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PARTNER

CHAPTER 25

MEXICO

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I. LEGAL BASIS

§ 25:1 THE LEGAL SYSTEM

Mexico has a droit d'auteur tradition. The copyright law has been framed on the basis of continental European principles, in particular the French notions of authorship and duality of patrimonial and moral rights, but also the German and Spanish distinction of economic and remuneration rights. However, after the country's adherence to the North American Free Trade Agreement in 1993, the Copyright Law of Mexico received certain influence from Canada and the United States, in connection with rights allocation in complex collective productions, like audiovisual or software related works.

§ 25:2 THE CURRENT ACTS GOVERNING COPYRIGHT AND ITS ENFORCEMENT

- Federal Copyright Law of 1996[1] (hereinafter referred to as "Copyright Law")
- Industrial Property Law of 1991[2]
- Federal Penal Law of 1931[3]
- Federal Civil Code of 1928[4]

- Federal Code of Administrative Proceedings of 1994[5]

- Federal Code of Civil Proceedings of 1943[6]

- Federal Code of Penal Proceedings of 1931[7]

- Customs Law of 1995[8], and

- Cinematography Law of 1992[9] .

§ 25:3 THE CURRENT SECONDARY LAW

- Regulations to the Copyright Law of 19981

- Regulations to the Industrial Property Law of 19942

- Tariff for Public Performance in General3

- Tariff for Theatrical Performances[4]
- Tariff for Film Exhibition[5]
- Tariff for Public Performance in Hotels[6]
- Tariff for Public Performance of Musical Works[7]
- Tariff for Broadcasting of Musical Works[8]

§ 25:4 TERRITORIAL SCOPE OF APPLICATION

The jurisdiction where the Copyright Law and related statutes and regulations apply is the territory of Mexico.

§ 25:5 IMPORTANT RECENT AMENDMENTS IN LEGISLATION

A. THE LATEST REFORMS OF THE COPYRIGHT LAW

(1) AMENDMENTS OF 1997[1] AND 1999[2]

The reform of 1997 and the further amendment of 1999 had the purpose to improve administrative and criminal sanctions for copyright piracy, in particular the violation of reproduction and distribution rights in the fields of copyright and neighboring rights. The problem is that some of the provisions look exactly the same and, accordingly, contain no criteria to distinguish when piracy should be regarded as an administrative fault or a crime.

(2) AMENDMENT OF 2003[3]

A main reason of the amendment of 2003 was the insertion of a regime of public performance remuneration rights[4] for authors who have assigned their exclusive rights to authorize or prohibit the utilization of works. The remuneration right for public performance would extend to composers having contributed to music productions by virtue of work-for-hire deals. Likewise, the remuneration right scheme would also apply to performing artists and phonogram producers, despite the fact that they had already enjoyed remuneration rights under the Copyright Law and the Rome Convention. In addition to the remuneration rights system, the reform provided authors of fine art works with a right of resale or droit de suite[5]. It also established, among others, procedures to fix compensations, a regime in the transmission of rights mortis causa, and obligations upon brokers and art galleries to inform authors or their representatives about any sales of their works so that authors can receive compensation. Finally, the copyright and neighboring rights terms of protection were all increased. Prolongations were from 75 to 100 years after life for copyright; from 50 to 75 years for performances; from 50 to 75 years for phonograms; and from 25 to 50 for broadcasts[6].
The bill addressed a levy or compensation system for private copying[7]that was dropped in the end. In essence, the bill suggested the implementation of a number of provisions granting additional rights to authors and holders of neighboring rights, such as artists and phonogram producers. Thus, among other aspects, the Copyright Law would have been changed to reflect a compensation right for private copying of works of authorship. The electronics industry opposed strongly to the measures, as it would be the manufacturers and vendors of equipment and media for reproducing copyrightable subject matter, who would bear the obligation to cover the compensation.

B. THE LATEST REFORM OF THE REGULATIONS OF THE COPYRIGHT LAW: AMENDMENT OF 2005[8]

The 2005 amendment of the Regulations of the Copyright Law was approved having in mind the need to redefine or adjust certain general principles or provisions of the Copyright Law, to establish a resale right procedural system, and to implement the remuneration right regime.

A. THE TRANSITIONAL PROVISIONS OF THE COPYRIGHT LAW OF 1996[1]

These provisions state as follows:

- The Copyright Law shall become enforceable 90 days after the date of its publication (December 24, 1996).

- The Copyright Law of 1963 and reform of 1963 is abrogated as a result of the amendment.

- "Authors' Societies" or "Artists' Societies," as CMOs (collective management organizations—CMOs) used to be called under the former statute, registered at the Copyright Office, could rely on a 60-business-days term to "adjust" their bylaws to the provisions of the new law.

- Administrative proceedings started under the former statute were to be resolved under the same.

- The rule in transitional article fourth shall be applicable in connection with conciliation proceedings, unless these are notified to defendants after the date on which the new law becomes effective.

- The rule in transitional article fourth shall also be applicable in connection with reservations. However, the new law's provisions shall govern their renewal.

- They provide terms for the Copyright Office to publish a list of arbitrators and the arbitration fee structure.

B. THE TRANSITIONAL PROVISIONS OF THE 2003 AMENDMENT OF THE COPYRIGHT LAW OF 1996[2]

These provisions state as follows:

- The present decree of amendment to the Copyright Law shall enter into force on July 24, 2003.

- Provisions in the Copyright Law contradicting those in the present decree shall be derogated.

- The government is obliged to make pertinent adjustments to the 1998 Regulations to the Copyright Law, within 90 days from the date on which this decree enters into force.

C. THE TRANSITIONAL PROVISIONS OF THE 2005 REGULATIONS TO COPYRIGHT LAW[3]

These provisions state as follows:

- The present decree shall enter into force on September 14, 2005.

- Provisions in the Regulations to the Copyright Law contradicting those in the present decree shall be derogated.

§ 25:7 PENDING LEGISLATION

Three bills of amendments to the Copyright Office are presently pending at Congress.

A. DOMAINE PUBLIC PAYANT

Bill pending at the Chamber of Deputies, proposing that a domaine public payant system is reinserted into the Copyright Law. Mexico had followed a domaine public payant system until 1996, when Congress reconsidered it due to its little efficacy. For that and other reasons, the bill is not welcome and is rather the subject of strong opposition. It will most likely be dropped shortly1.

B. REMUNERATION FOR AUTHORS OF MUSICAL WORKS

Bill pending at the Chamber of Senators, proposing the adoption of remuneration rights in connection with the reproduction of works and the distribution of copies that incorporate works. The bill has also been questioned. The purpose of the reform is that composers having assigned their rights over to music publishers may seek remuneration directly from the record labels having licenses from the publishers. The Chamber of Deputies approved the bill in 2006 and sent it over to the Chamber of Senators. The latter probably will also pass the bill, but with modifications that restrict the scope of the remuneration right to authors of musical works2.

C. IP CRIMES

Bill pending at the Chamber of Deputies, proposing that intellectual property crimes are pursued ex officio. At present, IP crimes have been the subject of actions started privately by the right holders. The drafters of the bill believe that the change shall lead to more expedited enforcement, since district attorneys shall command the actions, without showing title of IP rights at criminal trial stage, as it is required in connection with private actions. However, IP owners shall lose control over the actions, which can result in corruptive practices. The bill shall most likely be approved in the end3.

25:8 INTERNATIONAL CONVENTIONS

The following international treaties have been approved by the Mexican Congress and are hence a source of law:

- Berne Convention for the Protection of Literary and Artistic Works, Paris Act1
- Universal Copyright Convention as revised in 19712
- Inter-American Copyright Convention on Literary, Scientific and Artistic Works3
- Convention for the Protection of Producers of Phonograms Against Unauthorized Reproduction of their Phonograms4
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations5
- Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite6
- Treaty on the International Registration of Audiovisual Works7
- WIPO Copyright Treat8

- WIPO Performances and Phonograms Treaty[9].

- Agreement on Trade-Related Aspects of Intellectual Property Rights[10]

- North American Free Trade Agreement[11]

- Free trade agreements without specific IP rules[12]

II. SUBJECT MATTER OF PROTECTION

§ 25:9 CATEGORIES OF PROTECTED SUBJECT MATTER IN THE MEANING OF THE BERNE CONVENTION

A. CATEGORIES IN GENERAL

The Mexican legislation of 1996 used the Berne Convention and the WIPO Copyright Treaty methodologies, in order to develop a system of its own. In keeping with this, the Copyright Law utilized the Berne Convention expression of "literary and artistic works,"[1] which encompass original creations in literature, arts or science[2]. Likewise, the law provides a list of copyrighted works, based on standardized categories[3] according to the Berne Convention and the WIPO Copyright Treaty. The list is as follows:

- literary works[4]

- musical works[5]
- dramatic works[6]
- choreographic works[7]
- paintings or drawings[8]
- sculptures or plastic works[9]
- architectural works[10]
- works of applied arts, including textile and graphic designs[11]
- compilations, characterized as encyclopedias, anthologies, and other related works[12]
- photographs[13]
- radio programs[14]

- films and other audiovisual works[15]
- computer software[16]
- graphic digital works[17]
- audiovisual digital works[18]
- databases[19]

The listed terms include every subcategory that can possibly be regarded a work of authorship. For example, literary works comprise any writings like novels, essays, poems, lectures, addresses, sermons, and scientific or similar works. Fine art, plastic or "pictorial or drawing" works comprise paintings, sculptures, illustrations, caricature, engravings, lithography and other graphic arts, including those resulting from utilizing computer media[20]. Works combining different categories are considered part of the list as well, such as musical works with lyrics or even dramatic-chorographic musical works. In any event, categories listed expressly or implicitly are consistent with[21] the standards of the Berne Convention, Paris Act. Likewise, works that derive from any of the principal categories can be protected by copyright as well and would follow the rules of derivative works[22].

B. CERTAIN WORKS REGULATED IN SEPARATE CHAPTERS

(1) AUDIOVISUAL WORKS

Audiovisual works, including films and television programs, but excluding video productions, that are the subject of neighboring rights[23]. Rules consist of: i) definition of audiovisual work;[24] ii) audiovisual works are independent and preexisting, even if adapting literary works;[25] iii) directors, writers, composers, photographers, and cartoonists shall be authors[26] of the audiovisual works that they contribute to, but shall only be entitled to remuneration rights as opposed to authorization rights;[27] iv) producers, as defined in the Copyright Law[28], shall hold the exclusive patrimonial rights to authorize or prohibit in connection with the audiovisual work;[29] and v) contributing authors shall have the right to utilize their works independently, when normal exploitation of the audiovisual works allow that[30].

(2) PHOTOGRAPHIC, PLASTIC, AND GRAPHIC WORKS

Rules consist of: i) owners of plastic or fine art pieces are not copyright owners;[31] ii) rights of photographers to display their works when made for hire;[32] iii) rights of ordinary persons with respect to their portraits in photographs, pictures, paintings, or drawings;[33] iv) certain formal rules concerning graphic, applied art, and architectural works.[34]

(3) SOFTWARE, DATABASES, AND MULTIMEDIA PRODUCTIONS

(A) SOFTWARE

Important articles of the Copyright Law define[35] software and stipulate that software "shall be protected in the same terms as literary works"[36] and protection shall extend to "operating programs and application programs, either in the form of a source code or an object code."[37] Additional rules include: i) unless otherwise agreed, software publishers shall hold the exclusive rights to authorize or prohibit in connection with the software when having performed as employers;[38] ii) employees working on the development of a computer software shall not have any sort of rights therein in circumstances deriving from employment agreements;[39] iii) software right owners shall hold rights of distribution, including first sale and rental;[40] iv) specifications about licenses and the number of copies permitted;[41] and v) a right to authorize or prohibit that software is disassembled or reverse engineered.[42]

(B) DATABASES

The Copyright Law states that databases can be protected as compilations, provided that they: i) represent "intellectual creations" consisting of “original” content perceptible by machines or in any other forms, that is "selected and disposed";43 or ii) represent collections of works, that are "intellectual creations" obtained from the "selection or arrangement"44 of their content or matter. The difference between databases obtained from selecting "and" disposing, and those obtained from selecting "or" arranging, shows that selecting "and" disposing can signify a higher threshold. On a different aspect, Copyright Law affords "compilation"-like protection to databases that are original, but non-original databases can be nevertheless protected, for the lesser term of five years.45

(C) MULTIMEDIA PRODUCTIONS

Under the Copyright Law, it was debated whether multimedia productions are copyrightable subject matter or not. A further question has been whether multimedia productions can be viewed as computer software (due to their digital nature) or audiovisual works (due to their function, by combining sound and image in movement). In general terms, multimedia productions have been regarded copyrightable subject matter and have been mostly classified as computer software.46

§ 25:10 OTHER CATEGORIES OF PROTECTED SUBJECT MATTER INCLUDING AUDIOVISUAL RECORDINGS

The Copyright Law affords neighboring right protection to artists' performances, phonographic productions, broadcasting signals, video recordings, and books.1 Likewise, the law grants protection to titles of periodicals and TV and radio programs, as well as fictional characters and artistic names, by virtue of a concept named "reserve" of rights.2

§ 25:11 GENERAL SUBSTANTIVE REQUIREMENTS FOR PROTECTION AND IRRELEVANT FACTORS

A. SUBSTANTIVE REQUIREMENTS OF PROTECTION: ORIGINALITY AND EXPRESSION

(1) ORIGINALITY

Mexico follows the author's rights system and, accordingly, the originality principle[1] in the Copyright Law takes a "personal creation" approach, by which authors imprint their personal artistic talent to create a work. However, the "imprint of the author's" notion, regarded as the applicable standard for traditional "literary or artistic" works, has not been equally effective in connection with certain works, if made by a collectivity of intellectual creators working under the direction and supervision of a producer and whose contributions, generally not separable, are a part of the overall result.
Since the principle of "imprint of the author's persona" presupposes elevated standards of originality, the Copyright Law has implicitly recognized that originality must lower for software and multimedia. In the digital era, originality has been mostly viewed as "independent creative expression" as it would be hard to consider that technology works are the expression of the author's personality.

(2) EXPRESSION

Expression is another copyright factor, which determines what is the copyrightable subject matter under the Copyright Law.[2] The Copyright law has recognized the idea/expression dichotomy as a fundamental principle of copyright protection.

B. FACTORS THAT ARE IRRELEVANT TO DEFINE THE SUBJECT MATTER OF COPYRIGHT PROTECTION

In accordance with the Copyright Law, works are entitled to copyright protection regardless of the merit, destiny, or quality of the work.[3] In order to become an original work of authorship, intellectual creations are not required to be unique or splendid. By fulfilling a minimum level of creativity, intellectual creations satisfy originality standards and thus qualify as works. Not every work produced has a great quality, but is anyway subject of protection. Examples can be found in various artistic fields like music, graphic arts, audiovisual production, multimedia, and others.[4]

§ 25:12 SCOPE OF PROTECTION

The Copyright Law sets out rules describing what cannot be a work.[1] Among others, the following is non-copyrightable subject matter:

- Ideas per se, formulas, solutions, concepts, methods, systems, rudiments, discoveries, processes or inventions of any type2;

- Industrial or commercial use of ideas contained in works3;

- Sketches, plans, or rules for the performance of mental acts, games, or business4;

- Letters, digits, or colors in isolation, except where they are stylized to such an extent that they become original designs5;

- Names and titles or separate phrases6;

- Simple forms or formularies in blank, to be completed with any type of information, as well as their instructions7;

- Reproduction or imitations, without authorization, of shields flags or emblems of any country, state, municipality, or equivalent political division, nor denominations, initials, symbols, or emblems of international government organizations, non-government, or any other organization officially recognized, as well as the verbal designation of the same8;

- The common use of information such as proverbs, sayings, legends, facts, calendars, and metrical systems9.

§ 25:13 WORKS EXCLUDED FROM PROTECTION

- Texts of laws, regulations, administrative, or judicial texts, as well as their official translations. However, concordances, interpretations, comparative studies, annotations, comments, and other similar works, which imply creation of an original work by their author, shall be protected1;

- The informative content of news, but not their form of expression2.

§ 25:14 FORMAL REQUIREMENTS

A. FIXATION

Fixation is a formal requirement of copyright protection1. Protection is afforded when an author has fixed her creation on a tangible medium of expression. The law would not consider that the fixation requirement is satisfied when third parties—not the author—have fixed the works. Since the view of the Copyright Law is restrictive, it would be hard to enforce copyright rights to prevent bootlegging recordings.

The Copyright Law defines fixation as the "incorporation in a tangible medium of expression, by letters, numbers, signs, sounds, images or other elements that represent expressions of the work, whether by analog or digital means, if the medium allows the reproduction or public performance thereof2. Under the law's improved definition, there will be fixation so long as works can be "perceived, reproduced or communicated3, whether publicly or privately. The issue would be whether the fixation would enable the human eye to perceive the work, directly or with assistance, or allow its further reproduction. Fixation

of the work in temporary computer memories, including its uploading or downloading, should meet the legal definition. A work of authorship that has been fixed onto a RAM shall be protected if the work can then be copied by any third party, despite the fact that the fixation remains visible for a short period of time.

B. REGISTRATION OF WORKS

Registration of works is a formality as well although not compulsory[4]. Copyright rights arise out of the act of creation and registration of a work would only recognize or confirm such previously constituted rights. Notwithstanding the foregoing, registration represents prima facie evidence of copyright ownership. Several statutes preceding the Copyright Law required registration of works as a condition for protection. In 1939 the government published certain regulations applicable to the Civil Code of 1928[5], which were intended to impose registration requirements to protect works of authorship. The regulations of 1939 were superseded by the regulations of 1998 to the Copyright Law. However, the registration obligations were derogated impliedly when Mexico joined the Berne Convention.

Registration of authored works has sometimes created an impact on the duration of copyright rights. Questions have arisen how to calculate protection terms of foreign works that have not been registered in line with former copyright laws that have imposed such kind of restrictions. The Copyright Laws of 1947 and 1956 required from foreign authors the registration of their works with the Copyright Office, unless they were nationals of Berne Convention member countries or granted reciprocity conditions to Mexican authors or foreign authors residing in Mexico. Due to this requirement, a large number of unregistered works fell in the public domain for all the time during which countries like the U.S. remained outside the Berne Union system. The law of 1963 abolished the ancient registration formalities and absence of formalities was adopted as the governing principle, not only in connection with foreign works, but with domestic works as well. The 1963 law offered authors whose works had fallen in the public domain restoration formulae, subject to a written petition filed within a given term. In parallel, the 1963 law prolonged the copyright term from 25 to 50 years, in 1993 to 75 years, and in 1997 to 100 years. The question remained though what would happen if a country adhered to the Berne Union after 1963, without their national authors having sought for

registration of their works or having requested restoration. In certain cases, the Berne Convention has been the answer. Said treaty has been invoked to rescue works from the public domain, eligible for protection if formalities had been complied with. The protection term applicable required application of the rule of the shorter term of the Berne Convention[6].

C. RECORDAL OF AGREEMENTS

Assignment agreements require registration in order to produce effects against third panties[7]. On the other hand, the law does not make it clear whether a license needs to be recorded, due to certain wording incapacities by which transfers seem to be the synonym of assignments[8]. However, the Copyright Law provides that agreements require registration when "patrimonial" rights are "created, modified, transmitted, pledged or extinct by virtue of a contract or covenant"[9] or when agreements relate to neighboring rights[10]. The Copyright Office makes “marginal annotation” in the files to take note when parties submit agreements or documents for inscription or when they change information in a file.

