oas.org/relatoria/showarticle.asp?artID=849&IID=1

3 CONPES is the body responsible for formulating economic policy in Colombia. For more information see: www.eltiempo.com/archivo/documento/MAM-221821

4 www.derechodeautor.gov.co/htm/Planeacion/Audiencias%20Publicas/2008cp3533.pdf

5 equinoxio.org/destacado/carta-abierta-conpes-plan-accion-sistema-propiedad-intelectual-2647

6 National Development Plan 2010-2014: “Prosperity for All”, Executive Summary. www.dnp.gov.co/PORTALWEB/LinkClick.aspx?fileticket=4-19V-FE2pl%3d&tabid=1238

7 www.tlc.gov.co/eContent/newsDetail.asp?id=5023&IDCompany=37&Profile=

8 <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=849&IID=2>

9 twitter.com/#!/German_Vargas/status/54966217961779201

10 twitter.com/#!/ppco/status/54967808211173377

11 twitter.com/#!/Juliana_M_L/status/55086053769490434

was soon shared on the net.¹² In less than 24 hours net surfers had started the hashtag #leylleras¹³ to exchange information on the subject. Despite the efforts of Vargas Lleras and Senator Roy Barreras (who had submitted the bill) to popularise the tag #leyderechosdeautor (#copyrightlaw), the hashtag #leylleras became widely popular and the bill became known as the Lleras Bill by the media and other social networks.¹⁴

Bill 241 is defined as the bill “[b]y which responsibility for infractions against copyright and related rights is regulated”. Vargas Lleras warned in his blog: “Those who continue to support piracy, now beware! From now on, the law will punish them with prison – and severely – if Congress passes the bill.”¹⁵ The bill will punish ISPs and internet users by blocking or banning content or by cancelling internet accounts. Likewise there will be changes to the penal code, among other controversial issues.¹⁶

It is not surprising that people and groups working on issues such as free culture, free software and freedom of speech on the internet – who knew about similar processes in Spain and France¹⁷ – became worried and began to meet virtually and face to face to discuss the bill and organise campaigns.

One of these meetings took place in Bogota. Carolina Botero, one of the supporters of Creative Commons in Colombia, got together with free software activists for the first time to discuss the bill. Given her involvement in promoting “copyleft”¹⁸ in the country, Botero was up to date on laws concerning copyright, was in contact with the Colombian Copyright Office (DNDA) and knew about the government initiative to legislate on the issue.¹⁹ However, she had been expecting wide consultation on the bill and the involvement of citizens in this consultation. When Carolina and others realised the bill was submitted without any consultation²⁰ they started a review of the bill and invited other people and groups to join in. Ultimately, the group

RedPaTo2 (Net for All) was created, and according to Freddy Pulido from RedPaTo2,²¹ it is open to all members of the public – artists, academics, scholars, technicians and lawyers, among others. RedPaTo2 aims for the drafting of a consensual bill with the participation of all citizens. To do so, they are working on the internet and meeting face to face,²² campaigning in social networks and the media, informing the public, and making alternative proposals to the Lleras Bill.

Likewise, there is also a group called ReCrea,²³ formed by professionals – mainly artists and content creators – whose goal is the promotion of culture and education in Colombia. Its main objective is to make remixing of content legal by proposing the inclusion of an article in the bill.²⁴ This would enable reproduction without payment and/or require the user to obtain the permission of authors to use their cultural, scientific and medical work, as well as fragments of protected materials, mentioning the source, title and author and making sure that the final product is used for non-profit purposes.

Other movements with more political purposes, such as the recently created Partido Pirata de Colombia²⁵ (Pirate Party of Colombia), have also expressed their views on the bill and are generating content regarding the bill on blogs and social networks.²⁶

The group Anonymous, known in several countries of the world for their protests and distributed denial of services (DDoS) attacks, has also taken action against the Colombian government and senators involved in passing the bill. They have attacked Colombian President Juan Manuel Santos’ Facebook profile and the Twitter account of former president Alvaro Uribe.²⁷ In an interview given to the magazine *Enter*, specialising in technology in Colombia, Anonymous declared they want to spread information about the Lleras Bill in the media and to the general public.²⁸ Likewise, in an interview given to the newspaper *El Tiempo*, they explained in detail their reasons for rejecting the bill.²⁹

12 twitter.com/#!/Legal_TIC/status/55012429775642624

13 twitter.com/#!/carobotero/status/55359278982242305

14 equinoxio.org/estancias/reacciones-contra-la-ley-lleras-11065 and www.delicious.com/knowledgefactory/leylleras?page=20, cited in www.enter.co/otros/la-transformacion-de-la-industria-cultural-primer-debate-sobre-leylleras

15 germanvargasllerasmij.blogspot.com/2011/04/se-regulan-los-derechos-de-autor-en.html

16 Colombian Congress Bill No. 241 “By which responsibility for infractions against copyright and related rights is regulated”.

