



**COMPETITION AND INTELLECTUAL
PROPERTY COURT**
Specialized Intellectual Property Chamber

RESOLUTION N° 0173-2022/TPI-INDECOPI

FILE NO. 0611-2021/DDA

OBLIGORS: ENTEL
PERÚ S.AVIETTEL
PERÚ S.A.C.
AMÉRICA MÓVIL PERÚ S.A.C.
TELEFÓNICA DEL PERÚ S.A.A.

THIRD PARTY

ADMINISTRATOR: YOUT, LLC.

Appeal of precautionary measure outside the proceeding - Expiry of the precautionary measure.

Lima, February seventh, two thousand twenty-two.

I. BACKGROUND

By means of Resolution No. 0149-2021/CDA-INDECOPI dated 14 April, 2021¹ the Technical Secretariat of the Copyright Commission, among others:

- Ordered injunctive relief through DNS-based blocking and URL-based blocking with respect to the websites Y2MATE.GURU; Y2MATE.BIZ; Y2MATE.INFO; Y2MATE.CH; FLVTO.BIZ; FLVTOMP3.CC; FLVTO.ME; NOTUBE.NET; YOUT.COM and MP3-YOUTUBE.DOWNLOAD, with URL <https://y2mate.guru/>; <https://y2mate.biz/>; <https://www.ymate.info/>; <https://y2mate.ch/>; <https://y2mate.ch/>; <https://www.flvto.biz/>; <https://www.flvtomp3.cc/>; <https://www.flvto.me/>; <https://notube.net/>; <https://yout.com/> and <https://mp3-youtube.download/> and domain name y2mate.guru; y2mate.biz; y2mate.info; y2mate.ch; flvto.biz; flvtomp3.cc; flvto.me; notube.net; yout.com and mp3-youtube.download.
- Ordered that ENTEL PERÚ S.A.; VIETTEL PERÚ S.A.C.; AMÉRICA MÓVIL PERÚ S.A.C. AND TELEFÓNICA DEL PERÚ S.A.A.A. execute
The Company will immediately implement this measure.
- Requested ENTEL PERÚ S.A.; VIETTEL PERÚ S.A.C.; AMÉRICA MÓVIL PERÚ S.A.C. AND TELEFÓNICA DEL PERÚ S.A.A.A.; to comply with the following requirements
with informing the Technical Secretariat of the date of execution of the precautionary blocking measure ordered in this resolution.



PERÚ

Presidencia
del Consejo de Ministros

INDECOPI

**COMPETITION AND INTELLECTUAL
PROPERTY COURT**
Specialized Intellectual Property Chamber

RESOLUTION N° 0173-2022/TPI-INDECOPI

FILE NO. 0611-2021/DDA

Considered the following:

¹ Ratified by the Copyright Commission at its meeting held on 28 April 2021.



COMPETITION AND INTELLECTUAL PROPERTY COURT
Specialized Intellectual Property Chamber

RESOLUTION N° 0173-2022/TPI-INDECOPÍ

FILE NO. 0611-2021/DDA

- Through the stream-ripping service provided through the websites: with URL <https://y2mate.guru/>; <https://y2mate.biz/>; <https://www.y2mate.info/>; <https://y2mate.ch/>; <https://www.flvto.biz/>; <https://www.flvtomp3.cc/>; <https://www.flvto.me/>; <https://www.flvto.me/>; <https://notube.net/>; <https://yout.com/> and <https://mp3-youtube.download/>, users may reproduce, by digital download, the audiovisual works indicated in the following table, which are also made available via streaming on the website www.youtube.com, at the time and place of their choice:²

Table N°1

Nombre de la obra audiovisual	Datos de identificación del productor audiovisual
"Hair Love"	MATTHEW A. CHERRY ENTERTAINMENT, LLC
"In a Heartbeat"	Beth David Esteban Bravo
"Almost Home"	DREAMWORKS ANIMATION LLC.
"MVP"	FUMI STUDIO
"Migrants"	Paul Chadeisson

- The precautionary measure will prevent the allegedly infringing acts carried out through the stream-ripping websites, which are the subject matter of this proceeding, from having no effect in Peruvian territory, by preventing access to the referred websites.
- The precautionary measure is directed against the companies ENTEL PERÚ S.A.; VIETTEL PERÚ S.A.C.; AMÉRICA MÓVIL PERÚ S.A.C. and TELEFÓNICA DEL PERÚ S.A.A., due to the fact that, as Internet Service Providers (ISP), they have the authority to proceed with DNS and URL-based blocking of websites.