D. COPYRIGHT NOTICE

Copyright notice is another formality under the Copyright Law. In theory, use of a copyright notice does not work as a condition to protect or enforce a work[11]. As a matter of fact, the Copyright Law states expressly that no forfeiture of rights will occur if copyright owners do not employ a notice. However, in such event they will be subject to an administrative sanction[12].

III. THE AUTHOR OR OTHER COPYRIGHT OWNER

§ 25:15 AUTHOR OF WORK

The Copyright Law defines "author" as the "natural person who created a literary or artistic work[1]. In accordance with the classification of the law, authors can be known, anonymous, or pseudonymous[2]. Concerning audiovisual works, the law regards as the authors of films or TV programs the director, writers, composers, photographers, and cartoonists[3].

§ 25:16 CO AUTHORSHIP/JOINT AUTHORSHIP

The Copyright Law has inserted two articles in connection with co-ownership of rights1. These recognize the possibility that authors or assignees can jointly own patrimonial or even remuneration rights (in the Spanish language, it is better to speak of joint holders or joint tenants, since ownership or property are words exclusively used for tangible goods). The Copyright Law states that works of authorship can be created individually, by one sole author; as a joint work ("work in collaboration"), by various authors who collaborate in a direct or indirect fashion, as coauthors or collaborators of a unitary and indivisible work; and as a collective work, by one entity that coordinates authors who personally participate in the production of a work, if their rights cannot be split or divided among the authors2. Contributors participating in joint works are regarded as coauthors and additionally as co-owners of the patrimonial rights in the resulting work, if they have not transferred the rights to any third party.
Rights in works made in co authorship equally pertain to the coauthors, unless otherwise agreed upon. In addition, the exploitation of the copyright work shall require consent by the majority of the coauthors. In such an event, the non-participating authors shall not be bound to make the expense, unless there is revenue from the exploitation and they claim compensation. Coauthors are allowed to exercise their rights in their contributions to the work, if there can be clearly identified. Unless otherwise agreed by the parties, a single co-owner can file an application to register the whole work. Lastly, if a co-owner dies, her share accumulates to the remaining authors.
From the above it is clear that the Copyright Law takes a joint ownership approach in connection with joint works. Shares are equal and undivided and exploitation cannot be made freely by coauthors acting individually. The law is silent regarding whether coauthors can dispose of their shares. However, it could be concluded that rights can only be licensed or assigned if all the authors agree. Activities that co-owners can perform without requesting authorization from the whole group are restricted to the registration of the work.

§ 25:17 OTHER FORMS OF WORK INFLUENCED BY SEVERAL PERSONS

Under the Copyright Law, a "collective work" is different from a "collection of works" or a "compilation" because the entity takes the initiative or gathers works from authors without participating personally in the project1. A

"collective work" is not a work "made for hire" because the entity that coordinates the contributions of "intellectual creators" (who are under instructions and receive a payment) becomes the patrimonial rights' holder of the work from the start2. Creators working in a collective work or work-for-hire cannot be regarded co-owners of rights, simply because the rights pertain to the party that coordinates.

§ 25:18 PRESUMPTIONS OF AUTHORSHIP OR FIRST OWNERSHIP

As a general principle, the Copyright Law regards the author as the first owner of patrimonial rights1and as the sole owner of moral rights2. In this context, the Berne Convention provides that, in order that an author is regarded as such, it suffices that his name appears on the work in the usual manner3. In a similar fashion, Article 77 of the Copyright Law states that "the person whose name or pseudonym, known or registered, appears as the author of a work shall be considered as such, except in the event of proof to the contrary and, consequently, his actions for violation of his rights shall be admitted by competent courts."
However, the law finds that rights can be owned ab initio by someone not being an author, when someone, like a producer, asking an intellectual creator for a remuneration, to collaborate or participate in the production of a work, or when entrusting an intellectual creator with the elaboration of a work4. The foregoing shall be true even if the parties have not executed an agreement; it suffices that the facts of the case alone point at a relationship in which one party hires and remunerates an intellectual creator. In addition, the Copyright Law considers the producer as the owner of patrimonial rights of an audiovisual work, as well as the manager of the moral rights, and based on the Berne Convention, presumes that the producer is the entity whose name is displayed on the work5. Similarly, the Copyright Law presumes that employers shall be first owners of computer software products elaborated under their labor initiative and rule6.

IV. CONTENTS OF PROTECTION

25:19 ECONOMIC RIGHTS

Together with moral rights, economic rights represent the bundle of copyright rights of authors under the Copyright Law. Economic rights are subject to

principles and rules like: i) independency of economic rights, in terms of space, temporality, and modality1; ii) holders can use the works in connection with all media, known or to be known2; iii) copyright limitations are specific and restrictive3; and iv) holders have the right to obtain remuneration for authorizing the use of the work4.

A. PATRIMONIAL EXCLUSIVE RIGHTS

Patrimonial exclusive rights grant the author or copyright holder the right to authorize or prohibit the exploitation of works of authorship5. Patrimonial rights can be transferred or disposed of by virtue of assignments or licenses6. They cannot be pledged, although the product obtained can be pledged7. Their duration is temporary.
In general, patrimonial exclusive rights are the following:

(1) REPRODUCTION RIGHT

Reproduction is defined in the law as the "making of one or several copies of a work, phonogram or video, including any permanent or transitional storing in a digital or electronic memory, including the two-dimensional rendering of a three-dimensional work, or vice-versa.8" Reproduction is possible in any form in which works can be multiplied and published, whether mechanical, electrical, or digital, in literature, paintings or graphics, designs or architecture, music, drama, photography, film, software, or multimedia. The foregoing is valid both in analog or digital means. The Copyright Law, in following the WIPO Copyright Treaty's agreed statement to Article 1.4, redefines the reproduction concept to meet digital environment standards.

(2) DISTRIBUTION RIGHT

Distribution to the public is defined as the “making available to the public of the original or a copy of the work by sale, rental and, in general, in any other form.9” The distribution right covers any form of tangible objects by which works can be disseminated, including sale, rental, and lending. In order to comply with the NAFTA treaty of 1993, Mexico inserted distribution rights in the Copyright Law. Among others, the definition cited above was analyzed and the following provision of exhaustion was set out as a result: "when distribution is made by means of sale, this right shall be exhausted after the first sale (of an

original or copy)10." The language used by the 196 legislator was obscure up to the point that it has raised the question whether it is the sale right or the whole distribution right that is exhausted after first sale. On the basis of an interpretation to the benefit of copyright owners and a grammatical and systematic interpretation of the article's language, it would seem that only sale rights end after originals or copies are placed into commercial streams, while the rights in all other forms of distribution subsist. Another question concerning exhaustion of distribution rights under the Copyright Law is how and for how long a copyright owner can exercise control over the distribution of a work, for example, until copies of the work have been sold for the first time to someone within the distribution chain or until a customer acquires them in property. The question is more difficult when international factors intervene. Could copies of works made abroad that are exported be stopped in Mexico if the copyright owner never intended their distribution in this country? On the contrary, would the sale of original copies be permitted only after a customer has bought them? These questions have been raised before the Mexican courts and are pending decision.

Rental right is also an open issue in Mexico due to the restrictive interpretation that one could give to the first sale doctrine rule of the Copyright Law. The Mexican legislator of 1996 should have kept in mind that international treaties and doctrine support a rental right, at least in connection with software and cinematographic works. NAFTA is a reason, in itself, to justify the existence of a copyright rental right in Mexico. At present, rental right are also being tested in litigation before the courts in Mexico.

Inspired by international treaties, such as the WIPO treaties, the legal definition requires that distribution of works be for the public. The notion of public is quite relevant while it has remained undefined. Relevancy intensifies in connection with the first sale and exhaustion of rights doctrines. Certainly, doubts exist when distributors and vendors aggregate in a distribution chain. The question is whether Copyright Law understands that “general public” could be defined as the party that first distributes the original or copies of a work, or as the collective proprietor of these works.

(3) PUBLIC PERFORMANCE RIGHT

Public performance is defined as the “presentation of a work, by any means, to listeners or spectators, if it is not restricted to a private group or family. The

performance of the work is a school or public or private assistance institution is not deemed to be public, provided it is not done for profit”11. Public performance rights cover any existing modality by which works can be disseminated to the public in a non-tangible manner, whether presented in front of an audience, with or without the assistance of technical equipment, or whether sent from a distant place, using technologies that enable the work to be transformed into electronic or digital signals, be placed in the electromagnetic spectrum and be rebuilt into a sound or image that can be listened or viewed. Examples of public performance that the law covers by the public performance right are recitation or representation of literary, dramatic, musical, dramatic-musical, or choreographic works on stage or scenarios; public display of fine art or graphic works, cinematographic exhibition; radio or TV broadcasting, by which works can be communicated in open or satellite emissions, cable transmissions, or retransmissions; digital transmissions and public access or making available; or otherwise.

The Mexican legislator of 1996 implemented the WIPO treaties' digital agenda just partially. In the year of 2002, the government joined the WCT and WPPT12, but did not make amendments to the law to incorporate them. The excuse was that the Copyright Law, passed in 1996, had already inserted standards of the WCT and WPPT in similar terms as debated at the diplomatic conference of Geneva in December 1996. The Copyright Law stated that infringements and other illicit acts perpetrated online would occur if parties who participate in the online distribution process infringe economic copyright rights by uploading, downloading, or disseminating works of authorship. In addition to the modified fixation and reproduction concepts, the Copyright Law made certain clarifications regarding public performance rights. For example, as mentioned above, the definition of “public communication” was drafted in the broadest sense possible, to encompass any mean by which works are made available to a generality of persons. Similarly, transmission was meant to be a term as wide so as to embrace the broadcasting or other forms of dissemination of works to distant locations. The Copyright Law adopted a WCT-kind of making available right13, by which "members of the public "may access these works from a place and time individually chosen by them”. In keeping with this, the law regarded as a bundle of economic rights "the public access by means of telecommunication.” The term "telecommunication" is intended to be wide in

scope as well. It covers every form of communication at distance, including interactive references in digital networks.

(4) TRANSFORMATION RIGHT

The Copyright Law does not define transformation as such. Transformation rights are inclusive—not exhaustive—indeed as they would comprise the disclosure of derivative works by any means or modality, like translating, adapting, arranging, compiling, amplifying, collecting, and any other forms by which works can be disseminated in modified versions14. The characteristic of derivative works is that they are linked to the preexisting work that they transform, and protection is triggered inasmuch as they can aggregate original aspects thereto. In accordance with the law, anybody can create works deriving from others, but needs authorization from the holder of the originating work to use her work, unless the rights of the latter work pertain to the public domain.

B. STATUTORY PUBLIC PERFORMANCE REMUNERATION RIGHT

In addition to the exclusive right to authorize or prohibit the use of works, the Copyright Law has set out a remuneration right intended to compensate authors who have assigned their patrimonial right of public performance. In the year of 2007, the Supreme Court of Mexico held that the remuneration right is a kind of economic right that must be distinguished from traditional patrimonial rights since it does not grant control on the public performance of the work, but still entitles the author to seek economic compensation from the user of the work15.

C. RESALE RIGHT

The Copyright Law provides for a resale right by which authors of works of fine arts or photography—but not works of applied art—are entitled to collect payment in connection with the resale that third parties make of the physical object embodying their works16. According to the law, owners of the tangible media can freely sell a fine art original or copy, or the copy of a photograph, without the need of consent. However, they are required to compensate the author17, in connection with the income obtained from the resale. The law is unclear how the remuneration should be calculated18. Likewise, the law seems to have restricted the scope of the resale right system to situations in which the

resale is made in a public establishment, a mercantile establishment (such as an art gallery), or with the assistance of an art dealer or agent19. Resale of originals or copies of works made outside of such situations appears to be excluded from the legal regime. The Copyright Law imposes obligations upon galleries and dealers to establish contact with the authors or the CMOs representing them, in order to inform about the sale and its conditions20.

§ 25:20 MORAL RIGHTS

In accordance with the Copyright Law, moral rights cannot be renounced, pledged, or transmitted and never prescribed.1 The author holds said rights in perpetuity2 and only their management can pass on to third parties3. The Copyright Law views moral rights as personal non patrimonial rights that are "united" with the author4 Obviously, persons automatically qualify for moral rights protection when they have authored a work of authorship. In countries like Mexico, moral rights play a social role, intended to protect the author beyond mere economic or commercial interests. The Copyright Law provides the following moral rights:

A. INTEGRITY RIGHT

Authors can prevent or object to distortions or modifications that mutilate the work or any action that detracts from or prejudices the author's reputation or that disrespects the work5. Regulations of the Copyright Law make it clear that owners of tangible media embodying works are not liable for the works' destruction caused naturally or by age6.

B. PATERNITY RIGHT

Authors can prevent or oppose third parties' actions affecting the recognition of their authorship. Authors are entitled to decide whether their work shall be disclosed as an anonymous or pseudonymous work. Likewise, they can oppose or object to false attributions of authorship of his works7. The sole legal exception under which the name of authors can be omitted concerns works used for advertisements, whether audiovisual or of another nature8.

C. DIVULGATION RIGHT

Authors can decide whether the work shall be disclosed or shall remain

unpublished. Jurisprudence has distinguished between moral rights of divulgation and patrimonial rights of publication. Moral rights safeguard the link between the author and her work, granting to the former the faculty to decide whether the general public shall ever know the work. Patrimonial rights come into play alter the author has decided to disclose the work9.

D. WITHDRAWAL RIGHT

Authors can withdraw the rights in a work from licensees and other derived right holders. The author can withdraw rights without requiring permission from the publisher or other user of the work. The copyright Law is silent as to whether the publisher in this case is entitled to compensation from the author, if he has invested in the edition prior to the time when the author communicated her decision. The silence might be misleading, though, by making authors believe that they are not bound to reimburse the publisher. However, that would simply not be true, since under civil, mercantile, or general contract laws, publishers would have a right to claim repair10.

V. LIMITATIONS AND EXCEPTIONS; COMPULSORY LICENSES

§ 25:21 GENERAL EXPLANATIONS

The Copyright Law follows a system of specific statutory limitations for cases in which the consent of authors or economic right holders is not required for utilizing works. The limitation regime of the Copyright Law aims at seeking a balance between parties within the copyright structure, including copyright and related rights owners on the one hand, and the society in general on the other hand. As seen in Mexico, limitations enable interested parties other than copyright or related rights owners to use works under strict conditions that do not harm the owners. In any event, the Copyright Law, based on the three-step test of the Berne Convention, for the right of reproduction, as well as the TRIPS Agreement and the WIPO Treaties of 19961, requires that "literary and artistic works already disclosed may be used, provided the regular use of the work is not impaired, without the authorization of the owner of the property rights and without remuneration, always quoting the source and without altering the work, only in the following cases2…" Notwithstanding that the Copyright Law does not follow literally the general limitation restrictions of the Berne

Convention3 for the reproduction right, or the three-step test also for other rights in the TRIPS Agreement and the WIPO treaties, it addresses them in a direct or indirect fashion. Accordingly, i) the use that publishers or other users make of the work needs to be "special", which is implied in the law; ii) the "regular" or "normal" use of the work must not be "impaired" or "conflicted"; and iii) the legitimate interests of authors must not be prejudiced unreasonably; this is language not expressly employed in the Copyright Law, but inferable anyway. In conformity with TRIPS4, the Copyright Law extends the three-step test to all kinds of rights, not only to the reproduction right. The Copyright Law provides limitations in particular of the reproduction and public performance rights, including for the purposes of copying for text citations, educational uses, and news reporting, in conformity with Berne Convention standards5. All these provisions require the use of a proper notice by citing the name of the author and the reference to the place of publication of the work6.

§ 25:22 THE INDIVIDUAL LIMITATIONS, EXCEPTIONS, AND COMPULSORY LICENSES

The statutory limitations in the Copyright Law are the following:

A. LIMITATIONS OF THE REPRODUCTION RIGHT

- Reproduction of texts for quotation, provided that the amount that is used cannot be regarded a substantial reproduction or a simulation of the original work1;

- Reproduction of texts, photographs, pictures, and comments regarding current events, published in the press or communicated by radio, television, or any other medium, if this has not been expressly prohibited by the owner of the rights2;

- Reproduction of parts of a work for the purpose of scientific, literary, or artistic criticism or research3;

- Reproduction of a literary or artistic work, in a single occasion, in one copy and without a purpose of gain, made for the personal and private use of the person making it. Corporations are not entitled to this benefit, unless they are educational or research establishments or their activities are non-commercial[4];

- Reproduction of one copy of a work by an archive or library, for reasons of security or preservation if the same is out of stock, not catalogued and in risk to disappear[5],

- Reproduction of a work for use as evidence in judicial or administrative proceedings

- Reproduction by virtue of drawing, photographic and audiovisual means of works that are visible from public places[6]; and

- Reproduction of works for obtaining ephemeral recordings, provided that: i) broadcasting is made as agreed by the copyright owner and broadcast entity; ii) no simultaneous emission or transmission is made when the recording is made; and iii) the recorded signal shall be broadcasted only once[7].

B. LIMITATIONS OF THE DISTRIBUTION RIGHT

- Distribution of copies obtained by drawing, photographic, and audiovisual means of works that are visible from public places[8].

- The first sale doctrine as applicable to the distribution right constitutes a copyright restriction[9].

- International exhaustion of rights is not a clear limitation of the right of distribution[10].

C. LIMITATIONS OF THE PUBLIC PERFORMANCE RIGHT

- Public performance in video systems located at establishments open to the public, to promote the rental or sale of copies of works that they distribute, provided that no charge is made for the admission and that the performance is confined to that particular establishment[11].

- Public performance of copies obtained by drawing, photographic, and audiovisual means of works that are visible from public places.[12]

D. LIMITATIONS OF THE RIGHT TO TRANSFORM

- Modification of a building constructed on the basis of an architecture plan shall be possible for the owner of the building, without authorization from the author. However, the author may request that her name is not mentioned in the building as modified.

E. PARODY

The Copyright Law does not mention expressly that parody can be invoked as a copyright limitation. However, parody can be considered an implied limitation supported by the constitutional right of free speech13. In any event, parody of a work or character shall be possible if there is humor and social criticism. On the other hand, it would not be allowed if utilized for the free ride or misappropriation of copyright rights. Cases like that would attempt to circumvent the Copyright Law and the three-step rule of the Berne Convention. The Mexican courts are currently testing the parody limitation.

F. COMPULSORY LICENSE FOR PROGRESS OF NATIONAL SCIENCE, ETC.

The Copyright Law refers to a compulsory license that can only be imposed for reasons of public utility14. In that regard, publishers or other users of works of authorship may translate or publish works without authorization of the right holders, when necessary "for the progress of national science, culture and education15." If the copyright rights holder refuses the authorization to translate or publish the work of interest, the government might dictate a substitute authorization, subject to a remuneration requirement. The foregoing shall be valid "without prejudice to international treaties on copyright and related rights, signed and approved by Mexico16." NAFTA has indeed remarked that compulsory licenses cannot be conferred "where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures17."

