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## *GETTING THE DEAL THROUGH - COPYRIGHT 2006*

### *LEGISLATION AND ENFORCEMENT*

1 What is the relevant legislation?

The legislation affecting copyright law in Mexico includes:

- the Copyright Act 1996;
- the 1998 Regulations to the Copyright Act;
- the Industrial Property Act 1991 and reforms of 1994;
- the Federal Code of Administrative Proceedings 1994 and subsequent amendments; and
- the Federal Penal Code 1931 and amendments of 1996.

2 Who enforces it?

Copyright legislation is enforced by:

- the Copyright Office (Instituto Nacional del Derecho de Autor, INDAUTOR);
- the Patent and Trademark Office (Instituto Mexicano de la Propiedad Industrial, IMPI);
- the civil and commercial courts; and
- the General Attorney's Office.

### *AGENCY*

3 Is there a centralised copyright agency? if so, what does this agency do?

The Copyright Office is in charge of:

- registering works of authorship, contracts and related documentation;
- organising and maintaining the copyright registry;
- making inscriptions of collecting societies;
- granting so-called 'reserves' and providing the legal means for their cancellation;
- providing the legal means for enforcing certain forms of copyright infringement;

- acting as an arbitral institution regarding disputes on copyright and neighbouring rights; and
- acting as a conciliator for disputes through special proceedings.

#### *SUBJECT MATTER AND SCOPE OF COPYRIGHT*

#### 4 What types of works are copyrightable?

The following types of works are copyrightable:

- literary;
- musical (with or without lyrics);
- dramatic;
- dance;
- pictorial or drawing;
- sculpture or plastic work;
- caricature and cartoons;
- architectural;
- cinematographic and other audio-visual works;
- radio and television programmes;
- computer programs;
- photographic;
- decorative art works which include graphic and textile design; and
- compilations such as encyclopedias, anthologies, and other works such as databases, but only if such works are considered to be an intellectual creation.

#### 5 What types of rights are covered by copyright?

The following types of rights are covered by copyright:

- patrimonial rights (ie, reproduction, distribution, public performance and transformation);
- moral rights (ie, ownership and integrity); and
- remuneration rights in limited situations (ie, the re-sale right known as 'droit de suite'; exploitation of audio-visual works; and public performance radio broadcasting — under limitation).

#### 6 What cannot be protected by copyright?

The following may not be protected by copyright:

- ideas themselves, formulae, solutions, concepts, methods, systems, principles, discoveries, processes or inventions of any kind;
- industrial or commercial exploitation of the ideas contained in works;

- schemes, plans or rules for the making of mental acts, games or business;
  - letters, digits or isolated colours, except where they are stylised to such an extent that they become original designs;
  - names and titles or isolated phrases;
  - blank formats or formulas containing any type of information, as well as their instructions;
  - reproduction or imitations, without authorisation, of shields, flags or emblems of any country, state, municipality or equivalent political division.
- Denominations, initials, symbols or emblems of international government organisations, or any government or other organisation officially recognised, as well as the verbal description of them;
- legislative, regulatory, administrative or judicial texts, as well as their official translations;
  - informative content of news; and
  - information in common use such as proverbs, sayings, legends, facts, calendars and metric scales.

7 Do the doctrines of 'fair use' or 'fair dealing' exist? if so please describe. If not please describe any comparable limitations.

The doctrines of 'bit- use' or 'fair dealing' do not exist as such in Mexican law.

The comparable provisions for copyright limitations are the following:

Limitations for reproduction rights:

- quotation of texts, provided that the amount quoted is not considered to be a simulated and substantial reproduction of the contents of the work;
- reproduction of articles, photographs, illustrations and comment referring to current events, published in the press or communicated by radio or television, or any other medium of communication, if this has not been expressly prohibited by the owner of the rights;
- reproduction of parts of the work for the purposes of scientific, literary or artistic criticism or research;
- reproduction of a literary or artistic work and in a single copy, for the personal and private use of the person doing it, and without a purpose. Legal entities may not benefit from this provision unless they are an educational or research establishment or their work is not devoted to commercial activities;
- reproduction of a single copy by an archive or a library, for reasons of security and preservation, and the work is out of circulation, no longer catalogued and there is a possibility that it will disappear;
- reproduction for use as evidence in judicial or administrative proceedings; and

- reproduction, communication and distribution by means of drawings, paintings, photographs and audio-visual processes of works that are visible from public places.

