

A Q&A guide to copyright litigation in Mexico.

The Q&A gives a high level overview of sources of law; court systems; substantive law; parties to litigation; enforcement options; procedure in courts; preliminary relief; final remedies; appeal remedies; litigation costs; reform.

To compare answers across multiple jurisdictions, visit the Copyright litigation [Country Q&A tool](#).

The Q&A is part of the global guide to copyright litigation. For a full list of jurisdictional Q&As visit [www.practicallaw.com/copyrightlitigation-guide](http://www.practicallaw.com/copyrightlitigation-guide).

#### Sources of law

1. What are the principal sources of law and regulation relating to copyright and copyright litigation?

The sources of national law relating to copyright law and copyright litigation are the:

- Federal Copyright Law of 1996 (Copyright Law).
- Industrial Property Law of 1991.
- Federal Penal Law of 1931.
- Federal Civil Code of 1928.
- Federal Code of Administrative Proceedings of 1994.

- Federal Code of Civil Proceedings of 1943.
- Federal Code of Penal Proceedings of 1931.
- Customs Law of 1995 (Customs Law).
- Cinematography Law of 1992.

The sources of national regulations to laws relating to copyright or litigation are the:

- Regulations to the Copyright Law of 1998.
- Regulations to the Industrial Property Law of 1994.
- Tariff for Public Performance in General.
- Tariff for Theatrical Performance.
- Tariff for Film Exhibition.

- Tariff for Public Performance in Hotels.
- Tariff for Broadcasting of Musical Works.

The sources of international law relating to copyright or litigation are the:

- Berne Convention for the Protection of Literary and Artistic Works 1886.
- UN Universal Copyright Convention 1952.
- Inter-American Copyright Convention on Literary, Scientific and Artistic Works 1946.
- Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms 1971.
- WIPO Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961 (Rome Convention).
- WIPO Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite 1974 (Brussels Satellite Convention).

- Treaty on the International Registration of Audiovisual Works 1989 (Film Register Treaty).
- WIPO Copyright Treaty 1996.
- WIPO Performances and Phonograms Treaty 1996.
- WTO Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS).
- North American Free Trade Agreement (NAFTA).

There are also a number of free trade agreements without specific IP rules.

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## Court system

### 2. In which courts is copyright enforced?

Copyrights can be enforced before administrative bodies, or civil or criminal courts. The type of action available depends on the type of rights enforced.

The Copyright Law places copyright enforcement actions under the procedural rules of the Industrial Property Law. Administrative copyright infringement actions can be brought before the Mexican Industrial Property Institute (*Instituto Mexicano de la Propiedad Industrial*) (IMPI) or the Copyright Office. IMPI oversees the enforcement of copyright and neighbouring exclusive economic rights through infringement actions. IMPI is an administrative body dealing with the registration aspects of industrial property rights. As IMPI was the enforcer of patent and trade mark rights for many years, Congress made copyright also part of IMPI's jurisdiction with the intention that administrative proceedings would be shorter than judicial proceedings. The Copyright Office, another specialised government body dealing with registration and other administrative matters in relation to copyright law, had no experience with enforcing IP rights when Congress was discussing a new copyright procedural system in 1996. With the advent of the Copyright Law in 1996, the Copyright Office was given the power to render administrative sanctions against certain copyright infringements, including protection of moral rights of paternity and integrity, but not the power to enforce economic rights.

Decisions made by IMPI can be appealed before the Federal Tribunal for Administrative Affairs, an administrative justice tribunal that reviews the resolutions of government bodies. The Tribunal has created an ad hoc chamber or section that deals exclusively with intellectual property matters. The resolutions of the Tribunal can be reviewed by federal circuit courts.

Civil actions can be brought before federal or local civil courts when the matters in dispute include:

- Remuneration rights, such as unpaid royalties, deriving from licences, assignments or other contracts.
- Authors' remuneration rights arising from public exploitation of their works after they have assigned their exclusive economic rights to third parties.