VI. DURATION OF PROTECTION

25:23 GENERALLY, AND IN RESPECT OF DIFFERENT KINDS OF WORKS

Moral rights are indefinite and never prescribed. The author holds said rights in

perpetuity and only their management can pass on to third parties1.
Regarding the duration of economic rights, the general rule is that copyright rights subsist for "the author's life and, as of her death, one hundred years thereafter." If the work was created in co authorship, the term shall be calculated from the death of the last co-author." Once the term has elapsed, the right passes into the public domain and everybody is thus free to use the work. In certain situations, namely posthumous works or works made in the name of the government, the hundred-year period is calculated from the date when the work was disclosed. The Copyright Law is silent regarding special terms other than those for federal and posthumous works. Work for hire, audiovisual, or computer related works were completely ignored. In such cases, there is no other choice but calculating the general rule directly, regardless of the difficulties of achieving that aim.

VII. RELATED RIGHTS

25:24 SUBJECT MATTER OF PROTECTION

The subject matter of neighboring rights, as referenced by the Copyright Law, is artistic performances, phonogram productions, broadcasting signals, book publications, and video recordings1. The copyright system was built on the idea of authorship in literary or artistic works. However, it was later recognized that other entities contribute as well to the creative process of works or their dissemination, leading the legislator to envisage a system parallel to copyright. Discussion took place on whether related rights are inferior in hierarchy with respect to copyrights or just of a different kind. The dominating position, resulting from Rome Convention standards2, was that rights are different and should coexist with those of authors. In any event, "the protection referred to in this title shall leave intact, and shall not affect in any manner the protection of copyright in literary and artistic works. Consequently, none of the provisions of this title may be interpreted as to impair such protection3." Thus, related rights holders might use their fixed artistic performances or phonograms, or broadcast their TV or radio signals, only if they have previously obtained authorization from the copyright owners to use the works that they perform, produce or broadcast.
The following types of achievements are protected by virtue of neighboring rights:

A. ARTISTIC PERFORMANCES

They are those carried out by actors or singers who interpret a dramatic, musical, or audiovisual work, or by players of musical instruments. Yet, the term is not exclusive of other kinds of performances, not necessarily made by artists or by performers of works4.
The protection condition regarding artistic performances is that they are made by Mexican or foreign interpreters in Mexico or abroad, and are fixed, reproduced, or publicly performed in Mexico.

B. PHONOGRAMS

The Copyright Law defines a phonogram as "any fixation of sounds of a performance exclusively or of other sounds or the digital representations thereof never before embodied5."
The protection condition for phonograms is that they are produced by Mexicans or foreign producers in Mexico or abroad, and are reproduced or publicly performed in Mexico.

C. BROADCAST SIGNALS

Radio or TV signals are the subject matter of emissions, transmissions, or retransmissions; which disseminate the signals in the electrostatic spectrum, by wire or wireless means. The Copyright Law understands by "emission" or "transmission" the "communication of works, sounds, or sounds and images, by radio electrical waves, cable, fiber optics or other similar proceedings." By "emission," the Copyright Law understands additionally the "sending signals from a land station to a satellite which relays them6." Although not in clear-cut terms, the Copyright Law follows the Rome Convention standard definition of "emission" as the exclusively wireless dissemination to the public of sounds or of images and sounds7. Likewise, the Copyright Law defines "retransmission" as the “simultaneous emission by a broadcasting organization of an emission by another broadcasting organization8,” representing a literal reproduction of the Rome Convention's concept9. The Copyright Law further conveys a classification of "signals," following criteria such as: i) encoded or free, depending on the availability of the signal to the public; or ii) original or deferred, depending on the time of the broadcast10.
The protection condition for broadcast signals is that they are subject of a first

emission, transmission, or retransmission by Mexican or foreign broadcasters in Mexico or abroad, and are then further broadcasted in Mexico.

D. VIDEO RECORDINGS

The Copyright Law considers a videogram "the fixation of associated images, with or without incorporated sound, giving the impression of movement, or a digital representation of such images in an audiovisual work, or the representation or performance of another work or folkloric work, as well as other images of the same type, with or without sound[11]."
The protection condition for video recordings is that they are recorded and produced by Mexican or foreign video producers in Mexico or abroad, and are reproduced, distributed, or publicly performed in Mexico.

E. BOOKS

The Copyright law considers a book as "a unitary publication, non-periodical, featuring literary, artistic, scientific, technical, educational, informative or recreational content, printed in a tangible medium, whether its editing requires a single volume or intervals of several volumes. It shall include also complementary material in any kind of support, including electronic, which include, along with the book, a unit which can not be commercialized separately[12]."
The protection condition for books is that they are published by Mexican or foreign publishers in Mexico or abroad, and are reproduced or distributed in Mexico or imported from other country into the Mexican territory.

§ 25:25 RIGHT OWNERS

The neighboring rights owners under the Copyright Law are:

A. PERFORMING ARTISTS

Artistic interpreters or performers are "the actor, narrator, orator, singer, musician, dancer or any other person who interprets or performs a literary or artistic work, or a folkloric work, or who engages in an activity similar to the above, even without a prior text to be performed. The so called extras and occasional participants are not included in this definition[1]. A question is whether models in TV advertisements fall within the description of

performing artists. While is seems that they are not, due to their "occasional" and not clearly artistic participation in advertisements of products or services, the legal definition is regarded broad in scope. The Regulations of the Copyright Law state indeed that performances shall be protected even in the absence of an underlying work[2]. What the Copyright Law and Regulations intend fulfils the standard of the Rome Convention[3], in connection with the scope and meaning of artistic activities. From a practical standpoint, whether performing artists or not, models are still entitled to remuneration from the fixation of their image and the public performance thereof[4]. As to joint performances; the Copyright Law does not distinguish between an individual or collective performance. Rights are granted equally whether the performer acts or plays alone or as part of a group. In any event, the Copyright Law has subscribed the Rome Convention's rule on "representation[5]," by stating that "artists participating collectively in the same performance, such as in musical groups, choruses, orchestras, ballet or theater companies, must designate among themselves a representative to exercise the right of opposition. . ." and "in the absence of such designation, the director of the group or company shall be presumed to act as representative[6]."

B. PHONOGRAM PRODUCERS

Phonogram producers are the owners of the right in a phonogram. They are a "natural or legal person that embodies for the first time the sounds of a performance, or other sounds, or the digital representation thereof, and is responsible for the edition and publication of phonograms[7]."

C. BROADCASTERS

A radiobroadcast entity is "the company having a concession for transmitting radio or television signals, to a plurality of receivers[8]." As it can be perceived, the quoted provision has referred to "transmission," excluding emissions and retransmissions, which is definitively a technical fault.

D. VIDEO PRODUCERS

A video producer is "the natural or legal person who embodies for the first time associated images, with or without incorporated sound, giving the impression of

movement, or a digital representation of such images, whether or not they constitute an audiovisual work9."

E. BOOK PUBLISHERS

A book publisher is "the natural or legal person that selects or conceives an edition and elaborates it, by itself or third parties10." From the foregoing, it can be concluded that apart from holding copyright rights in connection with the literary or other works that they publish; book publishers enjoy neighboring rights for the books that they elaborate and publish.

§ 25:26 CONTENTS OF PROTECTION FOR THE RELATED RIGHTS—OWNERS

A. PERFORMING ARTISTS

Performing artists enjoy a moral right of the "recognition of their name for their interpretations or performances1 , as well as a "right to oppose any deformation, mutilation or any other attempt on his performance impairing his prestige or reputation 2". Likewise, performing artists hold economic rights to oppose the: i) public communication of their interpretations or performances; ii) fixation of their interpretations or performances on a material medium; and iii) reproduction of the fixation of their interpretations or performances3. In accordance with Rome Convention principles4 and the Copyright Law before the 2003 amendment5, public performance rights were limited to unfixed performances.,"

Accordingly, artists were no longer entitled- to -oppose the public performance of their fixed performances, but had a right to remuneration for the public performance made by third parties.

In accordance with the amendment of 2003, the Copyright Law grants opposition rights protecting performances against fixation6, the reproduction or the public performance of fixed performances7, and, when opposition rights have been exhausted, remuneration rights for the reproduction and public performance of fixed performances8.

The Copyright Law modified the Rome framework by stating that the three opposition rights—fixation, reproduction, and public performance—exhaust once artists had authorized the audio or audiovisual fixation of their performances9. Under the reform passed in 203, exhaustion applies "so long as the users of the tangible objects (sic) for the purpose of gain have made the corresponding payment10." In addition, it stipulated "artists shall have a right

that cannot be renounced to remuneration for the use or exploitation of their performances made for the purpose of gain, direct or indirect, by any means, public communication or disposal11." The reform was unclear due to various reasons: i) it openly deviated from WPPT standards by considering that artists are entitled to opposition rights and not rights to authorize or prohibit12; it contradicts the WPPT by suggesting that reproduction and distribution rights can exhaust once users of the "tangible object" make a payment; it contradicts the Rome Convention—yet, in respect of unfixed performances only—by suggesting that the public performance right, a right to oppose indeed, is exhausted after users of the "tangible object" pay; iii) it remains unclear whether under the Copyright Law, artists enjoy the making-available right, in addition to the distribution "right of disposal," as the WPPT requires13; iv) it also remains unclear whether artists enjoy rights in their unfixed performances, as provided by the WPPT14; and v) harmonizing the newly adopted Copyright Law system with the Rome Convention and the WPPT would be hard to achieve. While Rome is based on opposition and remuneration rights for public performance15, and the WPPT on the idea that performers hold exclusive reproduction, distribution, and making-available rights as well as remuneration rights16, the Copyright Law has just messed up the two regimes. A group of cultural corporations brought actions before the circuit courts. However, the court decisions were as unclear and obscure as the reforms themselves17. A reasonable interpretation has been though that performing artists are entitled to seek remuneration from unrelated users who make reproduction, distribution, including rental, or public performance, when copies of the works that they perform have been sold. Obviously, artists would lose any WPPT type of rights to authorize or prohibit in connection with reproduction or distribution of performances, and not only in connection with their public performance, in conformity with Rome and the WPPT.

B. PHONOGRAM PRODUCERS

Phonogram producers enjoy the right to authorize or prohibit: i) "the direct or indirect, total or partial reproduction of their phonograms, as well as the direct or indirect use thereof18"; ii) “importation of copies of phonograms made without the producer's authorization19"; iii) "public distribution of the original and each copy of the phonogram by sale or otherwise, including its distribution through signals or broadcast20; iv) "adaptation or transformation of the

phonogram21"; and v) "commercial rental of the original or a copy of the phonogram, even after the sale thereof, provided the owners of property rights have not reserved such right22." Rights of phonogram producers in the Copyright Law are closer to those in the Rome-Convention and the WPPT. However, when reading that provision, it is still inaccurate. At first glance, the Copyright Law establishes a reproduction right, in conformity with the Rome Convention and the WPPT23, as well as additional WPPT rights of distribution and rental24, although it is silent as to a making available right25. However, the notion of "use" of copies of phonograms (see (i) above) has a much broader meaning than the words "importation," "public distribution," "adaptation," and “rental”; and since all of them represent specific forms of using works, one could ask why the legislator of 1996 approved the provision as it reads. Likewise, regarding public performance rights, the Copyright Law has followed a remuneration system that is not consistent with the Rome Convention26 and the WPPT27, and may even deviate from the treaties. The Copyright Law recognizes an initial exclusive public performance right28 that transforms into a remuneration right29after the phonogram producer has received "payment," for example, from selling a copy of the phonogram. The foregoing is certainly contradictory as it is hard to transform exclusive rights to remuneration rights by receiving payment from selling copies of works. Lastly, the Copyright Law abolished any possible formalities in phonograms like inserting a (P) notice30.

C. BROADCAST ENTITIES

In alignment with the Rome Convention and even exceeding its standards31, broadcasters hold rights to authorize or prohibit as regard to their broadcasts: i) the retransmission32; ii) the deferred transmission33; iii) the simultaneous or deferred distribution by cable or any other system34; iv) the fixation on a material medium35; v) the reproduction of fixations36; and vi) the public communication by any means and in any form for direct profit37.

D. VIDEO PRODUCERS

Video producers' rights are the right to authorize or prohibit the reproduction of videos, as well as their distribution and public communication38.

E. BOOK PUBLISHERS

Book publishers hold exclusive rights to authorize or prohibit: i) the reproduction of their books, whether directly or indirectly, totally or partially39; ii) the importation of unauthorized copies of their books40; iii) the first public distribution of an original or copy of their books by virtue of sale or other means41; and iv) the right to exclude others from using the typographic characteristics and diagrams of their books, when these are original42.

§ 25:27 LIMITATIONS AND EXCEPTIONS1

Neighboring rights of performing artists, phonogram producers, broadcast entities, book publishers, and video producers are restricted when: i) use is not made for the purpose of gain2; ii) short fragments of performances, phonograms, broadcast signals, books, or videos are used with the purpose of news information3, and iii) in the same cases in which author's rights are limited4. Infringement is something that the Mexican copyright community has viewed to be fair so long as works—or performances, phonograms, broadcast signals—are copied or utilized in general, for a non-commercial intent. However, very few have noticed that copying works without a gain purpose can still affect the patrimony and thus the rights of copyright or related rights owners. Accordingly, provisions like the instant one can step beyond copyright limitations and be rather a huge carving out of copyright or related rights.

§ 25:28 DURATION OF PROTECTION

The protection term of neighboring rights is as follows:

A. ARTISTIC PERFORMANCES

The duration is 75 years from: i) the first fixation of an artistic performance in a tangible medium, for example the master of a phonogram; ii) the first unrecorded performance of an artistic performance; or iii) the first broadcast of an artistic performance by radio, television, or other media1.

B. PHONOGRAM RECORDINGS

The duration is 75 years from the first fixation of the sounds into a phonogram production2.

C. BROADCAST SIGNALS

The duration is 50 years from the original emission or transmission of the program contained in the broadcast signal[3].

D. VIDEO RECORDINGS

The duration is 50 years from the first fixation of images in video[4].

E. BOOKS

The duration is 50 years from the first publication of a book[5].

VIII. RIGHTS MANAGEMENT

A. INDIVIDUAL RIGHTS MANAGEMENT

25:29 TRANSFER OF COPYRIGHT AND RELATED RIGHTS

Contracting rules have evolved and matured from the lesser developed notions in earlier copyright statutes or civil codes to the more modern rules of the Copyright Law. In the past, the laws used the word "concessions" to designate both assignments and licenses of copyright rights, without substantially differentiating between them. After the Copyright Law entered into force, to make it compatible with NAFTA and TRIPS, the concept of transfers was divided into assignments, meaning the full or partial transfer of proprietary copyright rights[1] and licenses, signifying the transmission of the right to use but not the right to own[2].

Mexican copyright and related rights law has been generally centered on the idea that authors and artists are the weaker part of the contractual relationship. The legal treatment of contracts on book publishing, music publishing, stage performances, broadcasting, audiovisual productions, or advertisement products in the Copyright Law shows how the legislator tried to equate or balance the negotiation positions between the "weaker" author or artist and the "stronger" user. Likewise, authors have been the subjects of protection by legal forms stating, for example, that agreements are not valid if used to pledge patrimonial rights or renounce them[3]. Except in limited situations, patrimonial

rights can be renounced[4].
The Copyright Law has typified the following forms of agreements:

A. PUBLISHING CONTRACT

A publishing contract is a contract between copyright holders— not necessarily being the author—who pledges to "deliver" a literary work to a publisher, for publication purposes[5]. To "deliver" a work for publication entails the authorization to publish but not an assignment of the rights. This characteristic is the basic distinction between a publishing contract and an assignment contract. Parties can stick to either contracting format, as they agree. The Copyright Law sets out statutory conditions that publishing contracts shall require, like the number of editions, copies, exclusivity, or consideration formulae[6]. In the absence of certain kinds of clauses, the Copyright Law imposes conditions like: i) right of preference for future editions[7]; ii) obligations on behalf of the publisher to bear all costs of the publication, including edition, distribution, and advertising[8]; iii) obligation of the publisher to display information referenced to the publication and the ISBN or ISSN number[9]; iv) liability of the copyright holder in connection with the originality of the work[10]; and v) one-year duration of the agreement if parties do not agree on a duration[11], or when the edition is sold out[12].

B. MUSIC PUBLISHING CONTRACT

A music publishing contract is a contract entered into by an author who "assigns[13]" certain rights in a musical work to a music publisher, entitling the latter to perform the mechanic or synchronization-reproduction of the work, its public performance, transformation, and any other form of utilization set forth in the contract. In exchange, the publisher pledges to disseminate the work[14].

C. THEATRICAL PERFORMANCE CONTRACT

A theatrical performance contract is a contract between a copyright owner who "grants" to an impresario the right to publicly perform her work, in exchange for a fee. The impresario pledges to make the performance[15].

D. RADIOBROADCAST CONTRACT

A radiobroadcast contract is a contract entered into by a copyright owner who "authorizes" a radiobroadcast entity to broadcast a work16.

E. AUDIOVISUAL PRODUCTION CONTRACT

An audiovisual production contract is a contract entered into by an author—except for the author of a musical work who “transfers” to an audiovisual producer the rights of reproduction, distribution, public performance, dubbing, and subtitling17. Audiovisual production contracts are one option for the parties to take regarding the rights in works to be incorporated into audiovisual productions. Parties can also adopt other solutions, such as an assignment, a license, or a work-for-hire agreement. The typified contractual figure is restrictive, though, since only authors, but not assignees, in title of the copyright rights can execute them. It is also restrictive inasmuch as it excludes musical works and economic rights other than reproduction, distribution, and public performance—for example, the right to adapt. It seems unlikely, in the end, that producers accept audiovisual production agreements for securing or clearing all rights needed to complete a production. Musical works are expressly excluded from audiovisual production agreements and, accordingly, producers are required to seek rights directly from composers—or the music publisher—via synchronization agreements. Producers can thus employ all sorts of contractual vehicles in order to obtain the rights needed for the soundtrack of a film or audiovisual production.

F. ADVERTISING CONTRACT

An advertising contract covers the utilization of works and other subject matter in commercials or advertising by any means of communication18. An important rule applicable in connection with works devoted to advertisement is that "commercials or advertisements may be communicated for up to a maximum term of six months from the first communication. After this term, remuneration must be paid at least for each additional six-month period, even if done for only fractions of said period, in an amount at least equal to that originally contracted. After three years from its production, said communication requires the authorization of the author of the work utilized19." According to the foregoing provision, authors or artists participating in advertisements shall have

the right to receive remuneration under the quoted formula.
Transfer of neighboring rights is a less clear subject under the Copyright Law. The Copyright Law is silent in this respect; yet, such silence does not mean that assignments or licenses of related rights are forbidden. Accordingly, performing artists should be able to assign their right to oppose or their right to remuneration in favor of a third party, who acquires the title and becomes the new owner. The same is
true in connection with the exclusive and remuneration rights of phonogram producers, as well as the rights of broadcast entities, video producers, and book publishers.