Limitations for public performance and other rights:

- use of literary and artistic works in shops or establishments open to the public, trading copies of the said works, provided that there is no admission and that the use does not transcend the place where the sale is made and serves the sole purpose of promoting the sale of copies of the works;

Ephemeral recordings are subject to the following conditions:

- transmission shall take place within the agreed period;
- for the purposes of the recording, it will not be possible to make a related or simultaneous broadcast or communication; and
- the recording may only be broadcast once.

#### *ARCHITECTURAL WORKS AND WORKS OF APPLIED ART*

The author of a work of architecture may not prevent the owner of the said work from making alterations, but he shall have the right to prohibit his name from being associated with the work so altered.

#### *OTHER*

The rights of artists, interpreters and performers, phonographic record and videogram producers, or radio-broadcast organisations, are not infringed by the use of their acts, phonographic records, videograms or broadcasts, when such works are reproduced, communicated and distributed by drawings, paintings, photographs and audio-visual means, visible from public places provided that:

- no direct economic advantage is pursued; and
- only brief fragments are used as information for current events.

8 What are the standards used in determining whether a particular use constitutes fair use?

The law does not define any standards to determine fair use.

Limitations are listed and interpreted literally.

9 Are architectural works protected by copyright? If they are, in what way?

Architectural works are copyrightable under the law. Plans are protected together with the physical constructions arising from the plans. The

architectural works protected include all aspects that can be attributed as original to the author or architect designer. The law imposes one restriction: the author of an architectural work may not prevent the owner of the physical construction from making modifications to it. However, the author will have the right to refuse his name being associated with the modified work.

### *COPYRIGHT FORMALITIES*

10 Is there a requirement of copyright notice? If so, please describe.

There is no requirement of copyright notice.

11 What are the consequences, if any, for failure to display a copyright notice?

There are no consequences for failure to display a copyright notice although the copyright law indicates that some sort of administrative infringements could arise.

12 Is there a requirement of copyright deposit? if so, please describe.

There is no requirement of copyright deposit.

13 What are the consequences, if any, for failure to make a copyright deposit?

There are no consequences for failure to make a copyright notice. Ownership in copyright disputes can be proved by documentary or other evidence showing that the author created the work.

14 Is there a requirement of copyright registration? If so, please describe.

No requirement of copyright registration exists.

15 How does one apply for a copyright registration?

To register a copyright, a person must file a simple application with two samples of the work and fee. Special information about contributors or creators is normally requested by the Copyright Office, INDAUTOR, for commissioned works.

16 What are the fees to apply for a copyright registration?

The application fee for copyright registration is approximately US\$13.

17 What are the consequences, if any, for failure to register a copyrighted work?

There are no consequences for failure to register a copyrighted work. Proof of ownership in copyright disputes may be something else showing that the author created the work.

## *OWNERSHIP AND TRANSFER*

18 Who is the owner of a copyrighted work?

Generally, an author would be the first owner of the copyrighted work.

Exceptions include:

- commissioned works — the entity asking for the work becomes the owner ab initio; and
- audio-visual works — the law regards the producer as the copyright owner of the work.

19 Can an employer own a copyrighted work, and, if so, in what circumstances?

An employer may own a copyrighted work. However, to own full rights, the law imposes conditions on the employer. For example, written employment contracts must contain specific clauses for creative employees.

20 Can a copyrighted work be owned by more than one person or entity? If so, in what circumstances?

Works may be produced as collective works or collaborative works affecting how much control a particular author will have on the work.

21 Can copyright rights be transferred? If so, in what circumstances?

Patrimonial copyright rights can be transferred. Generally, transfers are not permanent. The law provides for limitations on transfers.

22 Can copyright rights be licensed?

Patrimonial copyright rights may be licensed.