The aforementioned companies, by mail dated April 21, 22 and 29, informed 2021, that they had complied with the execution of the precautionary measures ordered.

On 8 July 2, 2008, Yout2021,, LLC (United States of America), as owner of the website <https://yout.com>, filed an appeal against the injunction, requesting its annulment, having learned of it on July 2, 2008. 2021.

² As verified on August 31, 2020 by the server delegated by the Copyright Commission and reported to the Technical Secretariat through Report No. 001-2020/JFA.



PERÚ

Presidencia
del Consejo de Ministros

INDECOPÍ

**COMPETITION AND INTELLECTUAL
PROPERTY COURT**
Specialized Intellectual Property Chamber

RESOLUTION N° 0173-2022/TPI-INDECOPÍ

FILE NO. 0611-2021/DDA

By order dated September 29, 2021, the Technical Secretariat, among others, declared Yout, LLC as an administered third party, since the present proceeding deals with a blocking measure based on DNS and URL, with respect to the website <https://yout.com> owned by said company.

The case file was submitted to the Chamber on 7 October 2021.

On January 22, 2022, Yout, LLC stated that the injunction issued by the Commission has expired, since no proceeding has been initiated within the 30-day period. In this regard, it requested that the injunction be lifted by blocking the website YOUT.COM, with URL <https://yout.com/>.

By means of Memorandum No. 98-2022-SPI/INDECOPÍ dated 3 February, the Technical Secretariat of the Specialized Chamber on Intellectual Property requested the Technical Secretariat of the Copyright Commission to inform whether any complaints had been filed or formalized, either ex officio or on behalf of the parties, for infringement of the Copyright Law, in connection with the procedure for precautionary measure of cessation, processed in the present case, in order to verify the application of Article 200 of Legislative Decree No. 822 - Copyright Law.

By means of Memorandum No. 034-2022/CDA dated February 4, 2022, the Technical Secretariat of the Copyright Commission informed that no complaint has been filed or administrative sanctioning procedure initiated ex officio in relation to the facts that were subject of evaluation in the precautionary measure issued in the present proceeding.

II. ISSUE UNDER DISCUSSION

From the review of the file, the Specialized Chamber on Intellectual Property shall determine:

- a) Whether it is appropriate to rule on the precautionary measure issued.
- b) If so, whether the precautionary measure under appeal was issued by the Copyright Commission in accordance with the law.



PERÚ

Presidencia
del Consejo de Ministros

INDECOPÍ

**COMPETITION AND INTELLECTUAL
PROPERTY COURT**
Specialized Intellectual Property Chamber

RESOLUTION N° 0173-2022/TPI-INDECOPÍ

FILE NO. 0611-2021/DDA

III. ANALYSIS OF THE ISSUE UNDER DISCUSSION

1. About precautionary measures

The precautionary measure is conceived as an institution that is intended to ensure compliance with the final decision in a proceeding, trying through it that a possible damage does not become irreparable due to the passage of time until the issuance of the resolution.

It should be specified that, in some cases, in view of the special characteristics of the infringing conduct, it is feasible to order precautionary measures before the initiation of the complaint procedure. This is due to the fact that the time it may take for the complaint procedure to be admitted for processing could cause the damage caused by the infringement to become irreparable or the evidence that proves the infringement to disappear.

Due to its nature and characteristics, any precautionary measure implies a pre-judgment, in addition, it is provisional, instrumental and variable³. In this regard, it should be noted that:

- It is a pre-judgment, since in order to issue a precautionary measure, the Authority must have analyzed the existence of the right - or the appearance of its existence.
 - of the person invoking the measure. Likewise, it must have determined that there are indications that allow to presume that this right is being violated.
- It is provisional, since its purpose is to allow the final resolution to be executed, in this sense, the precautionary measure will only exist until the resolution on the disputed merits is issued, once issued, the measure expires by operation of law. In addition, the precautionary measure may be revoked at any time due to circumstances that have arisen or that could not have been considered at the time of its adoption.
- It is instrumental, since the precautionary measure is only a means or mechanism to achieve a specific purpose (to achieve the effectiveness of the final resolution).
- It is variable, since a given precautionary measure may be varied by another measure during the course of the proceeding, as the needs of the proceeding may require.