Similarly, civil actions can be taken to pursue damages from violations to exclusive economic rights. However, such actions are available only after IMPI has given a resolution declaring an infringement of rights. The civil courts have no specialisation in copyright affairs.

Criminal actions can be brought before criminal courts in the case of copyright piracy activities or infringement that is perpetrated in bad faith and on a commercial scale. The Attorney General deals with criminal actions. The role of the Attorney General's Office is to investigate copyright crimes, mainly through a specialised unit with district attorneys qualified in the field. In contrast, the criminal courts have no specialisation in copyright law.

### 3. Who can represent parties before the court?

The parties must be represented by licensed attorneys-at-law, empowered by the claimant or defendant, if the matter takes place in a judicial court. If the matter is criminal, legally empowered district attorneys handle the proceedings. Any person can intervene with IMPI, in the capacity of representative of the conflicting parties. Collecting societies that have fulfilled the legal requirements to represent affiliate members can take actions on their behalf.

### 4. What is the language of the proceedings? Is there a choice of language?

The language of proceedings before the courts or administrative bodies must be Spanish.

5. To what extent are courts willing to consider, or are bound by, the decisions or opinions of other national or foreign courts, or other national or international bodies, that have handed down decisions in similar cases?

The courts are not bound to follow the resolutions of foreign courts, and case law is not a source of law in Mexico. However, sometimes IMPI or civil courts have been persuaded, or at least been interested, when parties have cited foreign awards in their allegations.

#### **Substantive law**

6. What types of works can be protected by copyright?

The Copyright Law uses the Berne Convention expression of “literary and artistic works” that are original creations in literature, the arts or science. In keeping with this, the notion of copyrightable works is broad and inclusive so as to include any creative expressions that can be considered works of authorship. Similarly, the Copyright Law lists copyrighted works into the following non-exhaustive categories:

- Literary works.
- Musical works.
- Dramatic works.
- Choreographic works.
- Paintings or drawings.

- Sculptures or plastic works.
- Architectural works.
- Works of applied arts, including textile and graphic designs.
- Compilations, characterised as encyclopaedias, anthologies and other related works.
- Photographs
- Radio programmes.
- Films and other audiovisual works.
- Computer software.
- Graphic digital works.
- Audiovisual digital works.

- Databases.

The author of a work does not have to be a national of Mexico for the work to qualify as copyrightable and works qualify for copyright protection irrespective of the nationality of the author. The Copyright Law states that foreign copyright owners enjoy the same rights as nationals under the international treaties to which Mexico has subscribed (*see Question 1*). In conformity with international treaties on neighbouring rights, the Copyright Law extends protection to neighbouring rights owners such as:

- Performing artists.
  - Phonogram (sound recordings) producers or broadcasting organisations who first fix performances.
  - Sound recordings or broadcast signals in a foreign country.
7. What are the main acts that constitute primary and secondary infringement of copyright?

Users of works can be sued for copyright infringement for undertaking the following acts without authorisation by the copyright holder:

- Making copies.

- Distributing copies.
- Communicating to the public.
- Transforming a copyrighted work.

The Copyright Law does not expressly recognise “making available” rights. However, this is recognised and regulated in practice through a direct application of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

8. Does your jurisdiction provide authors with moral rights?

Authors receive moral rights. Moral rights are personal to authors, and cannot be transferred and are perpetual.

9. What defences are available to an alleged infringer?

Alleged infringers can bring defences on several grounds. The first layer of defence is that either the:

- Claimant is not the author of the work or has no rights to it.
- Creation does not qualify as a copyrightable work.

The second layer of defence is that either the:

- Defendant did not use or exploit (copy in whole or part, distribute, publicly perform or transform) the work.
- Use made was permitted by the law because of a limitation of economic rights, or was outside the scope of the law.

Fair use and fair dealing cannot be used as defences in Mexico, although they are relevant to specific exceptions and limitations provided by the Copyright Law, or to reliance on the “three step test” recognised by the Berne Convention.

10. Is there a requirement for copyright registration?

Copyright protection is not subject to registration, and is not required to recover damages or other forms of relief. The Copyright Office registers works, but copyright holders do not have an obligation to register. Deposits are not required.

