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PARTNER

The law makes protection available to literary and artistic works regardless of the medium of expression in which they are embodied. To that end, it provides a general chapter which reflects the fundamentals and principles of author's right, including a regime on patrimonial and moral rights and the transmissions and licensing of patrimonial rights. In addition, the Copyright Law establishes chapters referring to special agreements such as the publishing of literary and musical works, public performance and representation, the production of audiovisual works, and the exploitation of works through publicity. Individual chapters also deal with the protection of works produced in different media such as photographic, graphic, fine art, cinematographic and audiovisual works as well as computer software and databases.

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One of the most interesting aspects of the new law is precisely that related to software and database protection. Mexico first recognized software as copyrightable subject matter in 1984. However, the Copyright Law of 1956 was only amended in 1991 when software was added as a separate and independent category of copyrightable work. The law as amended in 1991 also imposed restrictions on backup copying and provided criminal penalties for unauthorized reproduction of software for the purpose of gain.

On the substantive side, the highlights of the new law on software are as follows:

- a) Software will now be protected as literary works in terms of NAFTA;
- b) Protection will be extended to the sequence, structure and organization of the program;
- c) The producer shall be considered as the owner of the rights *ab-initio*.

- d) These rights shall comprise: distributions, and transmission of the work, rental rights unless the copy of the computer software is not itself an essential object of the rental; and right to prevent decompilation, reverse engineering and dissemblance of the program.
- e) The back-up copy provision was improved.

The protection of databases will be afforded as a compilation of the above when these rights are obtained as a result of the selection and arrangement of its contents. The rights conferred to the rightsholder will be to authorize or prohibit the reproduction of the database, and its translation, adaptation, restructuring and any other modification of the database, the distribution of the original or copies of the database, and its public communication.

Lastly, it bears mention that the Law provides protection to the data in the databases and the right of privacy of the persons whose names appear in the databases. The Copyright Law also makes express mention of multimedia works protection, and imposes a prohibition on import, manufacture, distribution and the use of equipment or services used to eliminate technical protections found in computer programs, transmissions across the electromagnetic spectrum and telecommunications networks and electronic multimedia programs.

PROCEDURAL PROVISIONS AND ENFORCEMENT

Changes to the enforcement system in Mexican Copyright Law are substantial. Traditionally, the major problem with Mexican law has been precisely enforcement. A radical reform of enforcement procedures and remedies was needed if Mexico was to satisfy the enforcement standards set in NAFTA and TRIPs.

It has been a complex process to accomplish this reform because in the past criminal penalties have been the basic means for enforcing copyrights. The 1956 Law devoted a whole chapter to criminal actions, providing a list of acts that were considered crimes. However, the standard for satisfying the criminal rule was high. In addition, the Copyright Law allowed an injured owner to recover damages after a court had finally determined that an infringer was liable for criminal penalties. As a minimum the 1956 Law stated that the court had to impose damages equal to forty percent of the total value of the infringing products.

As to preliminary measures the 1956 Law and the Criminal Procedures Code authorized the Federal Attorney General's Office to impose some provisional measures during the office's preliminary inquiry of a case. These provisions allowed the Attorney General's Office to seize and destroy infringing goods which under certain circumstances would require search and warrant orders from the Federal Courts.

The civil system, however, was considered to be less prepared to be the recipient of the proposed changes. Enforcing copyright through civil law would have required the reform not only of the Copyright Law, but also of other statutes such as the Civil Procedural Code. Under the 1956 Law civil actions are basically available only against infringement arising from the public performance of works. Civil actions cannot be used to stop unauthorized reproduction of a work. Moreover, the standard for proving damages in civil actions is quite difficult to satisfy and alternative remedies, such as punitive or statutory damages, are unavailable. Furthermore, Mexican Law provides only provisional remedies in civil cases; these are generally broad and are difficult to enforce.

The Mexican Government has now proposed, and Congress has approved, to base copyright enforcement on administrative actions. The problem, however, was which authority to use for that end. The Copyright Office has traditionally represented a registration authority without the powers to prevent infringement. On the other hand, the Mexican Industrial Property Institute (IMPI) has proved to be effective in the application of enforcement of industrial property rights. Due to the foregoing the IMPI was granted the authority to enforce the patrimonial aspect of the Copyright Law. The new Law has named the related provisions "Infractions in commerce". The Copyright Office itself, however, was empowered with the application of the moral right portion of the Law.

"Infractions in commerce" when undertaken with direct or indirect gainful intent, will constitute commercial infractions. The most relevant provisions are quoted hereunder:

I. Publicly use or communicate a work protected by any means and in any form without the prior authorization of the author, or his/her lawful heirs, or of the

economic rightsholder;

II. Produce, manufacture, stock, distribute, transport or commercialise illegal copies of works protected by this Law;

III. Offer for sale, stock, transport or put in circulation works protected by this Law that have been deformed, modified or mutilated without authorization of the rightsholder;

IV. Import, sell, rent or undertake any act that permits possession of equipment or system the goal of which is to deactivate electronic protections found in a computer program;

V. Use, reproduce or exploit a protected RESERVA of Rights (certain protection afforded to characters, titles of publications, among others), or a computer program without the consent of the rightsholder.

VI. Other infractions of the provisions of this Law that involve conduct on a commercial or industrial scale related to works protected by this Law.

The Copyright Law states that these commercial infractions will be sanctioned by IMPI with 5,000 to 10,000 days of minimum daily salary (approx. US \$15,000 to US\$30,000) in all relevant cases, except those in X. above, which shall be 500 to 1000 days.

For those who persist in a violation, IMPI can apply an additional fine up to 500 days of minimum daily salary per day (up to \$1500 per day).

Exploitation of works on a commercial scale can increase the fines by 50 percent.

The procedures and provisional injunctions set forth in the Industrial Property Law shall be applicable to the commercial copyright infractions. IMPI can also suspend free circulation of imported goods at the border.

Finally, copyright crimes have been reduced and moved from the former Copyright Law to the Penal Code. The basic provision was left as follows:

“Imprisonment from 6 months to 6 years and 300 to 3000 days of penalty to be paid (about US\$9000) for whoever produces, makes, imports, sells, stocks, transports, distributes or rents works protected by the Copyright Law with willful intent, on a commercial scale and without authorization of the rightsholder”

TRANSITIONAL ARTICLES

The most important transitional article states that the Copyright Law shall enter into force ninety days after the date of its publication, which was December 24, 1996.