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**Editor's Note. Legal debate on intellectual property and antitrust law. By A. Noboa Pagán.**

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The discussions regarding the divergent limit between intellectual property rights holders and holders of antitrust rights currently occupy an important debate in the public opinion. Without lessening the legitimate right of the parties involved in the controversy to express opinions and defend interests, it is worth proposing the recognition of one and another legal control in their just dimension and sphere of exercise. Subsequently, some explanations on the intellectual property /antitrust binomial:

1. In Dominican Republic, intellectual property and antitrust rights are both fundamental rights. The first one, explicitly established in article 8, section 13, of the Constitution. The second, recognized as inherent to the right to free enterprise and industry by the Supreme Court of Justice (SCJ), when it established that: "monopoly is the legal or factual system by which an enterprise or category of enterprises is extracted from free competition, allowing them to become owners of the market supply..benefiting this enterprise, by virtue of such actions, of a true and real monopoly in its country, or economic sector, by blocking others from the opportunity of accessing..constituting a violation of the cited article 8, paragraph 12, of the Constitution." (SCJ Sentence dated April 26, 2006)
2. It is not correct to affirm that granting an intellectual property right directly and immediately concedes market power. The highest courts of justice from either side of the Atlantic coincide that a patent, copyright or trademark holder, because of this administrative authorization, does not become an independent regulator of all the other agents of the protected product's market forces. The possibility of substitution from the demand and supply point of view, the pressure to innovate, and the transitory state of consumption (especially in properties protected by copyrights), are factors that have an influence on market operation and the degree of participation of its suppliers. Nevertheless, it is undeniable that an intellectual property right holder acquires legal administration powers over price and other conditions of sale of a product, which if not properly supervised by public powers, could permit him to incur in anticompetitive practices in detriment of the interests of licensees and finally consumers.
3. Law No. 20-00 on Intellectual Property, establishes the provisions on which such conducts will be able to be sanctioned by the administrative and judicial authority in articles 33.4, 42, 43.2, 48, 182 and following. However, in absence of a general antitrust law or a special regulation of the first one, procedural guarantees do not exist; so that in proceedings where punishable anticompetitive conducts are examined, by the ONAPI, participation in the debates of every part



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with legitimate interest, evidence administration, and defense rights, are respected; or that the decisions adopted are properly motivated in law and facts, allowing to correctly determine the existence or non-existence of an anticompetitive conduct on the part of the intellectual property right holder. While international case law already contributes with the criteria on specific object, essential function, relevant market, as well as interpretation criteria (per se or rule of reason), canalising good practices of conflict solution, Dominican law has yet to advance, until it delimits efficiently both prerogatives of law.

The DR-CAFTA, in Chapter 15 on Intellectual Property, requires that all national legislation on procedural guarantees be completed, in intellectual property conflicts. It is recommendable that the SEIC and ONAPI, confer by way of regulation, the improvement of the legal system of these economic rights.

**Tax Law. Bill No. 226-06 that grants corporate personhood, functional, budgetary, administrative, and technical autonomy, and own patrimony to the Ministry of Customs (Known by its acronym in Spanish DGA). By Y. Martínez Oller**

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President Leonel Fernández passed the bills that grant corporate personhood, functional, budgetary, administrative, and technical autonomy, and own patrimony to the Internal Taxes and Custom Ministries, by bills No. 227-06 and 226-06, respectively, both of date June 21<sup>st</sup>, 2006.

Law no. 226-06 grants Customs the legal capacity to acquire rights and to contract obligations, as well as to oversee the accomplishment of this law. Without lessening its newly acquired autonomy, Customs will continue to uphold the economic, fiscal and tributary policies defined by the Government and will be subject to the supervision of the Ministry of Finance.

The dispositions of law no. 3489 of 1953, and its modifications to the Customs regime, as long as they are not contrary to the dispositions contained in law no. 226-06, will stay in effect; in the same manner, law no. 11-92 that approves the Tributary Code, referring to the resources and jurisdictional procedures, is maintained in complete use.

Within its new attributions, the Ministry of Customs can hear and decide on the requests and complaints made by the interested parties; design administrative systems and procedures to ensure the fulfillment of the tributary obligations; require necessary information with an exclusive tributary object; promote and carry out studies, analysis and investigations on matters of its competition; design a flexible human and material resources policy, adapted to the functional needs of the organization.



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The DGA will be directed by a Board of Directors, composed by the Chief Director and four assistant directors, all designated by the President.