§ 25:30 LEGAL PRESUMPTIONS OF TRANSFER OR ASSIGNMENT OF ECONOMIC RIGHTS TO THE CONTRACTUAL PARTNER

Another form of contracting is work for hire. Under the Copyright Law, work for hire performs as an exception to the principle that patrimonial rights are initially vested upon the author. Accordingly, whoever hires an author for the creation of a work or a part thereof, under employment or as a freelancer, and recompenses the author for the contribution, can be regarded as the "original" owner of the patrimonial rights ab initio and without the need of a transfer. In the case of freelance works, work for hire can be triggered from a contractual relationship or from the mere application of the law, just as long as an order to produce the work and a consideration can be proven[1]. Regarding employment works, employers are required to execute a labor agreement with the creators that they employ, stating that the purpose of the agreement is creating works and that the corresponding copyright rights shall pertain to the employer. The Copyright Law dictates that: i) the employer shall own the rights when having secured a written labor agreement with a creating-purpose clause; ii) the employer and employee shall share the patrimonial copyright rights in equal parts when having a labor agreement without a clause in this regard; and iii) the employee shall own the rights when no written labor agreement has been executed[2].

§ 25:31 STATUTORY ROLES REGARDING COPYRIGHT AND RELATED RIGHTS CONTRACTS; FOR MATTERS OTHER THAN REMUNERATION

A. ASSIGNMENTS

As regard assignments, the tales in the Copyright Law other than regarding remuneration may be synthesized as follows:

- The assignment has to be made in writing1.

- In the absence of express provisions, any assignment of property rights is considered to be valid for five years. Contractual provisions on protection terms cannot exceed 15 years, and will be possible only when the magnitude of the investment required for the exploitation of the work justifies it at the discretion of the federal civil courts2.

- Assignments must be specific to the rights that are transferred—for example, reproduction rights—in a particular medium or modality, public performance rights, and so forth3.

- Registration of the assignment is needed, which is a formality condition under the Copyright Law4.

- Rights in future works cannot be assigned globally; instead, they will have to be defined and specified before they can be the subjects of an agreement5.

B. LICENSES

For licenses, the Copyright Law contains the following provisions:

- Parties have to expressly indicate when licenses are granted on an exclusive basis. Exclusive licenses imply that the licensee may utilize the work by excluding others[6].

- The licensee in an exclusive license bears the obligation to facilitate all human, economic and material resources needed for the exploitation of the authored work[7].

- Registration of a license seems to be required[8].

The Copyright Law does not state anything on whether licenses need to be onerous[9]. Likewise, it appears that licenses are not restricted to time restrictions.

Licenses can be granted in connection with economic rights to authorize or prohibit, including the right to reproduce musical works (including mechanical and synchronization rights), software or audiovisual works, or the right to distribute copies of the sane. Likewise, licenses can be granted in connection with any possible form of public performance, so long as there are no restrictions to the economic right to authorize. Accordingly, just to mention a few examples, small and grand rights can be the subject of licensing as well as rights deriving from the public communication of works by live or mechanical means or by exhibition or display or by emission, transmission, or retransmission, including wire or wireless reception, whether analogue or digital.

Copyright and related rights owners can be represented for negotiating licenses, collecting monies, or enforcing corresponding rights. Private representatives need a power of attorney or mandate to act on behalf of the right owners. Under the Civil Code, mandates can be general or specific[10] and representatives are restricted to undertake their power depending on how wide or narrow the scope of the mandate can be[11]. The Copyright Law has harmonized the rules on

private and collective representation to make them compatible with the principles of the civil laws[12].

§ 25:32 STATUTORY OR OTHER RULES REGARDING REMUNERATION FOR AUTHORS AND PERFORMING ARTISTS

The statutory rules applicable in connection with remuneration for authors and performing artists are related to agreements on transfer of rights. The first rule concerns the requirement that assignment or license agreements executed between authors and assignees or licensees must set forth a fixed or proportional participation clause[1].

The second rule is referenced to remuneration rights that authors or related rights owners are entitled to when they have assigned their exclusive rights on public performance[2] . In 2003, Congress adopted a remuneration rights system for public performance. In essence, the bill prescribed that an author and her assignee shall have the right to receive a "royalty[3]" for the public performance or transmission of the work that she has created, without the possibility of renouncing the right[4]. Users brought constitutional actions since, in their consideration, the bill had opened a window through which some sort of economic right would accrue to authors and assignees that was not clearly distinguishable from traditional patrimonial rights. Users believed that authors and assignees would be entitled to patrimonial and remuneration rights concurrently, and would be allowed to seek multiple monetary considerations originating from one single event. The actions escalated up to the Supreme Court Level. The Supreme Court declared that: i) the new right is indeed a remuneration right that is different from exclusive patrimonial rights; ii) authors are entitled to the remuneration right only when having assigned their exclusive rights; iii) remuneration rights cannot be renounced, but they can be assigned during the lifetime of the author; iv) since remuneration rights can be assigned, the entity exercising them shall be the assignee[5]. The remuneration right does not derive from agreements between authors and users of works. It rather triggers when authors have assigned their patrimonial rights and assignee allows users to publicly perform the work. Authors shall no longer hold a right to authorize or prohibit the public performance of the work, but they still will be entitled to seek remuneration.

§ 25:33 OTHER PROVISIONS OR CASE LAW

Abusive practices in copyright contracts or imbalanced or disproportional agreements would belong to the scope of the Civil Code. A contractual principle in the Civil Code is the will of parties in order to create binding and enforceable agreements[1]. Parties can rely on their free will in order to establish the terms of the contract and accordingly, the law shall presume that by executing a contract both parties have voluntarily accepted each of the terms contained therein[2]. If consent has not been rendered rightfully, the affected party can request the competent judge to destroy the effect of the contract[3]. However, chances are reduced to situations by which the law requires a certain formality[4] or in case of the three so-called "consent viciousness," which are mistake, violence, and bath faith[5].

B. COLLECTIVE RIGHTS MANAGEMENT

§ 25:34 GENERAL: SCOPE OF REGULATION

In addition to private representation, copyright and related rights owners can perform rights management by a CMO[1].
Rules on collective administration of rights are quite strict under the Copyright Law. They impose upon CMOs an array of obligations and conditions vis-à-vis their members and the users that they deal with. Under the Copyright Law, those CMOs are regarded as private associations of a "public interest" nature. They do not pursue any commercial purpose, and they are principally, although not exclusively, devoted to collectively representing authors, artists, or other copyright or related rights owners in connection with their royalties[2] or other remuneration rights[3].
In Mexico, CMOs take a special role in cases when works can be utilized massively, for example, when public performance leads to uncontrolled use situations, which cannot be negotiated on an individual basis due to the fact that it is possible that the work will be used by a great number of people at the same time and at different places. In line with the Copyright Law, CMOs specialize according to the categories of rights set out by the Copyright Law[4]. Indeed, the law permits that two or more CMOs receive government authorization to operate in the same field of rights. Mexican or foreign authors, artists, or other copyright or related rights owners can be members of CMOs

organized and performing under the Copyright Law5.
Foreign collective administration of rights is a sensitive matter. Foreign CMOs cannot perform their rights in Mexico directly. Only legal entities that have been set up and authorized in compliance with the Copyright Law will be permitted to operate as a CMO on behalf of their members or any foreign CMO. In practice, foreign CMOs empower a Mexican equivalent CMO to represent their members by virtue of so-called "reciprocity agreements." The Copyright Law makes reference to "reciprocity agreements" inspired by the CISAC (International Confederations of Authors and Composers Societies) model contract. However, the Copyright Law requires, whether expressly or impliedly that "reciprocity agreements": i) are two-ways oriented and ensure that Mexican copyright and related right owners will benefit from the licensing or collecting activities that foreign CMOs undertake in their representation abroad; ii) the "reciprocity agreements" comply with Mexican civil or other laws on representation; and iii) "reciprocity agreements" are recorded before the Copyright Office6.

§ 25:35 CONDITIONS FOR COLLECTIVE MANAGEMENT ORGANIZATIONS (CMOS) TO BECOME ACTIVE

The basic legal conditions for CMOs to perform are: i) that they formally represent copyright or related rights owners of a particular sector, like music composers, writers, film directors, or performers1; ii)thay they are duly registered with the Copyright Office2; iii) that they receive mandates or powers of attorney, as required by the Civil Code, to collect remuneration from users on behalf of their members, to enter into license agreements, or to take legal actions to protect the exclusive or remuneration rights that they manage3; and iv) that they work in the benefit of copyright protection in general 4.

§ 25:36 REGULATION OF RELATIONSHIP BETWEEN CMO AND RIGHT OWNERS

The Copyright Law stipulates the following obligations by CMOs toward their membership: i) exercise the economic copyright or related rights entrusted to them or “intervene” in the protection of moral rights of their members1; ii) handle and administer works' repertories2; iii) assist their members, inform them about the incomes that they obtain from collecting, and ensure that they are treated equally3, and iv) distribute the royalties or income that they collect among their members4. The administrators of CMOs bear personal responsibility that the objectives and obligations of the CMOs are complied with5.

CMOs need a formal mandate to represent the true and rightful owner of economic or remuneration rights. For example, in the field of music, every economic right and not only reproduction and distribution rights may belong to music publishers, since composers may expressly assign to publishers public performance rights, in addition to reproduction and distribution rights. In cases like that, CMOs need a formal mandate from the publishers in order to collect royalties deriving from economic rights, including public performance. Composers may still be holders of remuneration rights, but as remuneration rights are assignable, CMOs would not be authorized to collect, unless they receive a mandate from the assignee.

§ 25:37 REGULATION OF RELATIONSHIP BETWEEN CMO AND PROFESSIONAL USERS

The Copyright Law sets the following obligations by CMOs toward users of works: i) negotiate licenses or collect royalties or remuneration on behalf of their members, whether Mexican or foreign1 ; ii) inform users of works about the rights that their members hold in connection with the works that they use, and the formal mandates that they have received from their members2.
Upon showing to the users the copyright or related rights administered by them and the express mandate that they received, CMOs can either enter into written license agreements with the users, if uses covered by exclusive rights are concerned, or into verbal covenants, if uses covered by remuneration rights are concerned. If a member of a CMO is not the truthful owner of the rights or the CMO does not possess a power of attorney sufficient to represent that member, copyright or related rights owners would be required to negotiate with the users directly or through a private representative.
Generally, collection is made on the basis of contracts or agreements. The structure and purpose of the agreements may vary depending on whether the use of works or other subject matter of protection entitles the copyright or related rights owners to exclusive or remuneration rights. For example, if copyright or related rights owners hold exclusive rights, authorization must be granted by virtue of a written license. On the other hand, in case of remuneration rights, where right owners cannot authorize or prohibit the use of the work or other subject matter, verbal payment covenants suffice. The specific terms of licenses or covenants may vary, depending on how CMOs and users negotiate. Licenses or covenants may strictly impose CMOs to show title and representation in connection with each work or other subject matter

utilized. Blanket licenses represent an alternative by which the agreement is made in bulk, without proving title or representation. Normally, it is the user who determines the route to take. Generally economic considerations are based on a tariff previously approved by the government3. However, practice reveals that the tariffs that government has made official are not exhaustive enough to cover all possible forms of using works4. Likewise, on occasion, the parties to the agreement are unwilling to rely on them to fix the parameters of the deal. In such cases, the parties may revert to a consideration formula as they agree on, or as one of the parties, normally the collecting society, proposes5.

§ 25:38 PROCEDURAL PROVISIONS ON CMOS

Once CMOs have received a mandate that is sufficient enough to represent their members in collecting royalties or remuneration and enforcing their copyright or related rights, they shall be empowered to take sort of administrative or judicial actions available under the law. The foregoing capacity includes the right by CMOs to take administrative or civil actions or to file criminal complaints, represent their members in criminal investigations or in litigations in general or to terminate the same, for settlement, or any other purposes1.

§ 25:39 CONTROL/SUPERVISION OF CMOS

CMOs are subject to certain control under the Copyright Law. As a matter of fact, the Copyright Office, as the government body in charge of supervising the performance of CMOs, is empowered to revoke the authorization to operate if a CMO violates the legal obligations set forth in the Copyright Law. The Copyright Office is required to render a warning to the defaulting CMO giving a term of three months for correction1.

§ 25:40 CULTURAL AND SOCIAL FUNCTIONS OF CMOS

The Copyright Law makes just a general reference about social assistance, by stating that CMOs bear the obligation to "promote or render assistance service in the benefit of their members and to support activities to promote their repertoires1 ." The larger CMOs like Sociedad de Compositores de México (SACM) or Sociedad General de Escritores de México (SOGEM) contemplate social programs for their members principally, but in general for the music or writers communities, respectively2.

25:41 EXISTING CMOS:

CMOs authorized by the Copyright Office to collective administration are the following:

A. SOCIEDAD DE AUTORES Y COMPOSITORES DE MÉXICO (SACM)

- Types of works: musical
- Groups of right owners: music composers and music publishers
- Web site: www.sacm.org.mx

B. SOCIEDAD GENERAL DE ESCRITORES DE MÉXICO (SOGEM)

- Types of works: literary works
- Groups of right owners: writers
- Web site: www.sogem.org.mx

C. SOCIEDAD MEXICANA DE COREÓGRAFOS (SOMEC)

- Types of works: choreographic and dance

- Groups of right owners: choreographers

- Web site: none

D. SOCIEDAD MEXICANA DE AUTORES DE LAS ARTES PLÁSTICAS (SOMAAP)

- Types of works: fine arts

- Groups of right owners: fine art artists

- Web site: www.somaap.com

E. CENTRO MEXICANO DE PROTECCIÓN Y FOMENTO A LOS DERECHOS DE AUTOR (CEMPRO)

- Types of works: literary works or books/reprography

- Groups of right owners: writers or book publishers

- Web site: www.cempro.com.mx

F. ASOCIACIÓN NACIONAL DE INTERPRETES (ANDI)

- Types of works: artistic interpretations

- Groups of right owners: singers or actors

- Web site: www.andi.org.mx

G. SOCIEDAD MEXICANA DE PRODUCTORES DE FONOGRAMAS, VIDEOGRAMAS Y MULTIMEDIA (SOMEXFON)

- Types of works: phonograms, video recordings, and multimedia productions

- Groups of right owners: phonogram, video, or multimedia producers

- Web site: www.somexfon.com

H. SOCIEDAD MEXICANA DE DIRECTORES, REALIZADORES DE OBRAS AUDIOVISUALES

- Types of works: film directions

- Groups of right owners: film directors

- Web site: www.cinedirectores.com

I. "EJE" EJECUTANTES

- Types of works: artistic interpretations

- Groups of right owners: musicians

- e- Web site: eie_ejecutantesmexico.com.mx

J. SOCIEDAD MEXICANA DE EJECUTANTES DE MÚSICA (SOMEM)

- Types of works: interpretations

- Groups of right owners: musicians

- Web site: none

K. UNIÓN IBEROAMERICANA DE HUMORISTAS GRÁFICOS

- Types of works: drawings and cartoons

- Groups of right owners: cartoonists

- Web site: www.editorialcarton.com.mx

L. SOCIEDAD MEXICANA DE AUTORES DE OBRAS FOTOGRÁFICAS (SMAOF)

- Types of works: photographic

- Groups of right owners: photographers

- Web site: www.informesmaof.org

M. SOCIEDAD DE AUTORES DE OBRAS VISUALES IMAGEN DEL TERCER MILENIO

- Types of works: photographic

- Groups of right owners: photographers

- Web site: None

IX. ENFORCEMENT

A. REMEDIES

§ 25:42 CIVIL REMEDIES

The majority of copyright infringement is channeled through administrative actions. The Mexican intellectual property enforcement system is unique. Congress conceived it originally as a summary proceeding, in which the authority specializing in the substantive aspects of industrial property law was viewed as a better alternative than civil or commercial courts to decide on patent and trademark conflicts, not only concerning proprietorship issues, but also violations of the law. Since the system proved to be effective during the

decade of the '80s and part of the '90s, the Copyright Law legislator adopted it also for the field of copyright and related rights. Stressing the need to implement more effective enforcement mechanisms, a search was initiated to find out means compatible with NAFTA1and TRIPS2. The Canadian and American counterparties of the Mexican negotiating team for NAFTA agreed that administrative remedies could substitute civil remedies to enforce copyright rights3. The condition was that administrative proceedings ensured the same degree of fairness and efficacy as civil proceedings, including: i) the full respect of due process of law and other procedural principles, giving both parties in a copyright litigation the possibility to substantiate claims and present evidence, to be represented in a proceeding; to receive notice by the court of the demands or defenses and the documentation or evidence in support of the same; and to have means to identify and protect confidential information4; ii) requirements that administrative authorities need to fulfill, for example, when a party is in possession of evidence useful to prove a point or issue benefiting the opposing party; iii) pronouncement of injunctions, seizures, damages, expenses, or other compensatory remedies5; and iv) imposition of provisional measures, in the territory of their competence as well as at the borders6.

The Copyright Law of 1956 as reformed in 1963 had made enforcement available by virtue of criminal7and civil8 actions and the model seemed to work well. However, the Copyright Law aggregated a set of administrative actions that abolished most of the criminal and civil actions of former statutes. Questions were raised on how the new copyright enforcement system should work when combining administrative, criminal, and civil actions. Putting the pieces together has not been an easy task and it has required time and effort, in addition to a number of amendments to the Copyright Law and other statutes, to slowly achieve a balance. At first glance, criminal and administrative remedies can be used to enforce exclusive rights to authorize or prohibit and civil actions to enforce remuneration rights. Likewise, civil actions can be used to enforce rights to authorize or prohibit, if an administrative action has been previously resolved in favor of the plaintiff/copyright owner after the appeal, and if the plaintiff is entitled to damages as a result. In essence, copyright owners can take administrative infringement actions seeking administrative remedies, such as fines or the shutdown of a business, to enforce their substantive copyright or related rights. Damages are a civil or commercial law remedy that only civil or commercial court can pronounce. Due to the foregoing, copyright owners

having obtained final administrative resolutions declaring copyright infringement need to start a civil action to pursue damages.
Since copyright infringement requires two actions to obtain en remedies possible, the Mexican enforcement system has been criticized for its excessively long and complicated proceedings9 . The problem is that civil or commercial courts would in themselves not necessarily represent the best solution. Their limited infrastructure and resources as well as their modus operandi would make it hard for judges to implement preliminary measures, as required by the Copyright Law, in particular those having to do with the inspection of premises or locations and the seizure of infringing copies of works. Administrative authorities like the Mexican Institute of Industrial Property have developed skills and ability to perform inspections and seizures, in a rather quick fashion, and are better equipped for doing that job.
The Copyright Law provides rules concerning civil law actions in copyright and related rights. In the first place, it sets out that federal civil courts are competent to decide on controversies deriving from the civil aspects of copyright law. However, if a given controversy affects particular interests only, parties may submit the controversy to a local court, following jurisdictional and other procedural norms in the Federal Civil Procedures Law or the applicable state procedural laws10. An important provision of the Copyright Law stipulates that monetary compensation triggering from copyright damages shall not be lower than 40% of the public sale price of the infringing copy of a work or the infringing service rendered by which copyrights are violated. The judge shall be competent to fix the monetary compensation for damages in cases where the 40% rule cannot be followed and applied11.

