

BY [LUIS C. SCHMIDT](#)

PARTNER

COMPUTER LAW REVIEW INTERNATIONAL CRI, ISSUE 5, 15 OCTOBER 2003

In April and May 2003, the Mexican Congress debated a bill proposing certain amendments to the Copyright Act 1996. In essence the bill is to implement a number of provisions granting additional rights to authors and holders of neighboring rights such as artists and phonogram producers.

1. ROYALTIES FOR SECONDARY USE

The amendment concerns two provisions and regulates expressly that authors and artists are entitled to seek royalties from secondary uses of copyrighted works, in particular the public communication thereof. The new wording of the provisions would imply that authors and artists are able to get compensated for the public communication that users make of the works, regardless whether they hold the corresponding rights or have disposed of them in any form or means. The measure has been strongly criticized for attempting, against the Federal Constitution and the rule of law, to extend property rights to situations where ownership no longer exists.

2. PRIVATE COPYING

Similarly, the Copyright Act would be changed to reflect a compensation right for private copying. The electronics industry strongly opposed to the measure, as it would be the manufacturers and vendors of equipment and media for reproducing copyrightable subject matter, who would have to bear the obligation to cover the compensation. The proposal was dropped in the end as levies are totally incompatible with Mexican copyright law and legal system. In Mexico there is clearly a private copy exception allowing people to make one

copy of any work for private purposes without having to compensate the copyright holder. Consequently, it would be viewed as unfair forcing them to pay compensations for the reproduction equipment and media they use for making such a copy. Likewise, the Copyright Act does not recognize "contributory infringement" as a possible means of liability. Under said statute, liability can trigger only when people have directly infringed a copyright. Finally, Mexico has adjusted the Copyright law enhancing the protection of Technological Protection Measures and Digital Rights Management in a digital environment, whether online or offline. The question has thus arisen why to implement a private copy levy system if there is the trend to adopt technology protection type models. For all the foregoing reasons the private copy amendment of the law was not accepted.

3. DROIT DE SUITE

The reform contemplates a "droit de suite" aimed at protecting authors of works of fine arts as well as creations of similar nature, with the exception of works of applied arts. A system would be established including procedures to fix compensations, transmitting rights "mortis causa" and imposing obligations upon brokers and art galleries to inform authors or their representatives about any sales made of works of their authorship so that they get the right compensation.

4. PATRIMONIAL RIGHT TERM

One change that has also become the subject of discussion is the increase of the patrimonial right term of life plus 75 years to life plus 100 years. And once the term expires, the Government would have the power to collect fees from the use of works, which are no longer protected. Older statutes like the Copyright Law of 1956 followed a similar system, abolished during the 1980s as being unfair and inapplicable. The bill would also suggest a provision on restoration of works that fell into the public domain for lack of compliance with

formalities in conformance with the Civil Codes of 1884 and 1932.

The amendment was strongly supported by authors and collecting societies but has been rejected by the industry and by society at large. Many would have hoped that Congress fully meditated on the implications of the amendment, not only in terms of what it would mean for the users of works, but for society in general. The challenge for the legislator was thus manifest. However, the outcome did not please many sectors of society and as a result, even though Congress passed the bill with the exception of the private copy provision, a strong resistance was started at the President's office with the intention that the promulgation and publication of the bill is stopped and that, instead, the President exercises his power of veto. However, notwithstanding his resistance to promulgate the bill, the President finally signed it into law and published it so that the amendment became effective on 24 July 2003.