The resources needed to finance the DGA's requirements will be obtained by its revenues (provided by the disposition of one of the assets from its patrimony), by transferences or legacies from other institutions, or from any credit or loan authorized by law. It is important to emphasize that the law explicitly prohibits the acceptance of donations from contributors.

This bill has made significant modifications to law no. 3489, of which are worth mentioning the following three:

1. Regulation and penalization of contraband;
2. Elimination of the Consular invoice;
3. Elimination of the hierarchic resource.

As for the first aspect, law no. 226-06 specifies the regulation and penalization of contraband when it substitutes what in the previous law read "*all merchandise whose import would have been made in violation of the law [...]*" for "*the objects, products, generics, or merchandise provided by means of contraband or in violation of the law [...]*". It adds that all penalties will be cumulative, and updates the amount of the fines and reclusion time to which will be sanctioned a person found guilty of contraband.

As for the second modification, which is probably the most important one, the figure of the consular invoice has been eliminated. The law establishes that no legal, regulatory or normative disposition existing is to be interpreted in the sense that would leave effective the future use of the consular invoice for commercial interchange of any nature

Finally, this law has countermanded the hierarchic resource upheld before the Finance Minister to appeal unfavorable decisions; in its place all contributors interested in appealing any decision of the Tax Administration, will have to interpose their complaint to the Contentious Tributary Court, by means of a Contentious Tributary Resource.

**Tax Law. Bill No. 227-06 that grants corporate personhood, functional, budgetary, administrative, and technical autonomy, and own patrimony to the Ministry of Internal Taxes (Known by its acronym in Spanish DGII). By Y. Martínez Oller**

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Law No. 227-06 of 2006 grants the Ministry of Internal Taxes corporate personhood and autonomy, conceding it flexibility in the administration and collection of tax revenues, as would an autonomous organization.



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Thru this law, the DGII can negotiate agreements and contracts, linked to the development of its functions; broadcast consults of tributary nature submitted to its consideration, in accordance with the Tributary Code and within the limits of its jurisdiction; amongst other attributions.

The newly acquired autonomy has revoked everything that establishes the Ministry of Finance as the superior organization. The hierarchic resource that contributors could uphold before the Finance Minister to appeal unfavorable decisions has been eliminated; in its place all contributors interested in appealing any decision of the Tax Administration, will have to present their complaint to the Contentious Tributary Court, by means of a Contentious Tributary Resource

However, the law recognizes that the MF shall have a vigilant authority, in order to verify that the DGII's functionality adjusts to all legal dispositions.

The DGII also will be directed by a Board of Directors, composed by the General Director and four sub-directors, all appointed by the President. It will obtain the resources needed to finance its requirements by its revenues (provided by the disposition of one of the assets from its patrimony), by transference or legacies from other institutions, or from any credit or loan authorized by law.

**Tax Law. Statute that regulates the printing, emission, and delivery of fiscal vouchers.  
By Y. Martínez Oller.**

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With the intention of preventing tax evasion and promoting transparency in the registration of contributor's commercial operations, president Fernández dictated Decree No. 254-06, which establishes the Statute that regulates the printing, emission, and delivery of fiscal vouchers.

Thru this statute, the DGII will have control over the printing and emission of the documents that endorse all company transactions.

All moral or physical person that is involved commercial activities such as transference of goods, or renders services will have to emit a fiscal voucher, which could be an invoice, note of credit, debit note, among others.

In addition, all vouchers must contain:

1. Information pertaining to the document: document denomination, sequential number, fiscal voucher number in the frontal side, and date of printing;
2. Information on the issuer;



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3. Information on who prints the fiscal vouchers, if different from the issuer;
4. Information on the transferred good or service;
5. Information on the value of the transaction;
6. Information on the taxes;
7. Information on the document.

Vouchers are allowed to be printed: by the issuer, (in which case he will have to use a commercial invoicing computer program or another type of telematic program); by establishments of the official DGII list to be found in the Printing and Graphic Establishments Registry Office; also, if the type of voucher requires it, thru a cash register. In all cases the elected printing manner must be authorized by the DGII and include the voucher number. The approval must be required thru an authorization application.

All fiscal vouchers used by contributors must compel to the provisions anticipated by the new law, by January 1<sup>st</sup>, 2006. However, the DGII can commence printing authorization of said vouchers, if contributors therefore ask for it, as of ninety days of the publication of the law.

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