PERÚ

Presidencia
del Consejo de Ministros

INDECOPI

**COMPETITION AND INTELLECTUAL
PROPERTY COURT**
Specialized Intellectual Property Chamber

RESOLUTION N° 0173-2022/TPI-INDECOPI

FILE NO. 0611-2021/DDA

³ By way of reference, it should be noted that this is contemplated in the article of the 612Code of Civil Procedure.



PERÚ

Presidencia
del Consejo de Ministros

INDECOPÍ

**COMPETITION AND INTELLECTUAL
PROPERTY COURT**
Specialized Intellectual Property Chamber

RESOLUTION N° 0173-2022/TPI-INDECOPÍ

FILE NO. 0611-2021/DDA

2. Validity of an interim injunction issued out of procedure

Due to the provisional nature of precautionary measures, they cannot be permanently in force, especially in the case of precautionary measures issued outside of an infringement complaint procedure.

By virtue of the foregoing, it is necessary that the administrative authority, once the precautionary measure has been issued and executed, verifies the initiation of the corresponding infringement complaint procedure, since otherwise the rights of the injured party would be affected by such measure.

On this subject, Morón Urbina⁴ points out that, in the case of precautionary measures prior to the administrative proceeding, it must be ensured that the proceeding is initiated immediately. As this type of measures is born with an absolute vocation of provisionality, which conditions its permanence to the existence of an express confirmation of the same by the competent body in the act of initiation of the administrative procedure.

However, the laws applicable to the administrative procedure followed before the Copyright Commission do not establish provisions that set the deadline for initiating the ex officio complaint procedure, nor what are the consequences for not initiating such action.

In this regard, it is necessary to resort to the provisions of the Code of Civil⁵ Procedure, related to copyright, in accordance with the provisions of the TUO of the Law (General Administrative Procedure 27444⁶Law).

Pursuant to the provisions of Article 195 of Legislative Decree 822, civil proceedings initiated for violation of the provisions contained in the aforementioned Decree may be brought only in the event of a violation of the provisions of the aforementioned Decree.

⁴ Morón Urbina, Comentarios a la Nueva Ley del Procedimiento Administrativo General, Editorial Gaceta Jurídica, Lima 2001, p. 319.

⁵ First Final Provision of the Code of Civil Procedure. - The provisions of this Code apply supplementarily to other procedural laws, provided that they are compatible with their nature.

⁶ Article VIII of the Preliminary Title of the TUO of Law 27444.- The administrative authorities may not fail to resolve the issues proposed to them, due to a deficiency in their sources; in such cases, they shall resort to the principles of administrative procedure provided in this Law; failing this, to other supplementary sources of



PERÚ

Presidencia
del Consejo de Ministros

INDECOPI

**COMPETITION AND INTELLECTUAL
PROPERTY COURT**
Specialized Intellectual Property Chamber

RESOLUTION N° 0173-2022/TPI-INDECOPI

FILE NO. 0611-2021/DDA

administrative law, and only subsidiarily to these, to the rules of other laws that are compatible with their nature and purpose.



PERÚ

Presidencia
del Consejo de Ministros

INDECOPI

**COMPETITION AND INTELLECTUAL
PROPERTY COURT**
Specialized Intellectual Property Chamber

RESOLUTION N° 0173-2022/TPI-INDECOPI

FILE NO. 0611-2021/DDA

The proceedings shall be processed in accordance with the provisions of the abbreviated procedure provided for in the Code of Civil Procedure and the provisions contained in the special legislation.

Although the Code of Civil Procedure contains a general rule referring to the term the Authority has to initiate the corresponding proceeding, in the case of precautionary measures issued outside the proceeding⁷, the Legislative Decree contains 822 special provisions on such term for the case of civil proceedings initiated under the article of 195 the aforementioned law.

