

*BY LUIS C. SCHMIDT*

*PARTNER*

*MANAGING INTELLECTUAL PROPERTY, MAY 1999*

The following comments relate to the laws and rules in Mexico regarding copyright protection terms, in accordance with different laws in force in Mexico since 1947. The purpose of this note is to explain how they could have impacted on foreign works of authorship. The author chose the case of US works because of the question NAFTA has posed, and because extending it to other countries laws would have made this note very long.

*WHAT THE LAW SAYS*

Work created in the US under the Copyright Law of 1948.

Article 8 established a term of protection of patrimonial rights of life of author plus 20 years. Article 2 established that the protection given by the Law to Authors is granted by simple creation of the work without the need for prior deposit or registration of its title, except for the cases specially stated therein. Aliens domiciled in the Mexican Republic shall enjoy the same right as they are national authors; aliens not domiciled there must register their rights with the copyright department to obtain the benefits of protection this law grants, unless the agreements entered by Mexico and the governments of the countries of which aliens are nationals state otherwise.

There was no treaty executed by Mexico and the United States of America granting the 1940 reciprocal benefits (absence of formalities as to registration). The Berne Convention provides such rights; however, the US did not sign it until 1989. The US ratified the Panamerican Convention of Buenos Aires of 1910, and so did Mexico apparently. However, the treaty did not provide an absence of formality provision. Thus, as the treaty of 1910 did not provide such rights, unregistered works created in the US would fall in the public domain, as there was nothing in the 1948 Copyright Law to the contrary.

### *WORK CREATED IN THE US UNDER THE COPYRIGHT LAW OF 1956*

Article 2 established a term of protection of life of author plus 25 years. Article 25 established that protection given by the Law to authors is granted by simple creation of the work without need for prior deposit or registration for its title, except for the cases in the subsequent article.

Article 26 established that if the author of a work of authorship is not a national of a state with which Mexico has executed a copyright treaty or agreement that is in force, that work will have to be registered, for protection, with the Mexican Copyright Office.

Accordingly, works of US nationals would have required registration for protection, as in 1948 no legal treaty was in force between Mexico and the US during the 1950s.

If rights obtained while the 1948 Law was in force had not expired in 1956, when the Law of 1956 became effective, the protection term would have been extended from 20 to 25 years.

### *WORK CREATED IN THE US UNDER THE COPYRIGHT LAW OF 1963*

Article 23 originally established a general rule of life plus 50 years, which was amended in 1993, the term increasing to life plus 75 years.

Article 8 established that works that are referenced in the preceding article shall be protected, regardless if registered or are not made known to the public, or they remain unpublished.

The reciprocity rule was eliminated and the absence of formalities rule became fully applicable to works of US nationals, despite the fact that until at least 1989, the US did not reciprocate.

The law that came into effect in 1963 could have offered a chance to the copyright owners whose works had fallen into public domain, to restore the corresponding rights, with the filing of a copyright application within a particular term. Transitional article 6 of the 1963 Law set the following:

“Authors whose works have fallen into the public domain by reason of non-registration during the term established in the Civil Code for the District and Federal Territories, insofar as concerns general matters, and the entire Republic

insofar as concerns Federal matters, can obtain the benefits of protection that this amendment grants, if they seek registration of their works with the General Direction of Authors Rights within a period of one year counted as of these amendments come into force. This protection may be requested by the authors or their successors in title, and will not in any way affect any prior rights legally acquired by third parties. The successors or assignees of authors that are deceased, shall prove the fact of the death, and that it happened within a term of 30 years previous to the date that the present amendments became effective”.

Extension of term went from 25 to 50 years in 1963, and in 1993 from 50 to 75 years.

#### *WORK CREATED IN 1999*

In accordance with the Copyright Law of 1997 any work created in the US by US nationals would be entitled to protection for the term of life plus 75 years, without the need to register.

In a previous briefing we analyzed copyright terms under the copyright laws of 1947, 1956, 1963 and 1997. Particular emphasis was made to the registration of rights, a requirement abandoned in the Mexican law of 1947. It was also mentioned that a restoration provision required foreign authors not domiciled in Mexico to obtain registration of the work in the public domain within a one-year period. If that new formality was not met, restoration would not have produced effects and consequently the corresponding work would have remained in the public domain. In 1963, a similar restoration rule was adopted. Now the question has arisen of what would happen if a country adhered to the Union after 1963 without its national authors having obtained registrations as stated in the laws of 1947 or 1963.

Article 18 of the Berne Convention grants a solution. WIPO has interpreted it as an obligation on countries to protect works retroactively when the author failed to register but otherwise the work would still be under the term of protection of the protecting country or the term in law of the country of origin of the author, whatever term is shorter as stated by the comparison of term rule. Accordingly, foreign works should enjoy full protection in Mexico in conformity with article 18 of the Berne Convention.