23 Are there compulsory licences? If so, what are they?

The publication and translation of literary or artistic works, which are required for the development of science and culture and national education, may be the subject of a compulsory licence. However, the government would have to start a procedure to declare and approve a system of compulsory licensing. This has never happened and would be hard to enforce.

24 Is there any provision for the termination of transfers of copyright rights?

There is provision for the termination of the transfer of copyright rights. Under the law, transfers are temporary and are subject to certain rules. Transfers are only valid for periods ranging between five to 15 years. A transfer in excess of 15 years is only valid in particular circumstances relating to the investment in the production of a work.

25 Can documents evidencing transfers and other transactions be recorded with a government agency? If so, with which agency and how?

Documents evidencing transfers and other transactions can be recorded with

the Copyright Office by way of an application or request.

#### *DURATION OF COPYRIGHT*

26 When does copyright protection begin?

Copyright protection begins from the moment the work is created.

27 How long does copyright protection last?

Protection for patrimonial rights lasts throughout the lifetime of the author (or contributor) and for 100 years following the author's death.

28 Does copyright duration depend on when a particular work was authored or published?

Copyright duration depends on when the work was authored and fixed into a tangible term of expression.

29 What does 'published' mean for the purposes of triggering copyright protection?

Publication is not a requirement under the law triggering copyright protection. Publication (reproduction and distribution of a work) is part of the bundle of patrimonial copyright rights.

30 Do terms of copyright have to be renewed? if yes, in what way?

Terms of copyright do not have to be renewed.

#### *COPYRIGHT INFRINGEMENT AND REMEDIES*

31 What constitutes copyright infringement?

The law categorizes infringement into the following:

#### *COPYRIGHT INFRINGEMENTS*

- The editor, entrepreneur, producer, employer, broadcasting organisation or licensee entering a contract with the objective of transmitting copyright in violation of that disposed by the present law
- Infringement by the licensee of the terms of the compulsory licensing that would have been declared in article 146 of the present law
- To present oneself as a collective representation society without having

obtained the corresponding registration with the Copyright Office

- Not providing the Copyright Office, without justified cause, being the administrator of a collective representation society, the reports and documents referred to in the law
- Not inserting in a published work the requirements referred to in the law
- Falsely omitting or inserting in an edition the data referred to in the law
- Falsely omitting or inserting the requirements referred to in the law
- Not inserting in a phonogram the requirements referred to in the law
- Publishing a work, being authorised to do so, without mentioning in it the name of the author, translator, compiler, adapter or arranger
- Publishing a work, being authorised to do so, damaging the reputation of the author as such and, if applicable, of the translator, compiler, arranger or adapter
- Publishing before the federation, states or municipality and without authorisation the works performed in the official service
- Using fraudulently in a work a title that induces confusion with another work published earlier
- Fixing, representing, publishing or performing any communication or using in any form, a literary and artistic work, protected in the law, without mentioning the community or ethnicity, or the region of the Mexican Republic where it belongs
- Any other infringement derived from the interpretation of the present law and its rules

#### *COMMERCIAL COPYRIGHT INFRINGEMENTS*

The following behaviour constitutes an infringement in trade when performed with direct or indirect commercial purposes:

- Communicating or using publicly a work protected by any means, and in any form without the previous and explicit authorisation of the author, their legitimate heirs or the holder of the author's proprietary equity
- Using the image of a person without his or her authorisation or that of his or her successors
- Producing, reproducing, storing, distributing, transporting or commercialising copies of works phonograms, videograms or books, protected by copyright or related rights, without the authorisation of the respective holders in terms of this law

- Offering for sale, storing, transporting or making available works protected by this law that have been deformed, modified or mutilated without authorisation of the holder of the copyright
- Importing, selling, leasing or performing any act that allows having a device or system the purpose of which is to deactivate the protective electronic devices of a computer program
- Resending, fixing, reproducing and disseminating among the public, programmes of a broadcasting organisation without the organisation's authorisation
- Using, reproducing or exploiting a protected reservation of rights or a computer program without the consent of the holder
- Using or exploiting a name, title, denomination, physical or psychological characteristics or operation characteristics in such a way that they induce error or confusion with a protected reservation of rights
- Using literary and artistic works protected by chapter III, title VII of the law in violation of that contained in article 158
- All other infringements as provided by the law that imply a commercial or industrial behaviour relating to the works protected by this law.