§ 25:43 CRIMINAL SANCTIONS

The Copyright Law has listed a number of misbehaviors regarded as crimes. For its gravity, some of them have reached the status of felonies and, accordingly, are the subject of strong imprisonment sanctions, which an alleged infringer would face in jail, not only after being convicted, but also while prosecuted. As of 1997, the Federal Criminal Code has been amended to upgrade the criminal sanctions for copyright piracy1. Recognizing that infringers are frequently organized in mafias, criminal laws have been adjusted to elevate sanctions deriving from copyright felonies viewed as organized crime2. The reforms have been made in fulfillment of obligations deriving from international treaties, like

NAFTA[3] or TRIPS[4].
The threshold for seeking criminal remedies is that infringement was perpetrated knowingly, in bad faith or willfully, and for a commercial intent. Copyright criminal actions generally require that the aforementioned common factors be met. Unauthorized copiers of copyright works, or the importers, distributors, or vendors of said copies are liable to criminal sanctions, when acting in a direct manner. Neither contributory nor vicarious liability applies under the Copyright Law or the Penal Code[5]. Apart from seizure, forfeiture, and destruction of infringing copies, criminal sanctions consist of imprisonment, or fines or the awarding of damages. The highest imprisonment sanctions are intended to punish a felony, mainly inflicted by copyright pirates who copy works or who distribute them. However, misdemeanors can be the subjects of imprisonment sanctions as well, although for shorter terms, and commencing only after trial has finished and the infringer has been convicted. Injunctive relief is not expressly a remedy under the criminal laws but still is implied.
The Federal Penal Code lists the following crimes and applicable sanctions:

A. IMPRISONMENT FROM SIX MONTHS TO SIX YEARS AND A FINE SHALL BE IMPOSED ON[6]:

- whoever speculates in any form with free textbooks distributed by the Ministry of Public Education;

- an editor, producer, or recorder who knowingly produces more copies of a copyright work than the number authorized by the copyright owner; or

- whoever uses in bad faith, for purpose of gain and without authorization, copyright works[7] .

B. IMPRISONMENT FROM THREE TO 10 YEARS AND A FINE SHALL BE IMPOSED ON[8]:

- whoever produces, reproduces, introduces to the country, stores, transports, distributes, sells, or leases copies of works, phonograms, videograms, or books, protected under the Copyright Law, in bad faith, for commercial speculation and without authorization from the copyright or related rights owner. The same sanction shall be imposed on whoever, knowingly, provides in any form materials or staples destined for the production or reproduction of works, phonograms, videograms, or books, as referred in the previous paragraph[9]; or

- whoever manufactures for the purpose of gain a device or system utilized to deactivate the protective electronic devices of a computer program[10].

C. IMPRISONMENT FROM SIX MONTHS TO SIX YEARS AND A FINE SHALL BE IMPOSED ON:

- whoever sells to a final consumer in public places and in bad faith, for commercial speculation, copies of works, phonograms, videograms, or books. If the sale takes place in a commercial establishment or in a permanent or organized manner, the infringer shall be liable to a felony[11].

D. IMPRISONMENT FROM SIX MONTHS TO TWO YEARS AND A FINE SHALL BE IMPOSED ON WHOMEVER KNOWINGLY AND WITHOUT A RIGHT EXPLOITS AN ARTISTIC PERFORMANCE FOR PURPOSE OF GAIN[12].

E. IMPRISONMENT FROM SIX MONTHS TO FOUR YEARS OR A FINE SHALL BE IMPOSED ON[13]:

- whoever manufactures, imports, sells, or leases a device or system to decode an encoded satellite signals or programme-carrier without authorization of the legitimate distributor of said signal; and

- whoever performs any act for the purpose of gain, with the intention of decoding an encoded satellite signal or programme-carrier, without the authorization of the legitimate distributor of said signal.

F. IMPRISONMENT FROM SIX MONTHS TO SIX YEARS AND A FINE SHALL BE IMPOSED ON WHOEVER PUBLISHES, KNOWINGLY, A WORK SUBSTITUTING THE NAME OF AN AUTHOR FOR ANOTHER NAME.

While the criminal system has proven to be an important weapon to fight against copyright piracy, there is still much that could be done in order to improve it. Judicial precedents show an important number of successful cases in which infringers have been imprisoned or in which piracy was stopped. However, a number of others have been disasters. A recent example in the first category is a criminal action brought by the member studios of the Motion Picture Association of America against a site called SigloX.com. that used to render an online TV service to communicate hundreds of Hollywood and other films. The federal attorney's office in the city of Culiacán, Sinaloa, carried an investigation on site and was able to locate and seize the equipment in possession of the alleged infringers. The site was switched off as a result[14] . By contrast, in a satellite decoder matter, two individuals were acquitted by the criminal courts, notwithstanding that they were caught in flagrante, when installing satellite-dish equipment to a client's television receiver, with the intention of picking up satellite television signals containing programs from carriers such as Sky and Dish Networks. Televisa, a Mexican producer of TV programs, brought charges before the federal attorney's office to investigate, among others, whether the alleged infringers had intercepted a satellite television signal without its consent. The criminal courts had a hard time to find infringement of the rules regarding satellite signal encoding. Their conclusion was that the provisions of the Penal Code are restrictive and thereby difficult to

enforce when the content producer rather than the broadcaster brings the claim15.

§ 25:44 ADMINISTRATIVE SANCTIONS

Administrative infringement actions are available against violations of administrative dispositions or obligations in the Copyright Law. However, administrative actions are principally directed to prevent unauthorized third parties from using copyright works. The Copyright Law divides infractions into "copyright1" and "commerce2," depending on whether an infringement has a non patrimonial or patrimonial connotation. However, the system adopted by the Copyright Law is full of inconsistencies.

Copyright infractions are addressed in an unsystematic and dispersed listing of very narrowly drafted provisions that are hard to apply in real situations. No wonder there has been minimum litigation in this field. Commercial infractions have the purpose to enforce patrimonial copyright and related rights to authorize or prohibit. Supposedly, they represent an alternate protection mechanism vis-à-vis criminal law. The fact is that the nature and scope of both "copyright" and "commerce" infractions is materially equivalent. Curiously enough, commercial infractions require a purpose of gain, whether directly or indirectly3. A question is why the legislator employed the expression "commercial" to designate infractions aimed at protecting patrimonial rights. Patrimonial and commercial are not synonymous terms. The "patrimony" of a copyright owner can be affected when a work has been used without authorization, regardless of whether the used work was placed in commerce or whether it was used for the purpose of gain. The commerce or gain factors are questions of degree-not of substance- and consequently, legislators or judiciaries may consider them just to elevate or lower sactions, depending on how grave a behavior can be. Under the Copyright Law, right owners can still request relief against infringement of their patrimonial rights by invoking a catchall provision4. However, the Copyright Law legislator was not effective enough to design an enforcement model, which would be systematic enough to distinguish between the different remedies conveyed.

The following are administrative infractions under the Copyright Law:

A. "COPYRIGHT" INFRINGEMENTS[5]:

- The entering by an editor, entrepreneur, producer, employer, broadcasting organization, or licensee into a contract with the objective of transmitting copyright in violation of that disposed by the Copyright Law[6].

- The infracting by a licensee of the terms of a compulsory license that would have been declared in terms of the Copyright Law.

- Somebody presenting itself as a collecting society without having obtained authorization from the Copyright Office.

- Not submitting, without justified cause, the reports and documents referenced to in the Copyright Law to the Copyright Office, as the manager of a collecting society.

- Not inserting the copyright notice in a published work[7].

- Not inserting the names, data, and information that the Copyright Law requires the editors to disclose in their publications[8].

- Not inserting in a phonogram the (P) notice referred to in the Copyright Law[9].

- Publishing a work, when authorized to do so, without mentioning in the copies the name of the author, translator, compiler, adapter, or arranger[10].

- Publishing a work, when authorized to do so, damaging the reputation of the author as such and, if applicable, of the translator, compiler, arranger, or adapter.

- Anticipating without authorization of the federation, states, or municipalities, the publication of the works performed in the official service.

- Using in fraud a work's title that induces confusion with the title of another work published earlier[11].

- Fixing, representing, publishing, communicating, or using in any form a literary or artistic work, protected by the Copyright Law as a folkloric or popular manifestation without mentioning the name of the community or ethnicity, or the region of the Mexican Republic where it belongs; and

- Any other infringement derived from the interpretation of the Copyright Law or Regulations[12].

The sanctions in connection with copyright infractions are mostly fines[13], although the shutting down of establishments and administrative arrests are possible as well[14]. Injunctions seem not to be available for copyright infractions.

B. COMMERCIAL COPYRIGHT INFRINGEMENTS15:

- Performing or utilizing publicly a work protected by any means, and in any form, without the previous and explicit authorization of the author, her legitimate heirs, or the holder of patrimonial rights.

- Utilizing the image of a person without her authorization or that of her successors.

- Producing, reproducing, storing, distributing, transporting, or commercializing copies of works, phonograms, videograms, or books, protected by copyright or related rights, without the authorization of the respective holders, in terms of the Copyright Law.

- Offering for sale, storing, transporting, or putting in circulation works protected by the Copyright Law that have been deformed, modified, or mutilated, without authorization of the copyright owner.

- Importing, selling, leasing, or performing any act that allows having a device or system utilized to deactivate the protective electronic devices of a computer program.

- Retransmitting, fixing, reproducing, and disseminating to the public emissions of a broadcast organization without authorization.

- Using, reproducing, or exploiting a protected reserva16 of rights or a computer program without the consent of the copyright owner.

- Using or exploiting a name, title, denomination, physical or psychological characteristic or operation characteristics, in a manner that induces error or confusion with a protected reserve of rights.

- Using deformed literary and artistic works of folklore or popular manifestations.

- All other infringements as provided by the Copyright Law that imply a commercial or industrial behavior relating to the works protected by the Copyright Law.

As it can be perceived, the language that the legislator of 1996 has employed is full of inconsistencies and frequently inaccurate. Most of the provisions address patrimonial copyright or related rights violations, some of them following at the same time a general and specific approach. For example, the words "performing"—of a narrow scope—and "utilizing—of a wide scope—appear in a provision one next to the other17 . One of the provisions regards the rights of reproduction and distribution, and it does so exactly as the Penal Code18. The right of public performance seems to have been covered extensively, and every modality included, accordingly. However, it appears that the right of transformation has been left out of the catalogue, unless infringement thereof can result from the application of the catch-all rule19. Use of computer software is mentioned as a particular infraction, despite being considered a work. However, for strange reasons, it was placed in the same provision as reserves of rights (titles of publications, characters, and artistic names20). At the same time, general and specific references to reservas were given in two different provisions21. As to neighboring rights, infractions are enumerated in

respect of the reproduction and distribution in copies of phonograms, video recordings, and books, but not in respect of their public performance[22]. Similarly, broadcast signals are only referenced regarding emissions[23]. Infringements of moral rights of integrity are recognized only when works have been deformed and then disposed of in commerce[24]. Finally, the computer software deactivating infraction rule repeats the Penal Code's own rule[25].

The infraction related to persons' images was supposedly conceived to enforce the portrait right of the Copyright Law[26]. Notwithstanding being also inaccurate in the manner it was drafted, it has proved useful to protect the right of image from a patrimonial and not merely a personal perspective. Other statutes have taken care of the personal side of the right of image[27]. Recently, the Supreme Court addressed the issue whether the Mexican Institute of Industrial Property was the competent authority to render decisions regarding image rights, and it confirmed that the Instituto is so indeed, regarding their patrimonial angle[28].

The sanctions in connection with infractions in commerce are provisional and permanent injunctions[29], fines[30], and the shutting down of establishments and administrative arrests are possible as well[31].

Administrative actions are possible also to cancel copyright registrations or inscriptions issued by the Copyright Office. Accordingly, the Copyright Law provides that the federal administrative courts are competent to resolve cancellation actions resulting from registrations, annotations, and other inscriptions that parties make, and that the Copyright Office is designated the defendant[32].

§ 25:45 PARTICULAR REMEDIES IN RESPECT OF CIRCUMVENTION OF TECHNICAL MEASURES AND RIGHTS MANAGEMENT INFORMATION

During April and May 2003, Congress discussed a bill of amendments of the Copyright Law relating to private copying of works; that bill did not pass. The reason is that some thought that it could be better replaced by a system of technological protection measures (TPMs) and digital rights management (DRM). As signatory of the WCT and the WPPT, Mexico inserted TPM and DRM enforcement norms for online and offline analog or digital environments. The aim was to ensure that circumvention of these methods is prohibited and that criminal sanctions are available. Accordingly, the Penal Code imposed imprisonment sanctions against manufacturers of devices or systems that deactivate the protective electronic devices of computer programs1. However, relevant norms of the WCT and the WPPT are not restricted to computer programs. On the contrary, both treaties have procured that member states take adequate legal and enforcement measures against the circumvention of TPMs used by authors, performers, and phonogram producers to protect any of their works, performances, or phonograms against copying or other forms of use, when they have not granted their consent for that use to occur2. Likewise, the WCT and the WPPT have disposed of as well that member states need to take legal and enforcement measures against persons that remove or alter DRM or knowingly employ copies of any works with an altered or removed DRM to distribute or publicly perform the same3. As a general principle, international treaties are self-applicable in Mexico, but that might not necessarily be true when a particular provision in a general treaty is worded as an obligation upon the members to provide, by virtue of legislating or otherwise, a certain kind of legal protection, especially when the obligations leave open several ways of implementation, and when that sort of protection is ensured by enforcing rights. Accordingly, it could be said that Mexico is in default of its WCT and WPPT obligations concerning TPMs and DRM.

B. AVAILABLE PROCEDURE AND COURTS

§ 25:46 CIVIL PROCEEDINGS

Civil courts are in charge of civil litigation in general. The system is divided into federal and local civil courts. Federal civil courts are competent to resolve conflicts relating to federal subjects like copyright law.
However, the Copyright Law allows that plaintiff to exhaust the local venue, when a given conflict affects private interests exclusively[1]. The Copyright Law, applicable in substantive matters, as well as the Federal Code of Civil Proceedings govern litigation in federal courts[2]. In local litigation, the states' procedural codes substitute the federal adjective legislation, but the Copyright Law continues to apply.
Considering that civil proceedings are governed by the federal or local procedural codes, actions claiming remuneration or damages or requesting the cancellation of registrations must follow these statutes' norms and rules. The foregoing concerns rules on filing and responding complaints, hearings, incidental recourses, allegations, sentences, and appeal. Preliminary measures are possible under the procedural codes, but more restrictively applied in practice, in comparison to the equivalent figures in the Law on Industrial Property[3].

§ 25:47 CRIMINAL PROCEEDINGS

Criminal proceedings are exclusively federal[1] and are governed by the Copyright Law, the Penal Code, and the Federal Code of Penal Proceedings. Criminal proceedings are divided into preliminary inquiries and a process or trial. The investigative stage starts by virtue of a private claim by the copyright owners through private actions[2], or by a public claim—depending on the type of crime—and terminates by a resolution granting or denying indictment. The fact that a criminal action is private signifies that the federal prosecutor can only start to investigate after a copyright owner or his representative has filed a claim. Accordingly, title and representation have to be proven. The copyright owner can control the initiation and termination of the proceeding, inasmuch as he can anytime withdraw the claim[3].
The federal prosecutor or district attorney is in charge of the investigation, and in keeping with this, is empowered to collect evidence to conclude that a crime has been committed and that at least somebody presumably inflicted it. Among

other investigative measures, the district attorney can inspect premises and seize objects. If inspection is made in private property, a search and warrants order, issued by a judge, is required. After indictment, the matter shall be brought before a district judge, who shall then start a criminal process or trial if, after assessment of the matter, he arrives at a prima facie conclusion that there is a crime to judge. The alleged defendant is granted a constitutional right to a term to declare and to be rendered formally imprisoned or liberated, if charges have no merit. The judge conducts criminal trial, the parties being the General Attorney's Office as the plaintiff in representation of society, and the alleged criminal as defendant. The victim may assist the General Attorney in the prosecution of the trial. Either the General Attorney's Office, if resolution finds no crime, or the criminal, if convicted, may file an appeal before a unitary court and then file review at a circuit court.

§ 25:48 ADMINISTRATIVE PROCEEDINGS

Copyright administrative proceedings are federal as well. The Copyright Law, the Law on Industrial Property, the Federal Code of Administrative Proceedings, and the Federal Code of Civil Proceedings rule them. Sometimes, the civil proceedings code can supplement the administrative code, in particular when a given procedural norm of this latter statute is insufficient. A question has been why the Law on Industrial Property deals with copyright affairs. The legislator of 1996 considered that, since the Industrial Property Institute had more experience in enforcing intellectual property rights than the Copyright Office, it would be better that it enforces copyright rights. Accordingly, the Copyright Law sets out a so-called "sending" provision, to indicate that the Mexican Industrial Property Institute has jurisdiction over infractions in commerce[1] as well as preliminary measures, including border measures[2].

Administrative contentious proceedings are summary in nature and are planned to avoid procedural steps like incidents or intermediate appeals. In theory, they are generally restricted to the filing of a complaint, an answer, and final arguments. Certainly, preliminary measures are possible before or even during the principal proceeding, including preliminary injunctions, inspections, and seizures, conducted at the premises of the alleged infringer, a third party, or at a

customs office. Resolutions can be appealed before the federal administrative court and reviewed at a circuit court.

Establishing infringement under the Copyright Law is not particularly restricted to the analysis of determined factors. In any event, analysis may address copyright or ownership questions, if a copyright owner has not relied on a registration to prove title. The Copyright Law regards copyright registration certificates, issued by the Mexican Copyright Office or by an equivalent authority of a Berne member country, as prima facie evidence3. If the copyright owner files a registration that is questionable, she has to impugn it before competent authorities and accordingly bears the burden of proof4. The copyright owner implicitly needs to show that the alleged infringer copied while having had access to the work. The Copyright Law is not express regarding the access factor, but implies it anyway as otherwise it would be hard to know whether an alleged copier reproduced the work or made an original one. Substantial similarity is not a concept accepted by the Copyright Law and it is just the literal copying of the work, whether in whole or part, that the copyright owner may raise as a valid argument.

C. JUDICIAL EXECUTION

§ 25:49 GENERAL RULES

The Federal Code of Civil Procedures empowers the civil courts to execute their judgments. In general terms, judges shall have the faculty to compel a party having to fulfill a court decision by granting reasonable time to voluntarily comply with it1. If the obligation is not carried out, the judge can use economic or other execution means, such as decommissions, to ensure that the judgment will be honored2. Execution of debts may require the need to seize property for sale in public auctions. The Federal Code of Administrative Proceedings contemplates means to execute the resolutions of administrative courts or authorities, basically through fines3.

§ 25:50 SPECIFIC RULES FOR COPYRIGHT AND RELATED RIGHTS

The Institute of Industrial Property Law may execute its decisions mainly by

virtue of fines or other administrative sanctions. Basically, the Law on Industrial Property provides higher fines or the chance of a shutdown of premises or the business, against infringers who have been declared as such and who reiterate on infringement.

