

TITULO: Chilean photographer wins 10-year claim against The Associated Press				
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Chilean photographer wins 10-year claim against The Associated Press

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Credit: Shutterstock/likeyellow

Guerrero Olivos has helped Chilean photographer Roberto Candia win a decade-long dispute against US-based news agency The Associated Press in a ruling where a Chilean court ordered that the company must pay out a lump sum compensation after using his photos without permission.

Morales & Besa advised The Associated Press.

On 13 March, Chile's Constitutional Tribunal issued a judgement confirming the constitutionality of Article 85 K of its Intellectual Property Law – which states that parties who have been subject to copyright infringement can receive a single, fixed-rate payout, rather than general compensation.

The ruling dismisses an inapplicability challenge brought by The Associated Press on 4 February, in which the agency argued that the regulation facilitating a lump sum compensation was unconstitutional.

The March judgement ends a dispute that had been building for over a decade, when Candia – who captured the iconic image of a man holding the national flag amid rubble following Chile's 27 February 2010 earthquake – started the infringement.

The photographer first broached the matter through a settlement agreement with The Associated Press as early as 2015. At the time, the agency was asked to pay Candia royalties for his works and provide quarterly reports regarding sales and licenses related to the photographs.

Having failed to comply with those obligations, Candia filed an infringement claim against the agency in 2021 – with over 9,000 of his photographs uploaded on its platform for sale and distribution without his permission.

The latest ruling is “of paramount importance,” according to Diego Morandé, partner at Guerrero Olivos, as it “marks the first occasion on which the Constitutional Court has reviewed Article 85 K.” In doing so, the court “reaffirmed the constitutionality of the provision that allows authors to claim a single compensatory amount, both as applied to the specific case under review and in general terms,” he adds.

Counsel to Roberto Candia

Guerrero Olivos

Partners Diego Morandé, Pedro Pellegrini, Eduardo Cordero and José Gabriel Undurraga, senior counsel Manuel Núñez and associate Francisco Javier González

Counsel to The Associated Press

Morales & Besa