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On 16 April 2007, the Supreme Court of Mexico rendered an important resolution in connection with remuneration rights. The background of which is set against a bill passed by Congress in 2003 which recognized the rights for public performance of works-of-authorship. In essence, the provision states that an author and his/her assignee shall have the right to receive a "royalty" for the public performance or transmission of the work that they have created and the right cannot be renounced. However, the bill-opened questions if the right would be part of the bundle of patrimonial copyright rights or if it would be regarded a *sui generis* right of economic or other nature.

Groups of users like theatres or broadcasters raised strong objections against the bill since, in their consideration, it had opened a window accruing in favour of authors "and" their assignees, concurrent patrimonial and remuneration rights that they would be entitled to at the same time and consequently, that would allow seeking multiple monetary considerations from users in connection with one single event. The group of users viewed the remuneration right as a repetition of the patrimonial right of public performance and accordingly, as a vehicle that authors and assignees would employ in detriment of their constitutional rights. Likewise, the language that Congress employed was regarded by users as equivocal confusing and unfortunate, since it was used a conjunction "and" to describe that both, authors and assignees, would be owners of the right and since nothing was ever mentioned to define the nature of the remuneration right vis-a-vis existing patrimonial rights.

Accordingly, users brought constitutional actions before the federal courts with the purpose of removing the newly adopted bill from the Copyright Law.

AGREEING TO DISAGREE

Some of the actions reached the Supreme Court and were analysed simultaneously by the two chambers that compose the high court. The resolutions resulting from each of the chambers had a contradicting effect. While both agreed that the remuneration right that Congress inserted into the Copyright Law was a right in itself of economic nature, but certainly, different from the patrimonial exclusive right of public performance, they disagreed in the reading of the "no-renounce ability" requirement. The first chamber of the Supreme Court stated that the remuneration right could not be renounced, but

could be transferred by a living author to any assignee (i.e. a producer). The second chamber supported the idea that, since the right could not be renounced, it could only be transferred from a deceased author to an heir. It was clear that the first chamber's position was beneficial to the cultural industries, whereas the second chamber was more inclined to the author's interests. The contradicting judgments of the two chambers were raised for the analysis and discussion of the plenary assembly of the Supreme Court. The purpose of the analysis would be holding a session in which the whole issue would be discussed and decided by all Ministers gathered together.

Discussion by the Ministers sitting in the plenary session was a remarkable event. It was the first time in many years that the Supreme Court of Mexico would address copyright questions that required a thorough analysis of the subject's fundamentals and principles. The challenge for the Supreme Court would not only rest in defining whether Mexican Copyright Law had introduced non-exclusive remuneration rights adjacent to the exclusive patrimonial rights system or if the newly created right could be waived or if on the contrary authors could not renounce to it. The policy aspects behind the technical considerations were well beyond in terms of importance. Would this resolution be another proof that Mexico has been slowly departing from strict author's rights notions, following NAFTA and other international trends putting rights of authors and users in balance and harmony? Or on the contrary, would the Supreme Court undertake a more protective approach by enhancing the rights of the flesh and bone author, without viewing other interests?

#### FIVE-TO-FOUR VOTE

The outcome was ultimately based on the proposal by the first chamber with certain minor modifications. A divided plenary court, giving a five-to-four vote, decided to the existence of a remuneration right that authors enjoy for each time that the work that they have authored is publicly performed and that they can transfer to third parties without limitation of any kind. In keeping with this, under Mexican Law it will be possible that producers of audiovisual or musical works own by transfer the remuneration right of authors