X. CONFLICT OF LAW RULES AND STATUS OF FOREIGNERS

§ 25:51 APPLICABLE PROCEDURAL LAWS

The Civil Code[1] determines the law applicable to infringements or other acts taking place outside Mexican territory or within Mexico but involving elements linked to a foreign country. Its general rules cover both procedural and substantive matters. As a principle, the Civil Code sets out that Mexican laws apply to persons, whether Mexican or foreign, "located" in Mexico, and to acts or facts that occur within the Republic[2]. Foreign law applies when Mexican laws provide so or when stated in international treaties[3]. From the broad term "located" one may conclude that the Civil Code seems to have accepted that local and transitory acts occurring abroad can be brought to the courts of Mexico, provided that the Mexican laws recognize the application of foreign laws. Curiously enough, neither the Federal Code of Civil Proceedings nor the Federal Code of Administrative Proceedings admits, at least expressly, that Mexican civil or administrative courts apply to foreign procedural laws. This might be regarded an inconsistency in the law, but would make it hard that foreign procedural laws apply when conflicting parties choose a forum.
The Civil Code states that in order for a particular law to apply, it must recognize valid legal "situations" that are "created" in Mexico or in a foreign country, in conformity with its law[4] . For the application of a foreign law, i) the judge in Mexico shall apply it as the foreign judge would do it; and ii) it shall not be regarded an impediment for the application of foreign law that Mexican law does not contemplate institutions or proceedings that are essential in accordance with the foreign country's law, if an analogous institution or proceeding exists in Mexican law[5]. To the contrary, foreign laws are not recognized as valid legal "situations" if they contradict principles or institutions of Mexican laws[6] or are used in simulation to avoid the application of Mexican law[7].

International treaties are mostly silent concerning choice of forum. The national

treatment principle of the Berne and Rome Conventions perhaps could work as an exception though, although the theory has never been tested. Courts may consider a case if a copyright owner takes an action before Mexican courts to tackle infringement produced in various countries, for example, where a work was made available by means of digital networks.

§ 25:52 APPLICABLE SUBSTANTIVE LAW

If no contract has determined the applicable substantive copyright law, the laws of the country for which protection is claimed shall govern to resolve a given conflict. The Civil Code stipulates that foreign substantive law shall generally be applicable, unless exceptional or conflictive circumstances prevail that require application of Mexican law1. Accordingly, under the Civil Code, application of foreign substantive law is clearer than that of foreign procedural law.

§ 25:53 EXECUTION OF FOREIGN JUDGMENTS

The Federal Code of Civil Proceedings and the Civil Proceedings Codes of the Federal District and each of the federated states contain provisions regarding the execution of foreign judgments. The rules of the Federal Code of Civil Proceedings are applicable to foreign judgments deciding conflicts of federal nature. In keeping with this, foreign court decisions are executable by Mexican courts if they do not contradict public order1. In particular, the Federal Code states that Mexican courts shall recognize the competence of foreign tribunals for the purpose of recognizing the execution of sentences, when compatible or analogous to the national law or when competence has not been reserved for Mexican tribunals2. Foreign judgments on copyright matters fall within the Federal Code's description. Copyright law is a federal subject and is not exclusively reserved to the competence of Mexican courts3. Prior to execution, they will practice a homologation or exequatur process4 to assess that the foreign court complied with in venue, personal notice, and other procedural principles5. The Mexican court shall not examine the substantial aspects of the sentence6.

Mexico is member of two Inter-American treaties dealing with execution of foreign judgments. The names are: Inter-American Convention for the International Efficacy of Foreign Judgments7 and Inter-American Convention for the Extraterritorial Efficacy of Foreign Sentences and Arbitral Resolutions8.

§ 26:54 STATUS OF FOREIGNERS FRESERVED]

§ 25:55 REFERENCE TO APPLICABLE INTERNATIONAL CONVENTIONS

At first glance, Mexican domestic laws shall protect foreign copyright or related rights owners depending on whether international treaties are based on reciprocity or national treatment or whether they require Mexico to adopt certain minimum standards or the harmonization of laws. The foregoing would depend on the scope and nature of every convention or treaty. However, the Mexican legal system is friendly with foreigners, making treaty rights available to foreigners without exception. In keeping with this, Mexico follows the international law principle of self-applicability of treaties. Likewise, an interpretation of the Federal Constitution by the Supreme Court of Justice has established that international treaties are superior to federal or local laws1. Accordingly, treaties' provisions supersede domestic provisions in conflict or apply in a direct fashion when domestic laws do not provide the means to resolve an issue.

In the field of copyright and neighboring rights law, the Copyright Law has set out the principle that foreign copyright owners enjoy the same rights as Mexican nationals, pursuant to the international treaties that Mexico has subscribed2. Likewise the Copyright Law extends its protection to foreign related rights owners who have first fixed their works outside Mexico, in conformity with international treaties on neighboring rights 3. In both instances, the Copyright Law has been inclusive by extending protection deriving from international conventions to foreign copyright or related rights owners, irrespective of whether their countries are members of a particular treaty or not.

§ 25:56 PARTICULAR PROVISIONS ON THE PROTECTION OF FOREIGN AUTHORS AND RELATED RIGHT OWNERS

Under the Federal Constitution, foreigners shall enjoy civil or constitutional rights and freedoms to the same extent and equal proportion as Mexican citizens1 . Regarding copyright rights, the Copyright Law determines that foreign authors shall benefit of equal rights as Mexicans2. The same is true in connection with related rights owners. In particular, the Copyright Law affords protection to foreigners that have fixed for the first time outside Mexico, an

artistic performance, phonogram production, broadcast signal, book, or videogram3. See also § 25:55 above, last sentence.

[Section 23:2]
[1] Published at the Federal Gazette of December 24, 1996, and in force since March 25, 1997. The Civil Codes of 1870, 1884, and 1924 and the Copyright Laws of 1947, 1956 and 1963 preceded the Copyright Law of 1996. This latter statute inserted protective rights to neighboring rights as well. The 1996 Copyright Law is divided into 12 Titles (General provisions; Copyright Law; Transmission of Rights; Copyright Protection; Related Rights; Limitations; Rights on Patriotic Symbols and Popular Cultures Expressions; Registration of Copyrights; Collective Management; Copyright Office; Proceedings; and Contentious Administrative Proceedings). An English version of the 1996 Copyright Law can be found at www.wipo.int/clea/en/details.jsp. However, the WIPO translation is outdated, since it does not cover the amendments that Congress has made to the Copyright Law.
[2] Federal Gazette of June 27, 1991, and amended in August 2, 1994. The Law on Industrial Property is supportive of copyright contentious administrative procedures. The Patent and Trademark Office has played the role of copyright "commercial" rights enforcer. See supra at Chapter IX.
[3] Published at the Federal Gazette of August 14, 1931. The Penal Code contemplates criminal sanctions for copyright piracy.
[4] Federal Gazette of May 26, 1928. The Civil Code contributes with general rules applicable to obligations, contracts, representation, mandate and powers of attorney, among others.
[5] Federal Gazette of August 4, 1994. The Administrative Procedures Code renders a general framework as for contentious and non contentious administrative proceedings in copyright law.
[6] Federal Gazette of February 24, 1943. The Civil Procedures Code establishes court proceedings in civil law.
[7] Federal Gazette of August 20, 1931. The Criminal Procedures Code

establishes investigative and court proceedings in penal law.
[8] Federal Gazette of December 15, 1995. Customs Law considers the statutory law applicable to preliminary measures at borders in cases of copyright piracy.
[9] Federal Gazette of December 29, 1992. The Film Law provides statutory rules on audiovisual productions' classification and approval of distribution, among others.
[Section 25:3]
[1] Federal Gazette of May 22, 1998.
[2] Federal Gazette of November 24, 1994.
[3] Federal Gazette of August 8, 1957.
[4] Federal Gazette of October 9, 1964.
[5] Federal Gazette of November 9, 1965, and addendum of July 13, 1976.
[6] Federal Gazette of October 9, 1964.
[7] Federal Gazette of October 9, 1964.
[8] Federal Gazette of August 25, 1966.
[Section 25:5]
[1] Federal Gazette of May 19, 1997. Article 231(III) of the Copyright Law as reformed, requires that unauthorized reproduction of works, phonograms, video recordings or books, or the distribution (including storage, transportation, or commercialization) of copies thereof, is made for the purpose of gain, whether direct or indirect.
[2] Federal Gazette of May 17, 1999. Article 424 (III) of the Penal Code was inserted as a criminal provision against any form of "utilizing" works, which would naturally include reproduction, distribution, public performance, and transformation. Article 424bis (I) of the Penal Code repeats the administrative cause of action of article 231(III) of the Copyright Law and it only adds a bad faith, or "dolum," factor. Also, article 231 (III) uses the expression "purpose of gain," whereas article 424bis (I) employs "commercial speculation." In any event, the two provisions are the same, from a practical standpoint, the former being a minor crime and the latter a felony. Another comment, comparing articles 424 (III) and 424bis (I) of the Penal Code, is that the former provision utilizes the word "use," which can be extremely general and ambiguous. Since "use" can be reproduction or distribution, apart from public performance and transformation, the wording of article 424 (III) may be unnecessarily repetitive and may create confusion to the district attorneys or judges. See infra, § 25:43.
[3] Federal Gazette of July 23, 2003. The reform was somewhat extensive. In

addition to remuneration rights, droit de suite, and increase of terms, the reform included certain modifications to the right of reproduction (article 27(I), derivative works (article 78), photographic, pictorial and graphic works (articles 86, 88, 89, and 90), use of (P) notice on phonograms (article 132), and certain norms in jurisdiction (article 213) and a 40% rule (Article 216bis).
[4] Articles 26bis, 83bis, 117bis, 118, 131bis and 133, Copyright Law. Amendment published at Federal Gazette of July 23, 2003. Article 26bis deals with a general remuneration right for authors, articles 83bis, 117bis/118, and 131bis/133 with such a right for composers who work in an employment relation, performing artists, and phonogram producers, respectively.
[5] Article 92bis, Copyright Law.
[6] Articles 29 (copyright term), 122 (performances term), 134 (phonograms term), and 146 (broadcasts term), of the Copyright Law.
[7] Bill of amendments of diverse articles of the Copyright law discussed and voted at Congress during April and May 2003. The reason why it was disapproved is that it could be better replaced by a system of technological protection measures (TPM) and digital rights management (DRM). As signatory of WCT and WPPT, Mexico has recognized TPM and DRM protection online and offline, in analog or digital environments. The Copyright Law ensures that circumvention of these methods is prohibited and that criminal sanctions are available.
[8] Federal Gazette of September 14, 2005.
[Section 25:6]
[1] Transitional articles First to Ninth, Copyright Law.
[2] Transitional articles First to Third, Copyright Law.
[3]Transitional articles first and Second, Copyright Law.
[Section 25:7]
[1] Bill of Amendments of article 152 of the Copyright Law.
[2] Bill of Amendments of articles 26ter and 116 of the Copyright Law.
[3] Bill of Amendments of article 429 of the Penal Code.
[Section 25:8]
[1] Executed on July 24, 1971. Published in the Federal Gazette of June 4, 1994, and in force as of December 17, 1974. Mexico subscribed as well the Brussels Act of the Berne Convention, and published it at the Federal Gazette of January 4, 1967, and in force as of June 11, 1967.
[2] Paris text executed in 1971. Original version published in the Federal Gazette

of December 22, 1955, and in force as of May 12, 1957.
[3] Executed on June 22, 1946. Published in the Federal Gazette of February 13, 1947 and in force as of May 26, 1947.
[4] Executed on October 29, 1971. Published in the Federal Gazette of April 2, 1973 and in force as of December 21, 1973.
[5] Executed on October 26, 1961. Published in the Federal Gazette of December 31, 1963 and in force as of May 18, 1964.
[6] Executed on May 21, 1974. Published in the Federal Gazette of April 2, 1973 and in force as of December 21, 1973.
[7] Executed on April 20, 1989. Published in the Federal Gazette of August 2, 1990 and in force as of February 27, 1991.
[8] Executed on December 20, 1996. Published in the Federal Gazette of March 1, 2000 and in force as of March 6, 2002.
[9] Executed on December 20, 1996. Published in the Federal Gazette of August 24, 1999 and in force as of May 20, 2002.
[10] Executed on April 15, 1994. Mexico is a member of the World Trade Organization since January 1, 1995.
[11] Executed on December 17, 1992. Published in the Federal Gazette of December 8, 1993 and in force from January 1, 1994.
[12] Except for NAFTA, free trade agreements that Mexico has signed bi- or tri- or multilaterally do not contemplate intellectual property chapters or provisions as such, but might invoke copyright law principles or make references to TRIPS. Those agreements are: i) free trade agreement between Mexico and the European Union: executed on December 8, 1997, published in the Federal Gazette of March 20, 2000 and in force as of June 26, 2000; ii) free trade agreement between Mexico and Colombia: executed on June 13, 1994, published in the Federal Gazette of December 16, 1994, and in force as of January 01, 1995; iii) free trade agreement between Mexico and Bolivia: executed on September 10, 1993, published in the Federal Gazette of December 28, 1994, and in force as for January 01, 1995; iv) free trade agreement between Mexico and Central American countries: executed as one treaty on June 29, 2000, published in the Federal Gazette of January 19, 2001, and in force as of March 15, 2001-between Mexico and Guatemala-March 15, 2001, between Mexico and El Salvador-June 01, 2001, and between Mexico and Honduras-; v) free trade agreement between Mexico and Costa Rica: executed on April 05, 1994, published in the Federal Gazette of June 21, 1994, and in force as of

January 1, 1995; vi) free trade agreement between Mexico and Nicaragua: executed on December 18, 1997, published in the Federal Gazette of May 26, 1998, and in force as of July 1, 1998; vii) free trade agreement between Mexico and Chile: executed on April 17, 1998, published in the Federal Gazette of December 30, 1998, and in force as of August 1, 1999; viii) free trade agreement between Mexico and Israel: executed on April 10, 2000, published in the Federal Gazette of June 02, 2000, and in force as of July 1, 2000; ix) free trade agreement between Mexico and Uruguay: executed on November 15, 2003, published in the Federal Gazette of May 26, 2004, and in force as of July 14, 2004; x) free trade agreement between Mexico and the European Free Trade Association: executed as one treaty on November 27, 2000, published in the Federal Gazette on June 04, 2001, and in force as of July 01, 2001—between Mexico, Norway, and Switzerland—October 01, 2001, between Mexico and Iceland—November 01, 2001, between Mexico and Liechtenstein—.
[Section 25:9]
[1] The definition of Article 2 of the Berne Convention, “every production in the literary, scientific, and artistic domain, whatever may be the mode or form of its expression,” has been used in various articles of the Copyright Law, such as article 11 that state “Copyright is the recognition by the State of any creator of literary or artistic works…”
[2] Article 3 of the Copyright Law provides that "the works protected by this Law are those representing original creations liable to be published or reproduced in any form or medium."
[3] Article 13 of the Copyright Law. The Copyright Law calls the kinds or categories of works "genders," which is certainly an inappropriate word.
[4] Article 13 (I), Copyright Law.
[5] Article 13 (II), Copyright Law.
[6] Article 13 (III), Copyright Law.
[7] Article 13 (IV), Copyright Law.
[8] Article 13 (V), Article 13 (VII) considers "caricature and cartoon" works a listed category in itself, despite the fact that they could also be viewed as drawings or plastic works, a concept conveying a wider meaning.
[9] Article 13 (VI), Copyright Law.
[10] Article 13 (VIII), Copyright Law.
[11] Article 13 (XIII), Copyright Law.
[12] Article 13 (XIV), Copyright Law.

[13] Article 13 (XII), Copyright Law
[14] Article 13 (X), Copyright Law.
[15] Article 13 (IX) and (X), Copyright Law. For strange reasons, the legislator separated television programs from the general notion of audiovisual works.
[16] Article 13 (XI), Copyright Law. Computer software appears listed as a gender, which is different from other jurisdictions that regard software as a species of literary works.
[17] Article 13 (V), Copyright Law.
[18] Article 13 (IX), Copyright Law.
[19] Article 13 (XIV), Copyright Law.
[20] Certainly, in computer graphic design works authors do not paint or draw them in a traditional context, but such works are still forms of "painting or drawing."
[21] Article 13, last paragraph of the Copyright Law establishes that "Other works which can be considered, by analogy, literary or artistic works, shall be integrated in the genders *(sic)* closest to their nature."
[22] Articles 78 and 79 of the Copyright Law contain the rules in connection with derivative works, which include "arrangements, compendia, expansions, translations, adaptations, paraphrases, compilations, collections and transformations of literary or artistic works." Regarding compilations or collections, article 4 (D) determines that the Copyright Law distinguishes between individual, collaborative, and collective works: i) individual works are those created by one author; ii) collaborative works those created by two or more authors jointly; and iii) collective works those created on the initiative of an individual person or a corporation, with the contribution of authors, without it being possible to separate the contributions from the overall work and without it being possible to attribute an independent right to each contributor.
[23] Articles135 to 138, Copyright Law.
[24] Article 94, Copyright Law.
[25] Article 95, Copyright Law.
[26] Article97, Copyright Law
[27] Articles 99 or 26bis, Copyright Law.
[28] Article 98, Copyright Law.
[29] Articles97 last paragraph and 99 last paragraph, Copyright Law.
[30] Article 96, Copyright Law.
[31] Article 85, Copyright Law.

[32] Article 86, Copyright Law. The making of photographs or portraits requires the consent of the person subject of the portrait.
[33] Article87, Copyright Law.
[34] Articles88 to 94, Copyright Law.
[35] Article101, Copyright Law states: "Computer program is understood as the original expression in any form, language or code, of a series of instructions which, in a structured sequence and with determined organization, is designed for a computer or equivalent mechanism to perform a specific task or function."
[36] Article102, Copyright Law. However, the legislator of 1996 did not equate software to literary works, as NAFTA suggested, since that would have triggered confusion among inexperienced judges or untrained authorities.
[37] Article 102, Copyright Law.
[38] Article103, Copyright Law.
[39] Article103, Copyright Law. On the other hand, software writers having developed the software on their own or having developed it jointly with a publisher shall hold copyright rights as agreed.
[40] Article 104, Copyright Law.
[41] Article 105, Copyright Law. Yet, that article is unclear as to whether it would be applicable to shrink wrap or other sorts of package licenses.
[42] Article 106 (IV), Copyright Law
[43] Article 107, Copyright Law.
[44] Article 107, Copyright Law.
[45] Article 108, Copyright Law. The Copyright Office takes a sweat of the brow type of approach, by granting protection to databases that do not necessarily meet originality standards, but would still imply an effort sufficient to merit protection. This regime has been clearly inspired by the European Database Directive.
[46] Article111, Copyright Law.
[Section 25:10]
[1] See infra, at Chapter VII.
[2] Articles 173 and subsequent, Copyright Law. Reserva is a sui generis protection afforded by the Copyright Law to titles of periodicals or TV or radio programs, characters, and artistic names. It is very peculiar and probably unique in Mexico. It is not copyright nor a related right as such. It might resemble trademark law in some way, but is ultimately copyright oriented.
[Section 25:11]

[1] Article 3, Copyright Law.
[2] Article 14 (I), Copyright Law.
[3] Article 5, Copyright Law.
[4] Simple musical or pictorial works, or audiovisual works such as soap operas, TV programs, or video productions have coexisted with others, considering that they resulted from the imprint of an author's creativity. Under this rationale, even banal ideas can be the subject of protection if expressed individually. Obviously, in cases like that, it shall not be the underlying idea that gives rise to protection, but the expression circumscribing that idea.
[Section 25:12]
[1] Article 14, Copyright Law.
[2] Article 14 (I), Copyright Law.
[3] Article 14 (II), Copyright Law. This norm seems to derive from the Inter-American Conventions but matured later, when the "idea" restriction stopped to be associated with the "industry" and it was established that "ideas" were not copyrightable if just stated in the abstract. In keeping with this, by its broader scope article 14(I) of the Copyright Law technically supersedes article 14 (II).
[4] Article 14 (III), Copyright Law.
[5] Article 14 (IV), Copyright Law.
[6] Article 14 (V), Copyright Law.
[7] Article 14 (VI), Copyright Law.
[8] Article 14 (VII), Copyright Law.
[9] Article 14 (X), Copyright Law. This provision regards information like proverbs and the like, that is non original for being known. However, original expressions of information should be copyrightable.
[Section 25:13]
[1] Article 14 (VIII), Copyright Law.
[2] Article 14 (IX), Copyright Law.
[Section 25:14]
[1] Article 6, Copyright Law.
[2] Article 6, Copyright Law.
[3] Article 6, Copyright Law.
[4] Articles 5, 163 (I) and 168, Copyright Law.
[5] Regulations for the Recognition of Exclusive Rights of Authors, Translators or Editors, published at the Federal Gazette of October 17, 1939.

