



Partial response to the ALAI KYOTO QUESTIONNAIRE

Dear Colleagues,

Having consulted the potential public and private entities that may be related with the issues subject of the questionnaire of sessions 4, 5 and 6 we evidenced a lack of studies, statistics, measurement of the penetration and practice of the usage of the cloud computing technology in Colombia. Likewise the legal aspects therein contained have not had any regulation either, nor there is any jurisprudence in this concern, reason why we refrain from offering our response to said queries, and thus we only responded sessions 1, 2 and 3.

We hope these are of use.

Session 1

— Developments of New Platforms

1) How would you define “The Cloud” in your country?

Answer: There is no definition yet of the concept of the cloud in the environment of copyright law in our country.

2) Is exploitation of works, performances, and sound recordings and so on generally considered to relate to the Cloud?

Answer: In Colombia there is no general consideration or understanding establishing a relationship between the exploitation of contents in the cloud with the exploitation of works, performances or phonograms.

3) Are there already commercial platforms established specifically designated for the Cloud or to some extent related to Cloud uses? Can you foresee such new platforms to be established in the near future?

Answer: Even though there are no specific studies or statistics, we understand that in our country the internet service providers are who massive and commercially offer to companies of goods and services, either public or private, the possibility of hosting or storing data, facts or operations in the cloud. We foresee that said new platforms will be offered in due course, although we do not have measurements in this concern.

4) How would you evaluate the Cloud’s importance to copyright for the next few years to come?

Answer:

Although the importance of using the cloud as a mechanism offered with basis on the storage of data, facts and operations in a remote manner seems to be growing in our country, this is not substantially or generally associated with the exploitation of works in the national territory.

Sessions 2 and 3

— Can the Internet Treaties of 1996 play an important role in legal issues raised by “Cloud” Business?

- 1) Is there any case law to be found in your country and/or examples of (good) practices concerning:
 - 1.1) the right of making available to the public with reference to “Cloud” storage, retrieval and dissemination?
 - 1.2) cloud providers that may be relevant to determine liability for the making available of unauthorized content in the cloud environment?

Answer: We have no jurisprudence or examples in this concern.

- 2) Is there case law on the technological protection measures and Electronic rights management information in the “Cloud” environment?

Answer: We have no jurisprudence regarding these issues.

- 3) How can we re-examine or re-evaluate the role of the WIPO Treaties with reference to “cloud” developments?

Answer:

Indeed, the internet treaties should be the starting point to guarantee the existence or adequate and proper protection of the works involved or engaged in a storage service of works in the cloud (a remote server), and to that end legislators as well as the jurisprudence of each country have in declaration 1.4 of WCT related with digital storage the most important aspect to develop.

Simultaneously, consideration should be given to the fulfillment of article 14 of WCT as well as to numeral 1st of article 23 of the WPPT where the parties undertake to adopt in accordance with their legal systems the necessary measures to guarantee the enforcement of the Internet Treaties, since the legislator has the power and the duty to further develop the treaties in order to guarantee an adequate and proper exploitation of the works in the cloud.

Even though there is no yet jurisprudence in Colombia in this concern, it is worth pointing out that on the occasion of the Free Trade Agreements signed with the United States and the European Union, our country expressly committed with the right of making available and with the obligations of the internet service providers, as well as with the obligation to provide effective protection to the technological protection measures and the establishment of exceptions on them.