17 The Sinde Law in Spain and Hadopi Law in France.

18 en.wikipedia.org/wiki/Copyleft

19 Audio available at: aumana.typepad.com/el_complejo_de_prometeo/2011/01/director-nacional-de-derechos-de-autor-cuenta-lo-que-nos-espera-en-el-2011-en-pi-en-colombia.html

20 www.openbusinesslatinamerica.org/wp/2011/06/18/leylleras-cronica-de-una-polemica-social-anunciada

21 Interview on 4 July 2011.

22 Blog: redpatodos.co/blog/; wiki: redpatodos.co/wiki/; email list: lists.redpatodos.co@listinfo.cgi; general: redpatodos.co/; Twitter: @RedPaTo2; identi.ca: identi.ca/tag/leyllera

23 www.recrea.co/sobre-recrea

24 www.recrea.co/comunicado/propuesta-recrea

25 www.soypirata.org

26 On Twitter @ppco and on Facebook at es-es.facebook.com/pirataco?sk=wall

27 alto40.com/2011/08/anonymous-inicia-ataque-contra-el-gobierno-de-colombia

28 www.enter.co/internet/anonymous-habla-sobre-detenciones-en-espana-ley-lleras-y-onda-larga

29 www.infografiando.com/2011/04/entrevista-de-anonymous-colombia-el.html

There are other groups that have contributed to the discussion on blogs, networks and audio and video platforms.³⁰ The media have also contributed to the discussion by presenting different points of view.³¹

It is necessary to pause a moment to understand in more detail what has prompted this movement, given that the discussion is not limited to the articles of the law, but that the movement's foundation was laid before the tweet of Minister Vargas Lleras. Whereas the government's goal through the CONPES documents, the National Development Plan and the FTA has been to strengthen intellectual property and copyright, surfers have been using and promoting virtual tools to freely exchange, copy and co-create intellectual creation. "Here we are all co-creators," said Alejandra Bonnet, a member of ReCrea, in one of the talks organised in the Senate.³² The bill served as a catalyst for these persons to gather around a theme. While not all groups use the same strategies, and there are points of disagreement among them, in the comments made on articles of the bill there are common elements.

One of the points of contention for critics of the bill is that judges will be excluded from the act of censoring, and an ISP can simply block content that is identified by an author or creator as infringing the law. This, as Carolina Botero explains, "changes the presumption of innocence, and puts at risk the due process of law and rights such as the freedom of expression and opinion, with disproportionate sentences for the alleged offenders, not only in the process but also in the suggested contractual provisions for the ISPs."³³ According to Juan Carlos Monroy of DNDA, the legal possibility of blocking content is already in place in the law, and the bill aims for the "detection and blocking of content" without a judge's sentence given that the justice system does not have the infrastructure required to implement the law.³⁴

Another point of contention is the violation of the right to privacy, given that the bill allows passing on information about the alleged offender without due process.³⁵ Likewise, the possibility of preventing people who break the law more than once from accessing the internet is considered a violation of laws already in place. Here, according to UN Special

Rapporteur Frank de la Rue, the bill violates Article 19 of the International Covenant on Political and Civil Rights, which stipulates the right of all individuals to seek, receive and impart information and ideas.³⁶

Both defenders and critics of the bill are in agreement that it is a copy of the Digital Millennium Copyright Act (DMCA), which was adopted in 1998 in the US,³⁷ and that it does not take into account the deficiencies of the law in Colombia regarding modern technologies or the fact that Colombia belongs to the Inter-American Commission on Human Rights where "all dispositions on civil rights must be submitted to a judicial process."³⁸

These groups have carried out several actions aimed at modifying the bill.³⁹ Social mobilisation has led Congress to organise discussion forums on the bill. The social movements have also organised meetings and invited people to discuss the issues. A session in Congress that was seen by more than 2,000 people on the internet all over the country was unprecedented – with viewers tweeting their comments.⁴⁰

Some senators have listened to the objections. One of the senators opposing the bill organised several meetings aimed at sharing information.⁴¹ The government's proposed dialogues on the bill⁴² have not been accepted by the social movements, given that they have no impact at the level of Congress where the bill has been discussed.⁴³

RedPaTo2 has submitted alternative models to the bill based on Chilean and Canadian laws, and expressed well-founded objections to some of the articles, such as the need to include exceptions for disabled people, among others. Likewise, it petitioned Congress to make the process more transparent and to work on consensus building in drafting the bill.⁴⁴

In order to be approved, the bill has to pass four stages. The first one – in the First Commission of the

30 www.netvibes.com/hiperterminal#LeyLleras

31 www.enter.co/search/leylleras?t=c

32 www.enter.co/internet/internautas-hablaron-con-los-ponentes-de-la-leylleras

33 www.openbusinesslatinamerica.org/wp/2011/06/18/leylleras-cronica-de-una-polemica-social-anunciada