[6] Article 18, Berne Convention, for the application in time rule and 7(8) of said treaty, for the rule of the shorter term.
[7] Articles 32 and 163 (V), Copyright Law. See infra at § 25:31. It has been questioned whether this latter formality attempts to the absence of formalities principle of the Berne Convention.
[8] The flaw resembles a bad use of the verb to "transfer," as Article 30 of the Copyright Law indicates that copyright owners can either "transfer" or "license" rights, whereby "transfers" seem to have a strict connotation, as a synonym of assignment, and not as a general reference covering assignments and licenses.
[9] Article 162 (V), Copyright Law. This article does not specify whether "patrimonial rights" should be understood as copyright patrimonial rights or any other patrimonial right like for example a reserva right.
[10] Article 162 (VI) and (IX), Copyright Law.
[11] Article 17, Copyright Law.
[12] Article 229 (V) of the Copyright Law and article 17 in itself indeed, clearly contradict the principles of absence of formalities in the Copyright Law and the Berne Convention. See infra at § 25:44 a).
[Section 25:15]
[1] Article 12, Copyright Law.
[2] Article 4(A), Copyright Law.
[3] Article 97, Copyright Law. If interpreted literally, this article seems to be restrictive in terms of who can be an author in an audiovisual work. However, if interpreted systematically, the article would admit that the definition is not limited to the authors enumerated, and would include any other creator whose contribution can be regarded a work of authorship. See supra § 25:2, under audiovisual works treatment.
[Section 25:16]
[1] Articles 80 and 81, Copyright Law.
[2] Articles 4(D)(I), (II) and (III), Copyright Law; for collective works, see § 25:17 below.
[Section 25:17]
[1] Articles 4(D)(I), (II) and (III), Copyright Law; for collective works, see § 25:17 below.
[2] Articles 83 and 84, Copyright Law, for work made for-hire, see § 25:18 below.
[Section 25:18]
[1] Articles 24, 25, and 26, Copyright Law.

[2] Article 18, Copyright Law.
[3] Article 15, Berne Convention, Paris Act.
[4] Articles 83 and 84, Copyright Law.
[5] Articles 97 and 98, Copyright Law. Article 15 (2), Berne Convention, Paris Act.
[6] Article 103, Copyright Law.
[Section 25:19]
[1] Article 28, Copyright Law.
[2] Article 27, Copyright Law.
[3] Articles 148 and 149, Copyright Law.
[4] Articles 27, 30 and 31, Copyright Law. The latter provisions indicate that transmissions of economic patrimonial rights to authorize or prohibit must necessarily be onerous. However, the specific amounts are subject of negotiation. This form of royalty or remuneration derives from patrimonial copyright rights to authorize or prohibit and is different from the remuneration right of public performance of Articles 26bis, 83bis, 117bis, and 131bis.
[5] Article 24 and subsequent, Copyright Law
[6] Article 30 and subsequent, Copyright Law.
[7] Article 41, Copyright Law.
[8] Article 16(VI), Copyright Law.
[9] Article 16(V), Copyright Law.
[10] Article 27(IV), Copyright Law.
[11] Article 16 (III), Copyright Law.
[12] "For strange reasons, the published text did not include the agreed statements of both treaties. Speaking in strict legal terms, they are unfortunately not enforceable and binding law. The government has been slow to undertake the actions required so that the agreed statements become approved.
[13] Article 8, WIPO Copyright Treaty.
[14] Articles 27(VI) and 79, Copyright Law.
[15] Article 26bis, Copyright Law. Supreme Court of Justice. Contradiction of thesis 25/2005, published on April 16, 2007. The remuneration right shall be discussed at § 25:32, below.
[16] Article 92bis, Copyright Law. Manuscripts are included, in accordance with Article 92bis IV.
[17] Article 92bis II of the Copyright Law states that the remuneration right cannot be renounced and those transmissions are valid only mortis causa. The

rule is express and thus different from what is stated by Article 26bis of the Copyright Law, namely, that in accordance with the Supreme Court's analysis, transmissions of remuneration rights in public performance can be made inter vivos.
[18] It just states that the Copyright Office, following the proceeding utilized for adopting tariffs, shall fix remuneration.
[19] Article 92bis, heading, Copyright Law.
[20] Article 92bis III, Copyright Law.
[Section 25:20]
[1] Article 19, Copyright Law. "Moral rights are considered united with the author, and are inalienable, non-prescribing, irrevocable and non attachable."
[2] Article 18, Copyright Law. "The author is the sole, primary and perpetual owner of the moral rights in the works created by him."
[3] Article 20, Copyright Law. "Moral rights are exercised by the creator of the work, her assignees and, in their absence, the State, which exercises such rights on public domain and anonymous works." The Spanish text is not accurately drafted, but would ultimately refer to works in the public domain. Article 21, last paragraph of the Copyright Law, and Article 5 of the Regulations address the transmission of management question as well. Article 22 designates the director of an audiovisual work as the administrator of the moral rights.
[4] Article 19, Copyright Law.
[5] Article 21 (III), Copyright Law.
[6] Article 6, Regulations of the Copyright Law. Article 7 of the Regulation further states that restoration of works requires that both, the owner of the physical medium and the author agree to the terms and conditions. Asan exception to the right of integrity, Article 83 of the Copyright Law disposes that the commissioner of a work shall bear the right to perform modifications to the work.
[7] Article 21 (II) Copyright Law.
[8] Article 23, Copyright Law.
[9] Courts have reported various precedents in the same direction. The most recent decision was rendered by the Fourth Circuit Court in the First Circuit (Mexico City), on March 19, 1987. The case citation is: Amparo directo 68/87, César Odilón Lima. As an exception to the right of integrity, Article 83 of the Copyright Law disposes that the commissioner of a work shall bear the right to disclose the work. Similarly, by virtue of articles 22 and 99 of the Copyright Law,

the producer of an audiovisual production shall have the right to disclose the work.
[10] The right of publishers to reclaim compensation would not just derive from contracts in which authors voluntarily oblige themselves to pay when exercising their right to withdraw alter the publisher has invested in the publication. The right of publishers triggers from the law itself.
[Section 25:21]
[1] Article 9(2), Berne Convention reads: "it shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author." Articles 13 of TRIPS, 10 of WCT and 16 of WPPT, resemble this three-step formula of Berne, but cover all rights.
[2] Article 148, heading, Copyright Law.
[3] Article 9(2), Berne Convention.
[4] Article 13, TRIPS
[5] Articles 10 and 10bis, Berne Convention.
[6] Article 148 heading, Copyright Law.
[Section 25:22]
[1] Article 148(1), Copyright Law. Said provision appears to be in context with article 10 (1) of the Berne Convention. The former indicates that quotations cannot be "substantial" and a "simulation" of an original work. The latter requires that quotations adjust to a "fair practice and their extent "does not exceed that justified by the purpose."
[2] Article 148(II), Copyright Law. Article 148(II) is imprecise and certainly shows a remarkable flaw or contradiction, since it requires consent from the copyright owners when consent is not needed. The legislator of 1996 may have tried to render a solution to the "express reservation" factor of article 10bis (1) and (2) of the Berne Convention. However, the result of that intent was just poor, considering that it is not the same to say that copyright holders of works used as news content can reserve rights, and to say that users need authorization in any case or circumstance. In practice, media have sometimes agreed that content can be reproduced once disseminated.
[3] Article 148(III), Copyright Law.
[4] Article 148(IV), Copyright Law. This article combines in one provision Article 9 (2) of the Berne Convention, granting a private copy restriction, with the

education or teaching exception of Article 10 (2) of Berne. In 2003, Congress analyzed the possible abolishment of the private copy regime and to change it to a levy system, which was not approved. Article 40 of the Copyright Law may be considered an abstract rule addressing a private copy compensatory system. Articles 19 and 20 of the Regulations to the Copyright Law make reference to the compensation system as well. However, due to their incompleteness and non-functional aspect, the compensatory system for private copy of the Copyright Law is inapplicable per se, and thus would have required the amendment that was not passed.

[5] Article 148(V), Copyright Law. Being influenced by Article 1705 (5) of NAFTA, the rule in Article 148(V) was inspired by U.S. precedents like Williams and Wilkins Company v. the U.S. The CMO named CEMPRO has strongly pursued reforms in connection with limitations of the reproduction right. In 2007, it obtained support from Congress to insert a bill reforming Article 148 of the Copyright Law, to make clear that mercantile establishments that sell photocopies are not within the reprography limitations to copyright and related rights. However, the bill was not approved. Article 44 of the Regulations cover reproductions made for blind people and the translation of the same to languages or writings that they can use to read or listen.

[6] Article 148(VI), Copyright Law.

[7] Article 149(II), Copyright Law. This article corresponds to Article 11 bis (3) of the Berne Convention.

[8] Article 148(VI), Copyright Law.

[9] Article 27(IV), Copyright Law. See supra at § 25:19 a) (B).

[10] See supra at § 25:19 a) (B)..

[11] Article 149(1), Copyright Law.

[12] Article 148(VI), Copyright Law.

[13] Articles 6 and 7, Federal Constitution.

[14] Article 147, Copyright Law. Based on the Appendix provisions of the Berne Convention, Articles 38 to 43 of the Regulations of the Copyright law stipulate a proceeding to request a compulsory license.

[15] Article 147, Copyright Law. Based on the Appendix provisions of the Berne Convention, Articles 38 to 43 of the Regulations of the Copyright law stipulate a proceeding to request a compulsory license.

[16] Article 147, Copyright Law. Based on the Appendix provisions of the Berne Convention, Articles 38 to 43 of the Regulations of the Copyright law stipulate a

proceeding to request a compulsory license.
[17] Article 1705 6), NAFTA.
[Section 25:23]
[1] See infra at § 25:20 and infra at § 25:29.
[Section 25:24]
[1] Title V, Copyright Law, Neighboring Rights.
[2] Article 1, Rome Convention.
[3] Article 115, Copyright Law.
[4] Article 116, Copyright Law.
[5] Article 129, Copyright Law; Article 3(b), Rome Convention; and Article 2, WPPT.
[6] Article 140, Copyright Law.
[7] Article 3(f), Rome Convention.
[8] Article 141, Copyright Law.
[9] Article 3(g), Rome Convention.
[10] Article 143, Copyright Law.
[11] Article 135, Copyright Law.
[12] Article 123, Copyright Law.
[Section 25:25]
[1] Article 116, Copyright Law; Article 3(a), Rome Convention; and Article 2(a), WPPT.
[2] Article 49, Regulations to Copyright Law.
[3] Article 9, Rome Convention.
[4] Article 74 of the Copyright Law: "Commercials or advertising may be distributed for up to a maximum term of six months from the first communication. After this term, communication thereof must be remunerated at least for each additional six-month period, even if done for only fractions of said period, by an amount at least equal to that originally contracted. After three years from its production, said communication shall require the authorization of the author and related rights owners of the works utilized." One advantage, perhaps, that models are viewed as holders of neighboring rights is that they enjoy moral rights as well as regular economic rights after the advertisement agreements finish.
[5] Article 8, Rome Convention.
[6] Article 119, Copyright Law.
[7] Article 130, Copyright Law.

[8] Article 139, Copyright Law.
[9] Article 136, Copyright Law.
[10] Article 124, Copyright Law.
[Section 25:26]
[1] Article 117, Copyright Law. This article fulfills the standard given in Article 5(1) of the WPPT. However, it is silent as to who would exercise the same after the death of the artist, as suggested by Article 5(2) of the WPPT. In any event, the treaty standard applies directly, following the jurisprudence principle that treaty provisions are self-applicable and hence have a direct application in the Mexican legal regime. Likewise, Article 20 of the Copyright Law contains a similar provision for authors, which could certainly be extended to performing artists.
[2] Article 117, Copyright Law.
[3] Article 118, Copyright Law.
[4] Article 12, Rome Convention. Article 15, WPPT. Article 19, Rome Convention for visual or audiovisual fixations.
[5] Articles 79 and 80, Copyright Law of 1963.
[6] The Copyright Law does not consider a definition of fixation specifically applicable to artistic performance fixations. Accordingly, the valid criterion to follow is that in article 6. Article 2(c) of the WPPT defines fixation by providing a lower standard than the rule in article 6 of the Copyright Law.
[7] Article 118, first paragraph, Copyright Law, based on the "possibility of preventing" of Article 7, Rome Convention The 2003 amendment did not modify the first paragraph of Article 118.
[8] Articles 117bis and 118, second paragraph, Copyright Law. Article 118, paragraph two states: “These rights —fixation, reproduction and public performance opposition rights- shall become exhausted once the performer has authorized the incorporation of her acting or interpretation in a visual, sound or audiovisual fixation, so long that users utilizing the tangible media (sic), for the purpose of gain, make a payment." A possible understanding of this inaccurate rule is that opposition rights exhaust after fixation is authorized. The first part of the norm may be in partial alignment with articles 7, 12 and 19 of the Rome Convention. The problem is that remuneration rights cannot start before opposition rights exhaust. As to article 117-bis: "The artist or the performer shall have a non-renouncing right to seek remuneration for the use or exploitation of their interpretations or performances, made for a purpose of gain, direct or

indirect, by any medium, public performance or making available. "It looks like the right of Article 117-bis was conceived to emphasize Article 118, on the remunerative side in particular. However, it does not enhance that exhaustion needs to happen so that remuneration rights trigger. A question is whether article 117-bis is a remuneration right independent from Article 118, conceived to protect artists as the weaker part in **a** contract, by ensuring some sort of economic compensation. Otherwise, it simply does not make sense at all. Another question is whether the right of Article 177-bis extends to a "distribution right," considering that it has listed and thus included a "making available" right. The "making available" definition of Article 16 of the Copyright Law seems to include distribution besides the access of works in digital networks.

[9] Article 118, Copyright Law (before the 2003 reform). The last paragraph established that "these rights (opposition to fixation, reproduction and public performance) become exhausted as soon as the artist has authorized the incorporation of her performance in a visual, sound or audiovisual fixation." Concerning public performance, the Copyright Law keeps a Rome-like—Article 12—and WPPT-like—Article 15—provision, stating that “after the phonogram has been introduced legally in any commercial circuit, neither the property right owner, nor the artistic interpreters or performers, nor phonogram producers may oppose its direct communication in a public place, or its broadcast, or communication by cable, provided those who use it for profit-making purposes pay the corresponding royalties” (Article 133, Copyright Law).

[10] Article 118, current last paragraph, Copyright Law. It is hard to know though, what is the activity causing the rights to exhaust once users pay. Would this mean that fixation rights exhaust if users pay for this concept, or reproduction or public performance rights exhaust for the same cause? Would it mean that the rights exhaust after the user purchases a copy ("tangible object") of the work embodying an artistic performance?

[11] Article 117bis.

[12] An interesting question is how courts should resolve actions brought by artists grounded on WPPT rights to authorize or prohibit, when the Copyright Law regards them as rights to oppose. In strict theory, the treaty provision should supersede domestic law.

[13] Article 10, WPPT.

[14] Article 6, WPPT.

[15] Articles 7 and 12, Rome Convention.
[16] Articles 7, 8, 9, and 10, WPPT.
[17] Cinemex v. Federal Congress, et al. Amparos numbers 1313/2003, 1340/2003 and 1327/2003. Also, Cinemas La Huasteca, S.A. de C.V. et al v. Federal Congress, et al. Amparo number 1340/2003.
[18] Article 131(I), Copyright Law.
[19] Article 131(II), Copyright Law.
[20] Article 131(III), Copyright Law.
[21] Article 131(IV), Copyright Law.
[22] Article 131(V), Copyright Law.
[23] Article 10, Rome Convention. The Copyright Law right of reproduction and its enforcement is also in conformity with the Geneva Convention.
[24] Articles 11, 12, and 13, WPPT.
[25] Article 14, WPPT.
[26] Article 12, Rome Convention.
[27] Article 15, WPPT.
[28] Article 131(III), Copyright Law, which, by the way, represents a technical non sense as it refers to distribution rights of phonograms by tangible means and in the end inserts language that should really imply intangible forms of performing phonograms.
[29] Article 133, Copyright Law.
[30] Article 132, Copyright Law. Article 11 of the Rome Convention allows the formality of using a (P). On the other hand, Article 20 of the WPPT does not.
[31] Article 13, Rome Convention.
[32] Article 144(I), Copyright Law.
[33] Article 144(II), Copyright Law.
[34] Article 144(III), Copyright Law.
[35] Article 144(IV), Copyright Law.
[36] Article 144(V), Copyright Law.
[37] Article 144(VI), Copyright Law.
[38] Article 128, Copyright Law.
[39] Article 125(I), Copyright Law.
[40] Article 125(II), Copyright Law.
[41] Article125(III), Copyright Law.
[42] Article 126, Copyright Law. The kind of "use" for typographic characters resembles more a trademark-like use than a copyright use.

[Section 25:27]
[1] The limitations system applicable to neighboring rights is aligned, to a major extent, to the standard of the Rome Convention, Article 15(I) and (II).
[2] Article 151(I), Copyright Law.
[3] Article 151(I), Copyright Law.
[4] Article 151(I), Copyright Law.
[Section 25:28]
[1] Article 122, Copyright Law. In 2003, the term of protection was increased from 50 to 75 years.
[2] Article 134, Copyright Law. In 2003, the term of protection was increased from 50 to 75 years.
[3] Article 146, Copyright Law. In 2003, the term of protection was increased from 25 to 50 years.
[4] Article 138, Copyright Law.
[5] Article 127, Copyright Law.
[Section 25:29]
[1] Article 30, Copyright Law.
[2] Article 30, Copyright Law.
[3] See supra, at § 25:19.
[4] See infra at § 25:29.
[5] Article 42, Copyright Law.
[6] Article 47, Copyright Law.
[7] Article 49, Copyright Law.
[8] Article 48, Copyright Law.
[9] Article 53, Copyright Law.
[10] Article 52(II), Copyright Law.
[11] Article 55, Copyright Law.
[12] Article 56, Copyright Law.
[13] In music publishing agreements, the author indeed assigns the copyright rights and does not just deliver the work.
[14] Article 58, Copyright Law.
[15] Article 59, Copyright Law.
[16] Article 63, Copyright Law.
[17] Article 68, Copyright Law.
[18] Article 73, Copyright Law.
[19] Article 74, Copyright Law.