32 What remedies are available against a copyright infringement?

The following remedies are available for copyright infringement:

- injunctive relief;
- administrative orders (time, shut down of establishments or premises);
- civil remedies (damages); and
- criminal sanctions (prison or fines).

33 Is there a time limit for seeking remedies?

There is a statute of limitations for civil and criminal remedies.

34 Are monetary damages available for copyright infringement?

Monetary damages are available for copyright infringement. The applicable rule is that 40 per cent of the value of the infringing products will be awarded. The 40 per cent rule represents a minimum standard provision.

35 Are attorneys' fees and costs available for copyright infringement? if so, in what circumstances?

Attorneys' fees and costs are available for copyright infringement but they are seldom recovered.

36 Are there criminal copyright provisions? if so, what are they?

From six months' to six years' imprisonment and a fine will be imposed on:

- whoever deals in any form with free textbooks distributed by the Public

Education Department;

- the editor, producer or recorder that knowingly produces more copies of a work protected by the Federal Law of Copyright than that authorised by the holder of the rights; or
- whoever uses in a fraudulent manner, with commercial purposes and without the corresponding authorisation, works protected by the Federal Law of Copyright.

Up to 10 years' imprisonment and a fine will be imposed on:

- whoever produces, reproduces, introduces to the country, stores, transports, distributes, sells or leases copies of works, phonograms, videograms or books protected by the Federal Law of Copyright, in a fraudulent way, with commercial speculation and without the authorisation that in terms of the cited law the holder of the copyright or related rights should grant;
- whoever knowingly, contributes or provides in any way raw materials or consumables destined for the production or reproduction of works, phonograms, videograms or books referred to in the previous paragraph; or
- whoever manufactures with commercial purposes a device or system the purpose of which is to deactivate the protective electronic devices of a computer program.

From six months' to six years' imprisonment and a fine will be imposed on:

- whoever sells to any final consumer in public places and in a fraudulent manner with commercial speculation, copies of works, phonograms, videograms or books. If the sale takes place in a commercial establishment or in a permanent and organised manner, the infringer will be subject to sanction under the penal code.

From six months' to two years' imprisonment or a fine will be imposed on whoever, knowingly and without right, exploits with commercial purposes an interpretation or an execution.

From six months' to four years' imprisonment and a fine will be imposed on:

- whoever manufactures, imports, sells or leases a device or system to decode a coded satellite signal, program-carrier, without authorisation of the legitimate distributor of said signal; and
- whoever performs any act with commercial purposes with the intention of decoding a coded satellite signal, program-carrier, without authorisation of the legitimate distributor of said signal.

37 Are there ways to pursue copyright infringement that occurs online?

Methods exist for pursuing copyright infringement that occurs online. The law

provides copyright owners with a general right to pursue infringers regardless of the medium they employ.

Although not expressly provided for in the law, the internet is certainly included. Likewise the principles of the WIPO treaties have been implemented in the law, including a right of access and the redefinition of the terms 'fixation' and 'reproduction' in a digital environment.

38 How can copyright infringement be prevented?

Copyright infringement is always hard to prevent. However, copyright law recognises and protects infringements relating to technology protection.

#### *RELATIONSHIP TO FOREIGN RIGHTS*

39 Does your country belong to any international copyright conventions? if so, which ones?

Mexico belongs to most multinational treaties on copyright and neighbouring rights. It is also a member of a number of bilateral agreements in particular on free trade and those dealing with copyright and neighbouring rights issues.

40 What obligations, if any, are imposed by your country's membership in international copyright conventions?

The nature of the obligations imposed depends on the type of treaty. For example a treaty may be based on the principles of reciprocity, minimum standards, national treatment, etc. Mexico has executed copyright treaties without reserves or restrictions and on the whole has implemented them into domestic law. In any event, treaties are self-applicable under the Mexican Constitution and would not strictly require implementation. Accordingly, treaty provisions are valid to fill the gaps in local law. Treaty provisions prevail in the event of conflict with provisions in the local laws.