#### **Copyright notice**

A copyright notice is not a requirement for protecting rights or for taking actions.

#### **Consequences for failing to register copyright or to display a copyright notice**

Failing to display a copyright notice constitutes an administrative infringement subject to fines, if notices are not properly affixed onto copies of works subject to distribution. That provision goes against the domestic system and reflects Berne Convention principles.

11. How long does copyright protection last for the principal types of copyright work?

The term of protection of economic rights is the life of the author plus 100

years. The term applies to every work, without exception. The Copyright Law does not provide special terms for work-for-hire or other situations.

#### 12. How is copyright infringement assessed?

In principle, from the reading of the statute, the Copyright Law appears to require copying to be literal for there to be an infringement. However, in practice, courts have decided cases using the doctrine of substantial similarity.

The Copyright Law does not set out methods for assessing infringement. In practice, infringement is examined according to the nature or category of works. For example, the copying of musical works depends on issues such as the musical structure, harmony or melody used. For software, theories like abstraction tests are valid and can be followed.

#### 13. On what grounds can copyright in a work be declared invalid or unenforceable?

Copyright can be invalidated on the basis that it is not a copyrightable work of authorship, but merely a non-original expression of an idea. Copyright registrations can be annulled for the same reasons as in paternity disputes between a registrant and the true author or copyright owner.

#### 14. What limitation periods apply to copyright infringement actions?

There are no statutes of limitations for actions for infringement of copyright before the Mexican Industrial Property Institute (*Instituto Mexicano de la Propiedad Industrial*) (IMPI), and no related legal concept such as laches or acquiescence under the Mexican legal framework.

For a copyright infringement action before a civil court, an action would be barred after ten years from the date on which the infringement occurred.

#### 15. To what extent can the enforcement of copyright expose the copyright holder to liability for an anti-trust violation?

A copyright holder can be liable for anti-trust violations to the extent that they

carry out an uncompetitive practice by using the work, for example, excluding competitors from the market.

#### **Parties to litigation**

16. Who can sue for copyright infringement?

#### **Copyright holder**

The copyright holder, as the owner of the economic or moral rights, can sue for:

- Infringement.
- Royalty collection or recovery.
- Cancellation.
- Paternity disputes.
- Any action in connection with the rights provided under the Copyright Law

Copyright holders can only assign their economic rights. Being derivative copyright owners, assignees of economic rights can only sue on the basis of contracts executed in writing and recorded at the Copyright Office. Audiovisual producers can bring actions in connection with the audiovisual work, as well as

parties who have commissioned the realisation of the works. Neighbouring right holders can also bring actions to enforce their rights.

#### **Exclusive licensee**

Licensees of copyright or neighbouring rights can bring actions based on the licence agreement, if the licensor grants to the licensee the right to defend their rights, and the agreement is recorded.

#### **Non-exclusive licensee**

Licensees of copyright or neighbouring rights can bring actions based on the licence agreement, if the licensor grants the licensee the right to defend their rights, and the agreement is recorded.

17. Can copyright collecting societies sue for copyright infringement to enforce their members' rights?

Copyright collecting societies can sue for copyright infringement to enforce their members' rights. However, if the members decide that the collecting society can initiate actions against third parties, no parallel actions can be initiated against third parties for the same acts.

To collect royalties, the Civil Code and the Copyright Law require that a collecting society prove the:

- Rights of its members, or the foreign composers represented through reciprocity agreements, in the musical works.
- Collecting society's right to act on behalf of the composer through a power of attorney that entitles the collecting society to collect royalties and bring court actions.

18. Under what conditions, if any, can an alleged infringer bring proceedings to obtain a declaratory judgment of non-infringement?

A declaratory judgment of non-infringement is not possible under either the Copyright Law or general procedural laws. Non-infringement can only be raised as a defence in infringement proceedings.

19. Who can be sued for copyright infringement?

Unauthorised users of works can be sued for copyright infringement and for collection of royalties or remuneration rights.