[Section 25:30]
[1] Article 83 of the Copyright Law states: "Unless otherwise agreed, the natural or legal person who commissions the production of a work, or produces it with the remunerated collaboration of others, shall enjoy title to the copyright rights in such work, and shall have the corresponding powers concerning the disclosure, integrity of the work and collection in these type of creations. The person participating in the execution of the work for payment shall be entitled to be acknowledged as author of the part or parts in the creation of which he participated."
[2] Article 84 of the Copyright Law states: "In case of a work executed under a labor relationship established by an individual written labor contract, unless otherwise agreed, it shall be presumed that property rights are equally divided between the employer and the employee. The employer may disclose the work without the employee's authorization, but not vice-versa. In the absence of a written individual labor contract, property rights shall belong to the employee."
[Section 25:31]
[1] Article 84 of the Copyright Law.
[2] Article 33, Copyright Law. Article 17 of the Regulations stipulates the criterion and conditions applicable so that transfers can exceed 15 years. The rule of article 33 is exempted in certain conditions or situations like in a publishing contract.
[3] Article 28, Copyright Law.
[4] Article 32, Copyright Law. See supra at 25:14.
[5] Article 34, Copyright Law.
6Article 35, Copyright Law.
7Article 36, Copyright Law.
[8] Article 163 (V), Copyright Law.
[9] Article 30, Copyright Law. This article seems also be utilizing transmission and assignments as synonym concepts and thereby excludes licenses from consideration requirement.
[10] Article 2553, Civil Code.
[11] Article 2554 of the Civil Code refers to general mandates and includes three categories: dominium, management, and judicial. It also considers that for certain reasons and in certain situations, a general power would still require specification.
[12] For example, Articles 195 and 196 of the Copyright Law and 108 to 114 of

the Regulations provide that private representatives can hold general or specific powers. In any event, they require particularizing the economic rights subject of the mandate. Likewise, Articles 195, 197, and 200 of the Copyright Law, and 108 of the Regulations, set that CMOs can hold specific or general mandates, in a similar fashion to private representatives. However, they require a general power of attorney for enforcing rights and taking judicial actions.

[Article 25:32]

[1] Article 31, Copyright Law and 18 of Regulations.

[2] Articles 26bis, 117bis, and 131bis, Copyright Law. See supra at §25:19b. and §25:26a and §2526b.

[3] The Copyright Law has not used the right wording that distinguishes between royalties (deriving from licenses) and remuneration or compensation (deriving from remuneration rights). Actually, article 8 of the Regulations to the Copyright Law, expressly designates as "royalty" any form of income resulting from the use or exploitation of works.

[4] Bill of amendments. Article 26bis.

[5] Supreme Court of Justice. Contradiction of thesis 25/2005, published on April 16, 2007.

[Section 25:33]

[1] Article 1,792, Civil Code.

[2] Articles 1,792 and 1,839, Civil Code.

[3] Article 1,795, Civil Code.

[4] Article 1,795 (IV) as well as Articles 1,803 and subsequent, Civil Code. These latter articles refer to the chance that consent is rendered expressly or tacitly and provides the norms of binding agreements by consent.

[5] Articles 1,795 (II) as well as Articles 1,812 and subsequent, Civil Code.

[Section 25:34]

[1] Article 195, Copyright Law.

[2] Mexican CMOs are empowered to collect royalties triggering from license agreements as well as remuneration resulting from payment covenants. In Mexico the meaning of the word "royalties" is inconsistently broad, inasmuch as it refers not only to the consideration established in license agreements, but also the remuneration that users pay for utilizing works. Articles 8, 9, and 10, Regulations of the Copyright Law.

[3] Article 192 of the Copyright Law defines a collective management society as “a private, not-for-profit legal person, created under this Law in order to protect

its members, as well as to collect and deliver to the latter the royalties earned from copyright or subsidiary rights."
[4] Article 192 et seq., Copyright Law and Regulations. The allowance criterion is based on the fact that the law does not impose prohibitions or restrictions.
[5] Article 192, Copyright Law.
[6] References in the Copyright Law concerning “reciprocity agreements” are scarce. However, the Copyright Law imposes standards regarding "reciprocity agreements" indeed. Article 198 of the Copyright Law states that ". . .In case of incomes or rights for authors in foreign countries the principle of reciprocity shall apply." Firstly, Article 200 of the Copyright Law further states, ". . In case of foreigners that reside outside the Mexican Republic, representation for collecting shall be governed by the respective reciprocity agreements." Secondly, article 202 (VI) of the Copyright Law stipulates that CMOs shall "collect and deliver royalties due to the owners of foreign copyright or related rights, directly or through the CMOs representing them, provided there is an express mandate granted to the Mexican collecting society, after deducting administration expenses." Thirdly, article 163 (IV) specifies that "reciprocity agreements" shall have to be recorded before the Copyright Office.
[Section 25:35]
[1] Article 195 of the Copyright Law grants upon authors, copyright, and related rights owners the freedom to become a member of a collecting society, grant a power of attorney to a private representative, or exercise their rights by themselves. This article also confers the freedom to entrust CMOs the administration of the whole or part of the copyright or related rights pertaining to their members. Articles 108 through 114 of the Regulations of the Copyright Law refer to representation formalities and requirements, that CMOs and other representatives need to fulfill Articles 115 and 116 of the Regulations further state that copyright and related rights holders shall have the right to pertain to one or various CMOs of different kinds.
[2] Articles 192 and 193, Copyright Law, and 118 and 119, Regulations.
[3] Article 197, Copyright Law states: “when the member of a collective society choose to have the society collect in their name, they must grant a general power of attorney for litigation and collection”.
[4] Articles 192 and 202, Copyright Law.
[Section 25:36]
[1] Articles 202(I) and 203(I), Copyright Law. Authors or performers are in

charge of protecting their moral rights: However, in conformance with the Copyright Law, CMOs can "intervene" to protect them. The meaning of "intervene" is not clear, but can be viewed as a form by which CMOs assist authors and performers to exercise their moral rights.
[2] Articles 202(IV) and 203(11), Copyright Law.
[3] Articles 202(II), (VII), (VIII), and 203 (VII), (VIII).
[4] Article 203(IX), Copyright Law. This article does not envisage how incomes shall be distributed; this decision-making is finally a power that CMOs possess discretionary, so long as distribution is made fairly and equally.
[5] Article 204, Copyright Law.
[Section 25:37]
[1] Articles 202(I), (III), (V), and (VI), and 203 (VI), Copyright Law. Not every form of collection shall be made by virtue of licenses. Licenses are restricted for when use of works is authorized, based upon an economic right to authorize or prohibit uses.
[2] Article 202 (II), (V), (VI), and (IX), Copyright Law.
[3] Article 212 of the Copyright Law states: "The rates for royalty payments shall be proposed by the Institute at the express request of the collecting society or the respective users. The Institute shall analyze the request, taking into consideration the uses and customs of the field in question, and the tariff applied in other countries for the same category. If the Institute agrees in principle with the tariff solicited, it shall publish it as a draft in the Federal Gazette and shall give the interested party 30 days to make observations. In the absence of opposition, the Institute shall propose the tariff and publish it as final in the Federal Gazette. In the event of opposition, the Institute shall review again and propose the tariff appropriate in its judgment, by publishing it in the Federal Gazette." It can be observed that all existing official tariffs were adopted during the '50s and '60s, under the Copyright Law of 1956 or the reform of 1963. No new tariffs have been adopted during the Copyright Law.
[4] Existing tariffs are limited to "public performance," theatrical performance," "film exhibition," "public performance in hotels," "public performance of musical works," and "broadcasting of musical works." See supra at § 25:3.
[5] Sociedad de Compositores de México (SACM) has elaborated a tariff under a reference value called UDA (Unidad de Derecho de Autor), that they propose to the user to be followed in the agreements.
[Section 25:38]

[1] Article 200, Copyright Law.
[Section 25:39]
[1] Article 194, Copyright Law.
[Section 25:40]
[1] Article 202 (VII), Copyright Law.
[2] Information can be obtained from consulting the web pages of both CMOs. Among others, SOGEM offers schooling and education services for writers as well as library facilities and resources for them to produce a play, including theaters and others. SACM has similar services.
[Section 25:42]
[1] Article 1714(1) and (2), NAFTA.
[2] Article 41, TRIPS.
[3] Article 1715 (8), NAFTA.
[4] Article 1715 (1), NAFTA. Article 42 and subsequent of TRIPS allowed the administrative remedies solution as well.
[5] Articles 1715 (2) to (7), NAFTA.
6Articles 1716 and 1718, NAFTA.
[7] Article 135 et seq., Copyright Law of 1956.
[8] Article 79, Copyright Law of 1956.
[9] In attempt violation of NAFTA and TRIPS, and this despite the fact that the administrative proceeding has been designed as a summary trial, performed by a specialized authority.
[10] Article 213, Copyright Law.
[11] Article 216bis, Copyright Law.
[Section 25:43]
[1] Penal Code was reformed cm December 18, 1996, in virtue of a decree of Congress, for inserting Articles 424 to 429, all of them dealing with copyright and related rights crimes. The decree was published in the Federal Gazette of December 24, 1996, and became effective on March 25, 1997. Amendments were published in the Federal Gazettes of May 19, 1997, and May 17, 1999. Supra at footnote 20.
[2] Federal Law against Organized Crime. The purpose is pursuing and sanctioning crimes perpetrated by organized groups. Copyright crimes can be the subject of additional sanctions when committed by organized crime groups.
[3] Article 1717, NAFTA.
[4] Article 61, TRIPS.

[5] In this regard, the Mexican group of AIPPI has responded Q 204, by urging that the Copyright Law is amended to incorporate contributory and vicarious liability. Article 13 of the Penal Law defines who can be a material or intellectual author of a crime or who can be a participant in a crime. However, the norm requires a certain degree of direct intervention of the criminals to perpetrate the crime, which is different from contributory or vicarious liability. Additionally, article 13 is restricted to penal law. Article 424bis (I) has a similar problem. The Mexican group proposes that contributory infringement is adopted and be conceived as broad as possible. It should not be restricted to cases where third parties offer or supply tangible means to the direct infringer to inflict a copyright infringement. Intermediary indirect infringement has a special connotation and importance, in particular when a third party induces or assists the direct infringer to violate the law. WIPO treaties' standards should be enhanced accordingly, together with some balance as obtained from a system of safe harbors protecting Internet intermediaries.
[6] Article 424 (I), (II) and (III), Penal Code. Article 424 (I) is pursued ex officio. The three criminal provisions in the instant article are considered misdemeanors.
[7] Article 424 (III) of the Penal Code is of utmost importance. It was actually reformed in 1997 and 1999. However, by employing the term “use” of copyrighted works, the legislator was somewhat ambiguous. Criminal authorities and judges are not sufficiently trained to know the meaning of using works in the field of copyright. Accordingly, the legislator should have utilized specific concepts like reproduction, distribution, public performance or transformation (see also fn 20 above).
[8] Article 424bis (I) and (II), Penal Code. The two provisions in this article are considered felonies.
[9] Article 424bis (I) of the Penal Code is also detrimental. It is actually designed to tackle copyright piracy. It was principally conceived to stop and deter reproduction and distribution of non-authorized copies of works. However, it covers more specific illicit activities, deriving from distribution, such as storing, transporting, selling, or leasing. Selling seems to be restricted to distribution in the channel as the selling of copies to the final consumer is sanctioned under 424ter. The inclusion of the verb “producing” is non sense.
[10] Article 424bis (II) of the Penal Code was adopted in consistency with WCT and WPPT obligations.

[11] Article 424ter, Penal Code. Article 424ter. The two criminal provisions in Article 424ter are considered misdemeanors, unless sales are made in commercial establishments or by organized vendors. This article was reformed in 1999.
[12] Article 425, Penal Code.
[13] Article 426, Penal Code.
[14] Preliminary inquiry A.P./SIN/CLN/280/2008/M-II. Procuraduría General de la Republica, Subdelegación de Procedimientos Penales "A" Culiacán, Sinaloa. Claimants: Disney Enterprises, Inc; Twentieth Century Fox Film Corporation; Warner Brothers Entertainment, Inc; DreamWorks, LLC; New Line Productions, Inc; Paramount Pictures Corporation, Inc; Tristar Pictures, Inc; Columbia Pictures Industries, Inc; Universal City Studios Productions, LLP.
[15] Procuraduría General de la República. v Luis Raymundo Trejo Pima y Silvestre Estrada Flores. Claimant: Televisa, S.A. de C.V. File: A.P. PGR/DDF/SZC/CAW/2896/2006. Causa Penal: 114/2006. Poder Judicial Federal, Juzgado 8 de Distrito en Materia de Procesos Penales Federales en el Distrito Federal.
[Section 25:44]
[1] Title XII, Chapter I, articles 229 and 230, Copyright Law.
[2] Title XII, Chapter II, articles 231 to 236, Copyright Law.
[3] Article 231 heading, Copyright Law.
[4] Article 229 (XIV), Copyright Law.
[5] Article 229 (I) to (XIV), Copyright Law.
[6] Article 229 (I) of the Copyright Law represents an example of how silly “copyright” infractions can be. This article has to do with user agreements to 'transferring" copyrighted content that the legislator has regarded as infringement.
[7] Article 229 (V) of the Copyright Law and article 17 in itself indeed, clearly contradict the principles of absence of formalities in the Copyright Law and the Berne Convention. See supra at § 25:14.
[8] Article 229 (VI) and (VII) of the Copyright Law leads to the question of who has a legal interest to file these sorts of actions. The Copyright Office should not do so, as copyright infractions are not ex-officio. Likewise, in conformity with article 210 of the Copyright Law, the Copyright Office has attributions to investigate alleged infringements and to impose sanctions, but not to start Copyright infraction actions. Article 156 of the Regulations states that the

Copyright Office is indeed empowered to start proceedings.
[9] Article 229 (VIII) of the Copyright Law is also in violation of the absence of formality principle of the WPPT; yet, TRIPS and Rome allow such formalities.
[10] Article 229 (IX) of the Copyright Law is supposedly oriented to protect moral rights of paternity, however incompletely and unsystematically.
[11] Article 229 (XII) of the Copyright Law is confusing, since at the same time, article 14 (V) excludes titles from protection.
[12] Article 229 (XIV) is by chance the only Copyright infraction that is perhaps useful, as it can be invoked to pursue infringement of patrimonial rights, when the purpose is not commercial or for gain.
[13] Article 230, Copyright Law. Fines can be as high as $60,000, in some cases.
[14] That under the Federal Code of Administrative Proceedings.
[15] Article 231 (I) to (X), Copyright Law.
[16] This article has been translated literally from the official text in Spanish as mentioned. Reserva is a figure in the Copyright Law that protects titles of periodicals or programs, characters, and the names of artists or artistic groups.
[17] Article 231 (I), Copyright Law.
[18] Article 231 (V), Copyright Law. It resembles article 424bis (I) of the Penal Code.
[19] Article 231 (X), Copyright Law. The catchall provision relates to situations in which infringement of the Copyright Law provisions are made in a commercial scale.
[20] Article 231 (VII), Copyright Law.
[21] Article 231 (VII) and (VIII), Copyright Law.
[22] Article 231 (III), Copyright Law.
[23] Article 231 (VI), Copyright Law.
[24] Article 231 (IV), Copyright Law.
[25] Article 231 (V), Copyright Law and article 424bis (II), Penal Code.
[26] Articles 231 (II) and 87, Copyright Law. The person that is subject of the portrait does not have a positive right allowing that it to use or exploit the same, unless having authorization from the author of the painting, drawing, or the photograph.
[27] Article 1916, Civil Code and a local statute valid for Mexico D.F., that relates to the rights to honor, privacy and image of persons. The title is Law of Civil Liability for the Protection of the Right of Private Life, Honor and Image in the Federal District.

[28] Supreme Court of Justice. First Chamber. Published on May 21, 2008. Case 1121/07.
[29] Article 199bis, Law on Industrial Property.
[30] Articles 232 and 233, Copyright Law. Fines can be as high as $50,000, in some cases.
[31] Article 214, Law on Industrial Property.
[32] Article 214, Copyright Law.
[Section 25:45]
[1] Article 422bis (II), Copyright Law. See supra at §25:43 b).
[2] For more detail, see Article 11, WCT and 18, WPPT.
[3] For more detail, see Article 12, WCT and 19, WPPT.
[Section 25:46]
[1] Article 213, Copyright Law.
[2] Article 213, Copyright Law.
[3] Article 360, Federal Code of Civil Proceedings.
[Section 25:47]
[1] Article 215, Copyright Law.
[2] Article 429, Penal Code.
[3] Articles 113 et seq., Federal Code of Penal Proceedings.
[Section 25:48]
[1] Article 234, Copyright Law and articles 174 to 184, Regulations of the Copyright Law.
[2] Article 235, Copyright Law. Articles 148 and 149 of the Customs Law, establish the conditions and requirements for the customs authorities to stop the importation of products in process of importation, with the purpose that IMPI or the General Attorney's Office inspect and eventually seize them.
[3] Articles 5 and 209, Copyright Law. Article 5, Berne Convention.
[4] Articles 213 and 214, Copyright Law.
[Section 25:49]
[1] Article 420, Federal Code of Civil Proceedings.
[2] Articles 421 to 423, Federal Code of Civil Proceedings.
[3] Article 70 (III) and 71, Federal Code of Administrative Proceedings.
[Section 25:51]
[1] Civil Code is applicable locally in the Federal District or federally in connection with federal affairs.
[2] Article 12, Civil Code.

[3] Article 12, Civil Code.
[4] Article 13 (I), Civil Code.
[5] Article 14 (III), Civil Code. Under this provision it would be perhaps excluded that Mexican courts apply discovery rules, as Anglo-Saxon systems would do.
[6] Article 15 (II), Civil Code.
[7] Article 15 (I), Civil Code.
[Section 25:52]
[1] Article 14 (II), Civil Code.
[Section 25:53]
[1] Article 569, Federal Code of Civil Proceedings.
[2] Article 564, Federal Code of Civil Proceedings.
[3] Article 568, Federal Code of Civil Proceedings.
[4] Article 570, Federal Code of Civil Proceedings.
[5] Article 571, Federal Code of Civil Proceedings.
[6] Article 575, Federal Code of Civil Proceedings.
[7] Signed in la Paz, Bolivia, on May 24, 1984.
[8] Signed in Montevideo, Uruguay, on May 8, 1979. This convention is prior to the La Paz Convention.
[Section 25:55]
[1] Article 133, Federal Constitution. By interpreting Article 133, the Supreme Court has rendered a number of decisions and established jurisprudence detailing that international treaties are inferior in hierarchy vis-á-vis the Constitution but superior to federal and local laws. The purpose has been to comply with the Vienna Convention and to attend the international fundamental rule of “pacta sunt servanda.” Supreme Court of Justice, thesis P. VII/2007, P. VIII/2007 and P.IX/2007. Published at Semanario Judicial de la Federación y Gaceta, under numbers 172667, 172739, and 172650. April 2007.
[2] Article 7, Copyright Law.
[3] Article 8, Copyright Law. On formerly non-registered foreign works, see § 25:14 b. supra.
[Section 25:56]
[1] Article 33, Federal Constitution of Mexico.
[2] Article 7, Copyright Law.
[3] Article 8, Copyright Law. The expression "first fixed" does not technically apply to all related right forms, in particular to broadcast signals, as the

momentum that generates the right, and could perhaps be regarded as not in compliance with treaties like the Rome Convention.