

## SPECIAL REPORT

### Registry of “30S” and “There is no Forgetting” could generate inhibitory effect over media and public

Friday, October 12th

Since July this year, the terms “30S”, “30-S” and “There is no Forgetting” are the exclusive property of the government, after the Ecuadorian Institute of Intellectual Property (IEPI) accepted – in its Bulletin N° 560 – the registry of these phrases until May 2022.

However, before this happened, Ecuadorian citizens were the first to use the term “30S” as a hashtag in Twitter to talk about the events of 30 September 2010. That was the date of a police uprising described as an attempted coup d’état by the government party and reported about one-sidedly after the government ordered the broadcast of an indefinite official ‘chain’ that described only one version of the incidents.

Eduardo Arcos (@earcos), a Twitter user, was the first person to propose the use of “#30S” as a short hashtag to identify what happens in [#Ecuador](#)”, according to his own personal blog, because it was a “simple way” of grouping all the tweets and news about what was going on at the time, as it was done with international historic episodes such as 11-S and 11-M, which recall the tragic events of the United States and Spain.

Two years after the events in Ecuador, after the popularization of the term “30S”, the legal reach and implications of the use of the registered phrases is not clear. Some media outlets and social network users continue to employ them openly, while on the other hand, others prefer not to use them although they do refer to the issue.

According to an IEPI official notice, the registered terms are now “part of the State’s property and they were requested to identify specific services or campaigns”. It also quotes the Intellectual Property Law, which in article 218 expressly establishes that “as long as it is in good faith and does not infringe this right, any person may use the expression (its use is in good faith when it does not lead to confusion, association or deceit among the consumers)”.

Although 30S, 30-S and There is no Forgetting are registered within class 35, which includes business management and commercial administration, Nicolás Solines – a legal expert on issues concerning intellectual and industrial property from the Solines & Associates law office – commented that this class does not just include the categories mentioned above, but also advertising, from adverts in the streets to those broadcasted by radio or TV, as well as press release services.

"Because there is no clear definition of which cases could be punishable or when the use of the brands could be classified as illicit, fear could be generated that would lead the media, or even the public, to not use these distinctive phrases".

According to Solines, the sanction for the illicit use of these symbols could be up to three years in prison. This would lead any person to think twice before referring to the events of 30 September in this abbreviated form.

In this regard, the Inter American Human Rights Court has established that, in certain cases, economic fines can be even more inhibitory than penal sanctions, because they risk not just the communicator's assets, but potentially affect his or her family's life project.

Despite the fear the use of these brands could generate, Solines asserted that, in general terms, the media should use them freely as long as it is strictly within an informative framework, because "the use of them by the media does not and should not entail any kind of sanction", as they refer to an important historic event and, furthermore, are in common use.

This lawyer believes that the fact that a person alludes to a historically relevant date cannot be the cause for legal sanctions. However, he also sustains that the media should take into account that there is a risk that the government - availing itself of the protections afforded to registered services - could sanction an outlet it finds annoying as a way to intimidate or pressure the rest.

Flavio Arosemena, legal expert in the field of intellectual property, considers that unjustified fear has been generated regarding these brands. He believes it stems from a lack of knowledge about copyright issues, which according to him can only be used to forbid commercial uses or others that may generate confusion among the public.

"I cannot see how freedom of expression could be affected, because mentioning them in an article or debate does not imply a commercial use, unless an outlet employed them in a logotype or as a section identifier. That would be a commercial use that would entail sanctions", he stated.

Meanwhile, Twitter user Eduardo Arcos believes that "to aspire to control a term that was conceived (by the public) and therefore belongs to society, even with good intentions, betrays the confidence the government should have on its citizens and establishes a rather negative precedent: if we want to use certain terms we must first be in line with the government's interests. This is not very democratic, it is an attempt against freedom of expression, it is a kind of preemptive strike against things that have not happened yet, it is fixing a problem that does not yet exist", he states in his blog.

## **Media and internet users continue using government's phrases**

That the phrases that are currently the government's property are used by the private media and in the social networks became evident through a study carried out between 27 September and 1 October 2012.

For example, in articles published by the newspaper Hoy, the phrase "30S" was used in the editorial section to title pieces such as the one disseminated a day after the second anniversary of the events, "30-S:still waiting for the action of justice and police reform"; as well as in the body of the article "Correa remembers those who defended democracy against 'insurgents'".

Meanwhile, the newspaper El Comercio decided to use the term "30-S" to title some of its articles about the police uprising, for example: "The police leadership instated after 30-S attempts to underpin the reform", "30-S is commemorated in Quito with a vigil" or "Two years after 30-S the police attempts to recover its credibility". The terms, however, were not used in the bodies of the articles.

Their use was also evident in the newspaper La Hora, in the articles titled "Colonel Tapia denounces director of prison 4" - in its content, or "I am a 30-S trophy" and "Armed Forces have still not presented information about 30-S to the Prosecutor's Office". In all of them the term "30-S" appeared in parentheses after 30 September, as an acronym of the date. However, one of the paper's journalists was careful not to mention those phrases: Miguel Molina Díaz in his opinion piece titled "Two years after the black 30<sup>th</sup>".

Government newspapers such as El Telégrafo and El Ciudadano also used those expressions, both in news articles and in editorial columns. In El Telégrafo "30-S" appeared both in subtitles and in the informative content of the paper, while in El Ciudadano the phrases were used both in the titles and the contents of articles such as "President remembers the victims of 30S and thanks the people" and "Thousands of citizens defended democracy on 30S".

The newspaper El Universo, on the other hand, did not use the "brands" registered by the Citizens' Revolution, despite it did recall the date's anniversary in articles titled "Government slowed down its plan for changes in the police after uprising" or "Legal processes for 30 September follow different rhythms".

Something similar has happened in the social networks, where users have continued to use the distinctive 30S and 30-S to comment or refer to this historic date. However, some users have preferred to modify the phrase by using a lowercase letter, as in 30s, or the complete date.

In Twitter, French users employ the same phrase registered by the Ecuadorian government to refer to their country's demonstration against the budgetary pact. The phrase "There is no forgetting" was not used in any of the monitored articles.