Directors, managers, representatives, members of management committees and, in some circumstances, shareholders of companies can be personally liable if the company that they invest in, manage, or represent, has been convicted of a crime.

The Copyright Law and the general procedural laws do not recognise contributory infringement or vicarious liability as such. The criminal laws set out rules that can be similar to contributory infringement. For example, the Penal Code sets out the circumstances under which somebody is deemed to commit a crime. However, these are restricted to situations where participants knowingly take positive steps to assist those who have ultimately perpetrated the crime. Similarly, the Penal Code recognises specific secondary liability when third parties supply the raw materials or consumables for reproducing works.

20. How is the liability of intermediaries, such as internet service providers treated? Under what conditions can they be liable for copyright infringement? Are there any specific defences available to them?

The Copyright Law and the general procedural laws do not recognise contributory infringement or vicarious liability. Therefore, intermediaries such as internet service providers (ISPs) cannot be liable for copyright infringement in Mexico, and there are therefore no relevant safe harbours. The only way that intermediaries could be liable as a result of copyright infringement actions, is where preliminary injunctions are imposed on them and they refuse to comply.

Intermediaries such as ISPs can cite the violation of constitutional rights such as freedom of expression or access to information as defences to preliminary injunctions.

In the recent important *Alestra* case, the Federal Supreme Court established that preliminary injunctions blocking of a website for copyright violation had to comply with the following requirements:

- The measure must be recognised by law. The Mexican Industrial Property Law, as well as the Mexican Copyright Law Regulation recognise the possibility that preliminary injunctions can be ordered against an infringer and against third parties.
- The measure must have a legitimate purpose. An injunction blocking a website for copyright infringement must have the legitimate purpose of protecting copyright and neighbouring right holders.
- The measure must be necessary and proportionate. Partial website blocking is allowed as long as the preliminary injunction is duly reasoned and justified by the implementing authority. A consideration of all the relevant rights must be clearly undertaken. Total website blocking is allowed only if a totality or great majority of the contents of the website are illegal. The order implementing the preliminary injunction must also be duly reasoned and justified.

Mexico is currently re-negotiating NAFTA with the US and Canada, and it is very likely that as a result Mexico will be compelled to adopt provisions such as the ones contained in the US Digital Millennium Act or EU directives in relation to the liability of intermediaries for copyright violations.

21. Is it possible to add or remove parties during litigation?

It is not possible to add or remove parties during litigation. If the claimant reaches settlement with one or more co-defendants they can be removed from proceedings, which then continue against the non-settling co-defendants(s).

#### **Enforcement options**

22. What options are open to a copyright holder when seeking to enforce its rights in your jurisdiction?

Administrative, civil and criminal options are available for copyright holders to enforce their rights. See *Question 2*.

23. Is interim relief available for the rapid removal of infringing content from the internet?

Interim relief is available against the infringer and intermediaries for the rapid removal of infringing content from the internet. See *Question 20*.

24. Is it advisable to send a letter before action (cease and desist letter) to an alleged infringer before commencing copyright infringement proceedings?

It is not compulsory to send a cease and desist letter to an alleged infringer before commencing copyright infringement proceedings but it is common practice. Some infringers have filed criminal actions against the signatories of such letters based on libel or slander, arguing that they have been affected by unjustified threats. However, such criminal actions have so far been unsuccessful.

25. To what extent are your national courts able to grant cross-border or extra-territorial injunctions (preliminary or permanent)?

The issue of cross-border or extra-territorial injunctions has not been tested before the courts. Procedural rules allow judges to declare extra-territorial

injunctions, for example, for violations to the Mexican Copyright Law perpetrated by parties domiciled outside Mexico. However, since the question has never been raised in practice, it is difficult to predict if judges would be willing to support this.

26. To what extent are arbitration, and alternative dispute resolution (ADR) methods (such as mediation), available to resolve copyright disputes?

ADR has become an important method for resolving disputes in Mexico. Since ADR, and particularly arbitration, have been used more frequently, a number of cases have arrived at court, including at the Supreme Court of Justice, which have set criteria under the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) framework for how disputes can be arbitrated and awards executed or challenged.

