

BY [LUIS C. SCHMIDT](#)

PARTNER

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On 9 February 2007, the Second Unitary Court in Criminal Affairs in Mexico City, confirmed a resolution, granting liberty to two individuals that had installed dish equipment to their client's television receivers, with the purpose to connect satellite television signals from carriers like Sky/Televisa and Dish Networks. The criminal investigation had originated from an action filed by Televisa (a large television program producer in Mexico) before the Federal Prosecutors Office and had been followed by a search and warrant order executed by district attorneys, with the purpose of investigating whether defendants had (a) used copyrighted content transmitted by satellite broadcasting and (b) intercepted a satellite television signal, without the consent of the carrier.

Among other aspects, the decision of the criminal courts has made clear that the penal laws of Mexico are insufficient to enforce copyright and broadcasters rights over their copyrighted contents and satellite television signals. In the first place, it has been questioned whether hackers or copyright pirates who have installed equipment to receive satellite programs are using copyrighted works, in terms of the Copyright Law or more specifically, if they are making reproductions of the same to be viewed in television sets. Likewise, the provisions in the Penal Code protecting satellite television signals are restrictive and, thereby, difficult to be enforced in situations like the present case.

In general terms, the rule renders the making or selling of devices or systems to encode a satellite signal, carrying programs, without the authorization of the carrier or making anything to encode the satellite signal a criminal offence.

Content producers have very little field to protect their copyrighted materials on the grounds of the law, since it is hard for them to show that the counterfeiters actually used the content and much less that they have reproduced the same.

On the other hand, they cannot bring claims that would relate to the encoding of the satellite signals, since they are not actually the broadcasters of the programs. In keeping with this, the Copyright Law, as well as the Penal Code, require urgent amendments in order to protect the right of content producers that are victims of illicit acts perpetrated by hackers or people making or selling

the equipment to descifrate the signals carrying said contents.

#### **MEXICO: RESOLUTION FOR AUTHOR'S REMUNERATION RIGHTS**

On 16 April 2007, the Supreme Court of Mexico rendered a landmark resolution with regard to author's remuneration rights. A group of users of copyrighted contents, mainly movie theaters, was successful in obtaining that result by taking constitutional actions against a bill of Congress adopting a new regime in connection with remuneration rights.

#### **AMBIGIOUS COPYRIGHT BILL**

In essence the bill stated that authors and their assignees should have right to receive a "royalty" not subject to waiver, for the public performance of the work that they have authored. However, the bill as adopted was criticized as it left unclear whether the remuneration right was part of the bundle of exclusive patrimonial rights or a *sui generis* right enabling authors to seek monetary compensation for the exploitation of works-of-authorship (despite the fact that they could have transferred the patrimonial rights to a third party). In view of the users, the bill triggered harm in their constitutional rights considering the use of a conjunction "...and..." (remuneration rights for authors "and" their assignees) and that the right could not be waived.

#### **CONTRADICTING PREVIOUS DECISIONS**

The Supreme Court rendered verdicts in opposite directions. While it was specified that the remuneration right was a right in itself, of economic nature, but different from the regime of patrimonial rights, there was strong disagreement as to how the "non-waiver" provision should be read. The first chamber of the Supreme Court had admitted that the intention of Congress was that living authors could not waive the remuneration right, but could transfer it to third parties. In a later decision, the second chamber of the Supreme Court had supported the idea that, since the right could not be waived, it could only

be transferred from a deceased author to an heir.

#### **SUPREME COURT'S RESOLUTION**

The contradicting judgments of the two chambers were taken to the plenary assembly of the Supreme Court for analysis discussion and further resolution. The purpose was to hold a session in which the Ministers acting as a unitary body would decide the issue. Discussion by the Ministers sitting in the plenary session was a remarkable event. It was the first time in years that the highest court in Mexico would address copyright questions. The challenge for the Supreme Court would not only rest in defining whether Congress had inserted a non-exclusive remuneration right running in parallel to the exclusive patrimonial rights system of the Copyright Law or whether the newly created right could be waived or not. Policy aspects were in play being superior in terms of importance. The Supreme Court had to decide whether Mexico would depart from the strict author's right notions prevailing in the country's copyright system, following treaties and other international trends putting rights of interested parties in balance and alignment, or whether on the contrary, Mexico would adopt a tighter approach in terms of the rights owned by the flesh and bone author, without looking at other legitimate interests.

The outcome of the conflict analysis was ultimately based upon the judgment rendered by the first chamber, with minor variations. A divided plenary court, giving a five-to-four vote, decided on the existence of a remuneration right that authors enjoy for each time that the work of their authorship is publicly performed and that they can assign to third parties without limitations of any kind. In keeping with this, under Mexican Copyright Law, it shall be possible for producers of audiovisual or musical works to own the remuneration right by transfer and that they can exploit the work without a possibility for the authors participating in the production to seek monetary compensation from the communicating medium.