34 Conversatorio de Ley Lleras realizado en el Campus Party, Bogota, 2011.

35 www.openbusinesslatinamerica.org/wp/2011/06/18/leylleras-cronica-de-una-polemica-social-anunciada

36 www.enter.co/internet/onu-da-otro-golpe-a-leyes-antidescargas

37 www.enter.co/internet/%C2%BFpara-quien-legislamos-segundo-debate-inspirado-por-leylleras

38 Contribution made by Lorenzo Villegas, solicitor for Google Colombia, during the debate on the Lleras Bill in Congress. www.ustream.tv/recorded/14950504#utm_campaign=unknown&utm_source=14950504&utm_medium=social

39 RedPaTo2 submitted an open letter with 2,300 digital signatures before the debate of the bill. See: redpatodos.co/blog/ley-lleras-a-primer-debate

40 www.elespectador.com/opinion/columna-277957-librecultura-el-proceso-legislativo-leylleras

41 redpatodos.co/blog/y-ahora-que

42 Like the blog derechodeautor.wordpress.com launched on 6 April after the debate on social networks had begun.

43 www.karisma.org.co/carobotero/index.php/2011/04/12/participar-en-leylleras-una-cuestion-de-fondo-y-de-forma

44 redpatodos.co/blog/comentarios-juridicos-ponencia-primer-debate-ley-lleras

Senate – was already passed with seven votes in favour and three against, with some modifications to the articles but not the substantial ones expected by the activists.⁴⁵ This proves the urgency the government has in passing the bill instead of reaching a consensus.

The debate is not over yet. There are still three stages left before the bill is passed, and social movements have not given up the hope of securing a law that protects authors' copyrights and also the rights of internet users.

Conclusions

The mobilisation that the Lleras Bill has generated has shown the social changes brought about by the internet, not only regarding copyrights and intellectual property, but also regarding digital rights and citizens' participation in democracies.

On the one hand there are the industries and people that support and defend the traditional use of artistic and intellectual creations, and advocate for tools and content created to be protected by copyright. On the other hand, there are those who have found ways to access information that was previously inaccessible and, as they point out, they have transformed themselves from mere consumers to creative producers, generating new ways of creating and distributing their work. Therefore, it is important to consider both the needs of copyright holders and the need to have access to knowledge and information, which is a basic element in the promotion of culture and education. It is also important to highlight that what we are looking for is not the suppression of any of the alternatives of cultural creation, such as Creative Commons, but the *simultaneous* recognition of alternative models of cultural creation that have arisen in the digital era.

It is obvious that there is no consensus regarding digital rights and their impact on human rights. While governments are trying to control the internet, users are trying to defend freedom of expression and the information it provides. In this regard, the UN and other international organisations, in their declarations on human rights and the internet, have taken a big step forward by providing guidance to lead the discussion on key themes such as the freedom of expression, censorship and internet neutrality, among others.

Finally, this situation shows the changes that are beginning to take place in our democracies. The internet is a space that has allowed people to share, discuss and make proposals, something that

has taken many governments by surprise. However, as Pulido points out, there is a lack of real participation beyond discussing or sharing information – therefore the need to get people involved in legislative matters.

Action steps

Considering the mobilisation that has taken place around the Lleras Bill, and the shared experiences of some of the actors involved, it is possible to identify the following actions:

- Share and disseminate information.
- Convene stakeholders to analyse and tackle the issue. Find people who can translate the jargon into something understandable for the general public.
- Get together in an organised manner. Define common objectives and the strategies that follow, with clear and agreed rules.
- Assemble a group of trusted people to carry out the activities – again, with clear and agreed rules.
- Search for appropriate technological tools to share information in a team, appointing people for administrative matters. For example, RedPaToz has chosen several ways for communicating, such as a blog to publish press releases and documents, using micro-blogging tools such as Twitter and identi.ca, and using EtherPad⁴⁶ for creating documents in a group, among others.
- Establish contact with the media and, if needed, with legislators supporting the mobilisation of people.
- Keep the topic in the spotlight by publishing information and organising virtual and non-virtual forums and debates.
- Participate in all the spaces in which the issue is debated or solved.
- Submit proposals to actors responsible for the decision making, as well as the general public.
- Support the process by broadcasting the sessions and debates of legislators and by publishing all related documents. ■

45 www.lasillavacia.com/historia/la-leylleras-un-proyecto-que-pone-en-jaque-al-congreso-25255

46 etherpad.com

In the year of the Arab uprisings **GLOBAL INFORMATION SOCIETY WATCH 2011** investigates how governments and internet and mobile phone companies are trying to restrict freedom online – and how citizens are responding to this using the very same technologies.

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