Copyright arbitration has been growing in parallel to general commercial arbitration, particularly in the film industry. Increasingly, licence or other agreements relating to copyright or entertainment law matters are negotiated with arbitration clauses. Similarly, general arbitration institutions such as the Mexican Chamber of Commerce (*Centro de Arbitraje de Mexico*) have lists of copyright experts. The Copyright Office can also act as an arbitration institution and keeps a list of arbitrators that is updated every year and published in the federal government's gazette. On an international level, copyright holders and users have used arbitration systems such as the Independent Film and Television Alliance (IFTA) or the new WIPO arbitration project on entertainment law. Both have Mexican experts on their lists.

#### **Procedure in civil courts**

27. What is the format of copyright infringement proceedings?

The format of copyright infringement proceedings depends on the action filed. The Copyright Law is applicable in substantive matters, and the Federal Code of Civil Proceedings governs litigation in federal courts. In local litigation, the states' procedural codes are substituted for the federal legislation, but the

Copyright Law continues to apply.

As civil proceedings are governed by either federal or local procedural codes, actions claiming remuneration or damages or requesting the cancellation or registrations must follow these statutes' norms and rules. The rules cover:

- Filing and responding to complaints.
- Hearings.
- Incidental recourses.
- Allegations.
- Sentences.
- Appeal.

Preliminary measures are possible under the procedural codes, but are more restrictively applied in practice, in comparison to the Law on Industrial Property.

Criminal proceedings are exclusively federal and are governed by the:

- Copyright Law.
- Penal Code.
- Federal Code of Penal Proceedings.

Criminal proceedings are divided into preliminary inquiries and a process or trial. The investigative stage starts with a private claim by the copyright owner through private actions, or by a public claim (depending on the type of crime), and terminates with a resolution granting or denying indictment. As a criminal action is private, the federal prosecutor can only start to investigate after a copyright owner or their representative has filed a claim. Accordingly, title and representation must be proved. The copyright owner can control the initiation and termination of the proceeding by withdrawing the claim at any time.

The federal prosecutor or district attorney is in charge of the investigation, and is therefore empowered to collect evidence to conclude that a crime has been committed. Among other investigative measures, the district attorney can inspect premises and seize objects. If inspection is made of private property, a search and warrants order issued by a judge is required. After indictment, the matter is brought before a district judge, who then starts a criminal process or trial if they arrive at a prima facie conclusion that there is a crime. The defendant is granted a constitutional right to reply to the charges and to be formally imprisoned, or liberated if the charges have no merit. The judge conducts the criminal trial with the General Attorney's Office. The victim can assist the General Attorney in the prosecution of the trial. Both the General Attorney's Office and the defendant, if convicted, can file an appeal before a unitary court and then file a review at a circuit court.

Copyright administrative proceedings are also federal and are governed by the:

- Copyright Law.
- Law on Industrial Property.
- Federal Code of Administrative Proceedings.
- Federal Code of Civil Proceedings. The Federal Code of Civil Proceedings can supplement the administrative code, in particular when a given procedural norm is insufficient.

Contentious administrative proceedings are summary in nature and are intended to avoid procedural steps such as intermediate appeals. In theory, they are generally restricted to the filing of a complaint, an answer and final arguments. Preliminary measures are possible before or even during the principal proceeding, including preliminary injunctions, inspections, and seizures. Resolutions can be appealed before the Federal Administrative Court and reviewed by a circuit court.

Disputed issues are always decided by judges in a court proceeding, or by administrative officers if held by the Mexican Industrial Property Institute (*Instituto Mexicano de la Propiedad Industrial*) (IMPI).