Thus, the article of the Legislative Decree states that the precautionary measures will be lifted by the judicial authority, provided that the applicant of the measures does not prove that it has not initiated the procedure leading to a decision on the merits of the case, within **30 days** from its practice or execution⁸.

In view of the above, in those cases in which a precautionary measure is issued, ex officio or at the request of a party, outside of an administrative complaint procedure, this procedure must be initiated within a period of 30 days, otherwise this measure will lapse as of right.

3. Analysis of this case

In the present case, the Technical Secretariat of the Copyright Commission ordered, by Resolution No. 0149-2021/CDA-INDECOPI, the precautionary measure of cessation by means of DNS-based blocking and URL-based blocking with respect to the websites Y2MATE.GURU; Y2MATE.BIZ; Y2MATE.INFO; Y2MATE.CH; FLVTO.BIZ; FLVTOMP3.CC; FLVTO.ME; NOTUBE.NET; YOUT.COM and MP3-YOUTUBE.DOWNLOAD.

⁷ Article 636 of the Code of Civil Procedure provides that if the measure is executed before the main proceeding has been initiated, the beneficiary must file its claim before the same Judge within ten days after such act. If the lawsuit is not filed in a timely manner or if it is liminally rejected, the measure lapses by operation of law. Once the claim is admitted by revocation of the superior, the precautionary measure requires new processing.

⁸ Thirty calendar days is understood.



PERÚ

Presidencia
del Consejo de Ministros

INDECOPI

**COMPETITION AND INTELLECTUAL
PROPERTY COURT**
Specialized Intellectual Property Chamber

RESOLUTION N° 0173-2022/TPI-INDECOPI

FILE NO. 0611-2021/DDA

The aforementioned resolution was challenged by Yout, LLC, the third party administered in this proceeding, since the precautionary measure includes a domain of its property (yout.com).

In accordance with the information provided by ENTEL PERÚ S.A., VIETTEL PERÚ S.A.C., AMÉRICA MÓVIL PERÚ S.A.C. and TELEFÓNICA DEL PERÚ S.A.A., the

The precautionary cease and desist measure was executed between April 21 and 29, 2021, when the deadline for initiating a sanctioning procedure or filing a complaint with respect to the audiovisual works mentioned in Table No. of this resolution was **May 29, 2021, and the deadline for filing a** complaint with respect to the audiovisual works mentioned in Table No. of 1this resolution was **May 29, 2021. 2021.**

According to the information provided by the Technical Secretariat in Memorandum No. 034-2022/CDA, to date no complaint or sanctioning procedure has been initiated with respect to the works mentioned in Table No. 1; therefore, the Chamber concludes that the precautionary measure under appeal has expired.

Consequently, there is no need to rule on the appeal against the injunction granted in the First Instance, filed by Yout, LLC.

IV. DECISION OF THE BOARD

To declare that there is NO OBJECTIVE to rule on the appeal filed by Yout, LLC, since the expiration of the precautionary measure subject of the appeal has occurred.

With the intervention of the following members: Carmen Jacqueline Gavelan Díaz, Sylvia Teresa Bazán Leigh, Virginia María Rosasco Dulanto and Gonzalo Ferrero Diez Canseco.



Digitally signed by GAVELAN DIAZ
Carmen Jacqueline FAU
20216072155 soft
Reason: I am the author of the
document Date:
1610.02.2022:21:15 -05:00

CARMEN JACQUELINE GAVELAN DIAZ
President of the Specialized Intellectual Property Court

M-SPI-01/01

10-7

NATIONAL INSTITUTE FOR THE DEFENSE OF COMPETITION AND THE PROTECTION OF INTELLECTUAL PROPERTY

Calle De la Prosa 104, San Borja, Lima 41 - Peru / Phone: 224 e-

mail7800: consultas@indecopi.gob.pe / Web:

www.indecopi.gob.pe



PERÚ

Presidencia
del Consejo de Ministros

INDECOPI

**COMPETITION AND INTELLECTUAL
PROPERTY COURT**
Specialized Intellectual Property Chamber

RESOLUTION N° 0173-2022/TPI-INDECOPI

FILE NO. 0611-2021/DDA

/jz.