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MEXICO HAS EVOLVED A DYNAMIC MODERN SET OF COPYRIGHT RULES.

Mexican Copyright Law evolved from the civil law system adopted by the country as a consequence of the 16<sup>th</sup> Century Spanish Conquest. Since Mexico's independence, various copyright laws have been enacted, the most recent being the Federal Copyright Law of 1963, which is still in effect. Comments in respect to the Mexican copyright regime will be made below.

#### *THE AUTHOR*

Mexican Copyright Law is definitively oriented toward author's rights. The flesh and blood person called the "author" — or "authors" in case of collective works — is the main object of protection. In keeping with this, Mexico, like most other countries with legal systems derived from Roman Law, strongly encourages protection of the author's personality, a situation which is reflected in the concrete application of such basic copyright principles as originality, the expression/idea dichotomy and fair use.

#### *THE WORK OF AUTHORSHIP*

A work is the personal intellectual creation or expression of human sensibility, talent and ingenuity. A creation meeting the above criteria, that is, an individual creation which is complete, unitary and representing or meaning something, will be granted full protection under Mexican copyright law.

Likewise, Mexican Copyright Law requires that the work be embodied in a tangible medium of expression. It is indeed the act of creation and fixation of the author's creation in a material and durable form that leads to copyright

protection. However, it will be always the intangible element — human creation — that will be protected and not the medium or *corpus mechanicum* in which is embodied.

### *THE RIGHTS*

Mexican copyright law states that there are two fundamental types of rights, moral and patrimonial rights. Moral rights are the purest manifestation of the author's personality in copyright. They cannot be transferred, sold or assigned because they are inherent to and integral to the author, who holds them permanently and perpetually, during and after his or her life. Nor is it possible for the author to renounce his or her moral rights; they cannot be pledged and they may never be signed away. According to Mexican Copyright doctrine, moral rights constitute the dividing line between intellectual property rights and actual property. There are various categories of moral right, of which Mexican law has indirectly recognized some. These include the right to create, the right to continue and complete one's own work, the right to modify and destroy it, the right to keep the work unpublished, the right to publish it under the author's name, under a pseudonym or anonymously, the right to select interpreters for the work's performance and right to withdraw it from commerce. However only the paternity right and the integrity right have been expressly provided for.

Patrimonial rights, in contrast with moral rights, may be transferred, licensed or in any other way disposed of by the author, or by the assignee or copyright owner in case of a work for hire relationship; their duration is temporary. Just as in other jurisdictions, patrimonial rights contemplated by Mexican law can be divided into the five well-known categories of reproduction, distribution, control of derivative works, public performance and display.

The individual author of a work is owner of the copyright on what he or she creates, unless there is a work made for hire relationship. In this respect, Article 59 of the Copyright Law establishes that everyone who produces a work with special and remunerated participation or collaboration of one or more persons shall enjoy *ab initio* the copyright in it. The meaning of remuneration is broad and comprises salaries, shares and payments for the rendering of services other than employment. There are no court decisions that have limited this criterion.

## FORMALITIES

Mexican Copyright Law subscribes to the principle of absence of formalities as to registration and use of copyright notice of the Interamerican and Berne Conventions. Accordingly, Berne Convention standards were introduced into Article 8 of the 1963 Copyright Law, which states that there is no need to register a work in order to protect it. As mentioned before, protection of a work arises out of the very act of creation, so registration only recognizes or confirms the existence of previously constituted rights. Notwithstanding the foregoing, registration represents *prima facie* evidence of copyright ownership. Thus, in case of a dispute over rights, the burden of proof would be borne by the contesting party.

By application of the Berne Convention, the principle of absence of formalities extends to foreign authors who are nationals of Union countries or, if not nationals of Union countries, if their works have been published in one country of the Union or if they have permanent residence in one of them. Similarly, the Interamerican Convention confers protection to member State authors and foreigners domiciled in member states, without registration, deposit or formalities. Therefore, in the case of enforcement, a Mexican court would most likely recognize application of the principle of absence of formalities to all foreign works whose authors are nationals of Berne Convention or Interamerican Convention countries, but not to nationals of countries with which Mexico has only Universal Copyright Convention relationships or no reciprocity relationships at all.

The principle of absence of formalities also covers the copyright notice requirements. However, Mexican Copyright Law states that if proper notice is not displayed in a visible place, the publisher will be liable for sanctions prescribed by the law — but this will not result in loss of copyright. Regarding recordal of agreements, the law provides that those entered into by authors and users modifying, transmitting, encumbering or extinguishing patrimonial copyrights shall produce effects after they are recorded with the Copyright Office. It should be understood that only agreements representing transfer, modification or extinction of copyrights have to be recorded and work for-hire agreements do not fall within any of the cited categories.

Also recordal is probably not mandatory for agreements entered into by two

publishers or other corporations with no participation of the authors. Otherwise, there are no restrictions imposed by the law to scrutinize and approve recordal of agreements; the intention of the contracting parties governs copyright relationships between authors and publishers.