28. What are the rules and practice concerning evidence in copyright infringement proceedings in your jurisdiction?

Civil and criminal proceedings allow all forms of evidence. Administrative proceedings are subject to certain restrictions, as parties can only submit testimonies and confessions in writing and therefore cross-examination is not possible. The value of affidavits is small in civil and criminal proceedings. In

administrative proceedings, affidavits are equal to testimonies and can have persuasive value. Expert testimonies must comply with certain formalities. Both parties appoint experts who give testimonies in writing. The court or the Mexican Industrial Property Institute (*Instituto Mexicano de la Propiedad Industrial*) (IMPI) will bring third party experts to give their opinion when testimonies conflict.

29. To what extent is survey evidence used?

Survey evidence is principally used at the Mexican Industrial Property Institute (*Instituto Mexicano de la Propiedad Industrial*) (IMPI) in connection with trade mark matters. It has been never used in copyright proceedings, as copying matters, including issues of substantial similarity, are not relevant to consumers or the general public. Copying is assessed by experts in the relevant field.

30. Is evidence obtained for criminal proceedings admissible in civil proceedings, and vice versa?

Evidence obtained for criminal proceedings is admissible in civil proceedings, and vice versa.

31. Is evidence obtained in civil proceedings admissible in other civil proceedings?

Evidence obtained for civil proceedings is admissible in other civil proceedings.

32. To what extent is pre-trial discovery permitted and what other mechanisms are available for obtaining evidence from an adverse party or third parties?

Discovery is not available under any of the procedural laws. In administrative proceedings, any party can ask the Mexican Industrial Property Institute (*Instituto Mexicano de la Propiedad Industrial*) (IMPI) to order the other party to produce evidence. Such evidence must be specifically identified and be connected to the issues subject to the litigation.

33. What level of proof is required for establishing infringement?

To establish infringement or invalidity, proof must convincingly, objectively and directly demonstrate the wrong, in itself or together with other proof.

34. How long do copyright infringement proceedings typically last?

#### **Expediting proceedings**

Civil proceedings can take from one to three years, and sometimes longer if the subject matter involved is more complex. Administrative proceedings take from two to five years. They can be sped up, but that depends on the backlog of the Mexican Industrial Property Institute (*Instituto Mexicano de la Propiedad Industrial*) (IMPI). Criminal matters can be swift, depending on the evidence against the alleged infringers.

#### **Delaying proceedings**

Defendants can use several alternative tactics to delay proceedings. For example, they can bring frivolous counter-actions to challenge the copyright, taking advantage of the fact that the courts or IMPI must decide on the counter-actions before addressing the principal action.

#### **Counteracting delay to proceedings**

It is hard for a claimant to counter these tactics, apart from asking the court or IMPI to resolve them as quickly as possible.

#### **Preliminary relief**

35. Is preliminary relief available, and if so what measures are available and under what conditions?

Civil procedure laws provide preliminary measures, but courts apply them so

restrictively that they are never granted.

A range of preliminary measures are available in administrative procedures. Claimants can seek preliminary injunctions, seizures and site inspections, among other things. However, defendants can easily lift preliminary measures by posting a bond or a counter-bond (if the Mexican Industrial Property Institute (*Instituto Mexicano de la Propiedad Industrial*) (IMPI) previously required the claimant to file a bond as a warranty against damages when granting the preliminary measures).

In criminal proceedings, district attorneys can ask judges to make search and warrant orders to:

- Conduct raids.
- Seize infringing copies.
- Review premises, documents or evidence.
- Arrest people.<sup>36</sup> Can a protective writ be filed at the court at which an ex parte application may be filed against that defendant?

Protective writs are not recognised.

37. What is the format for preliminary injunction proceedings?

**General**

The claimant must file a petition for preliminary measures in writing, showing a prima facie copyright infringement. Evidence is submitted for this purpose, together with a bond as a warrant of damages. IMPI admits the petition and assesses the infringement (although in practice it does not analyse the infringement and automatically approve the petition). A few days later, the Mexican Industrial Property Institute (*Instituto Mexicano de la Propiedad Industrial*) (IMPI) responds to the claimant, generally granting the petition and providing a date for it, as well as a date for performing a search of premises and seizure, if requested by the claimant. IMPI may ask the claimant to increase the amount of the bond if, after the search and seizure is made, IMPI finds that the original amount is too low to cover possible damages if the case was decided in favour of the defendant. Once the preliminary measures are notified and implemented, the defendant has 20 business days to produce a response. At the same time, the claimant has ten business days to file an infringement action, based on the merits. The defendant can ask IMPI to eliminate the preliminary measures order by posting a counter-bond, which IMPI normally fixes as double the original bond.

#### **Level of proof**

The level of proof required for establishing infringement in preliminary injunction proceedings is showing a prima facie case. The level of proof needed for establishing invalidity in preliminary injunction proceedings is full proof.

#### **Evidence**

In theory, all sorts of evidence is valid in preliminary injunction proceedings, subject to the limitations of administrative proceedings. However, most petitions are supported by documentary evidence only.

#### **Copyright validity**

The Copyright Law and procedural laws do not allow a defendant to challenge the validity of copyright in preliminary administrative infringement proceedings. Defendants generally wait until the claimant actually brings an infringement action to counterclaim against the validity of the copyright. The Copyright and Industrial Property Laws follow TRIPS standards relating to preliminary measures proceedings and how they are independent from regular infringement proceedings.

#### **Length of proceedings**

Preliminary injunction proceedings take a few days or weeks from the date that they are filed to when they are implemented.

38. Where a preliminary injunction is granted, is it necessary to start main proceedings to confirm the preliminary injunction, and if so, what is the deadline?

Main proceedings must be started within ten business days after a preliminary injunction has been notified to the defendant.

39. What remedies are available in a copyright infringement action?

#### **Permanent injunction**

In civil matters, the typical available remedies are monetary. Remedies in administrative matters typically include:

- Final injunction.
- Fines.

- Shutdown of establishment.
- Destruction of seized goods.

Final injunctions can be effective against the infringer's suppliers or customers, or can be employed against future infringements.

Remedies in criminal matters typically include imprisonment and fines, as well as remedies to repair the effects of the breaches.

Final injunctions can be effective against the infringer's suppliers or customers, or can be employed against future infringements.

40. How are monetary remedies assessed against a copyright infringer?

Under the Civil Procedural Code, a claimant can recover either or both:

- Economic losses, including lost profits and royalties.
- Profits that the claimant would have earned if the infringement had not been committed.

The Copyright Law includes an ad hoc formula applicable once copyright infringement is found, known as the "40% rule". Under the 40% rule, damages for economic or moral rights violation are set a minimum of 40% of the sale price obtained by the infringer from selling copies of the works or rendering

infringing services. The 40% rule does not represent punitive or statutory damages, but is more similar to these than lost profits or reasonable royalties would be. The difference is that it does not trigger automatically on an infringement, despite the language employed in the law being quite straightforward. Damages must be proved first, otherwise the 40% rule would go against civil law and the Constitution. The rule functions as a minimum standard provision applicable when damages can be proved. To request application of the 40% rule, the author or copyright holder must prove that the infringer received income or revenue by selling copies of a work or by rendering a service using a work, without having obtained authorisation from the copyright holder or without having paid a royalty.

The rule is more complicated in the case of moral rights, since the author claiming damages for violation of a moral right would first need to show that the infringement triggered economic harm. There are no decisions awarding damages for violation of moral rights.

#### **Appeal remedies**

41. What routes of appeal are available to the unsuccessful party and what conditions apply?

See *Question 2*. If an appeal is filed, relief is stayed pending its outcome. Appeal proceedings last between six months and one year.

#### **Litigation costs**

42. What level of cost should a party expect to incur to take a case through to a first instance decision, preliminary injunction proceedings and appeal proceedings?

Attorney fees and costs can only be recovered by the winning party in civil proceedings. This depends on the behaviour of the losing party, in the opinion of the judge.

## **Reform**

43. What are the important developing and emerging trends in your country's copyright law?

Mexico is currently re-negotiating NAFTA with the US and Canada, and it is very likely that as a result Mexico will be compelled to adopt provisions such as the ones contained in the US Digital Millennium Act (DMCA) or EU directives in relation to the liability of intermediaries for copyright violations.