

Amendment to the Mexican Federal Copyrights Law

Intellectual Property – July 16, 2020

INTRODUCTION

- The amendment to the Federal Copyrights Law was published in the Official Gazette on July 1, 2020, and to this date, **it is already in full force and effect.**

RELATED RIGHTS

- The rights of the performers were enhanced, including among others, the **right to authorize or prohibit:**
 - i. the public distribution of their performances by sale or other form of transfer of ownership of their material supports;
 - ii. **public communication** of their fixed performances, through signals or broadcasts, **as well as making them available by wire or wireless, so that members of the public may access them from a place** and at a time individually chosen by them;
 - iii. the commercial leasing of their fixed performances and copies, even after the sale or transfer of the material supports that contain them.
- The legal concept of phonogram producer was modified to include the fixation for the first time of the **representation of digital sounds.**
- The rights of the phonogram producers were expanded, adding the right to authorize or prohibit: **(i)** the making available of the phonograms so that members of the public may access them from a place and at a time individually chosen by them; and **(ii)** public communication.
- The aforementioned modifications are consistent with what was previously established by the WIPO Performances and Phonograms Treaty (“WPPT”).

BROADCASTING ORGANIZATIONS

- Damages and compensation shall be paid if any of the following activities are carried out, **without the authorization of the legitimate distributor of the program-carrying encrypted signal**:
 - i. manufacture, modify, export, import, sell or distribute a device or system to **decode an encrypted satellite signal**;
 - ii. **receive** or distribute an encrypted satellite signal,
 - iii. manufacture or distribute equipment for unauthorized reception of encrypted cable signs; and
 - iv. **receive or assist to receive** an encrypted cable signal.
- It is important to note that encrypted signals are those that have been modified so that they are received and decrypted only and exclusively by those who have acquired this right from the broadcasting organization that emits them.

LIMITATION TO WORKS' ECONOMIC RIGHTS

- Works may be used, without the authorization of the owner and without any remuneration, for **non-profit publication and representation aimed for people with disabilities**. Under these grounds and in accordance with the provisions of international treaties, the **cross-border exchange of copies of works**, including their importation, may be carried out.

PUBLIC COMMUNICATION OF WORKS

- The definition of public communication is extended to cover communication by **wired or wireless means**, including the **making available** of the work, i.e., **streaming** or downloading. This is absolutely an excellent benefit for holders, and it is a result of the modernization of the copyright's framework.
- Penalties related to the **making available of works** when there is no prior and express authorization from the author or the holder of the economic right, are provided.

ECONOMIC RIGHTS

- The rights to authorize or prohibit public access and communication of the works are extended to the **digital environment**.
- The owners of the economic rights regarding **computer programs** may authorize or prohibit: **(i)** any form of distribution of the program, **(ii)** the decompilation and disassembly of the program, and **(iii)** the public communication of the program, including its making available.

COPYRIGHT PROTECTION

- Penalties are incorporated for those who evade or avoid **effective technological protection measures**.
- Exceptions are provided, i.e., in cases where a component is included with the sole purpose of **preventing children's access to inappropriate content online**.
- Effective technological measure means a technology, device, or component that, its **main function is the protection of copyright and related rights in the digital environment**.
- In such regard, providing a cell phone repair service does not in itself imply an infringing activity, **as has been erroneously commented in social media**.
- Infringements regarding the alteration and unauthorized distribution of the **management information regarding copyright or related rights** are implemented.
- **Rights management information** refers to all data, notices, codes, and information in general that identify the work, its author or holder of related rights when it is attached to a copy or appears in connection with the communication of the work to the public.
- **The Federal Court of Administrative Justice**, through the **Specialized Chamber for Intellectual Property Matters**, will now be competent to hear trials in which a record, annotation or registration of the work is challenged, previously the District Courts for Administrative Matters were competent to solve such trials.

- In the case of copyright infringements, in addition to the corresponding compensation for damages to those affected, criminal penalties may also be imposed to the offenders.
- The recording, communication or making available of **cinematographic** and other audiovisual works or its copies, without the authorization of the respective owners, is incorporated as an infringement. This was also included as a criminal offense in the recent amendment to the Federal Criminal Code.

Therefore, the activity known as “**camcording**” is now expressly sanctioned by the law, achieving with it, greater protection to the right holders and hopefully, in practice, will reduce the piracy.

INTERNET SERVICE PROVIDERS / NOTICE AND TAKEDOWN PROCEDURE

- The notice and takedown procedure is included to comply with the United States of America, Mexico, and Canada Agreement (“USMCA”) to update our country’s legal framework and to enhance the protection of intellectual property rights in the digital environment.
- **Liability exceptions** are established so that internet service providers are not responsible for infringements as long as they **(i) do not control, initiate or direct the infringing** activities against intellectual property rights, even if it is carried out through their networks; **(ii) do not interfere with technological measures that protect the contents** and **(iii) if they comply with the procedure**.
- Through this procedure, the right holders of **(i) copyright, (ii) related rights, and (iii) other types** will be able to request the service provider through a notice to remove or take down infringing content or when it receives a resolution issued by a competent authority.
- A notice must be given to the person whose content is removed and, where appropriate, he may request by a counter-notice, the content to be restored, if he proves to be **(i) the right holder of said content, (ii) an authorized user or (iii) a legitimate user** according to the law.
- In such case, the removed content must be restored, unless the person who filed the notice initiates **(i) a judicial or (ii) administrative proceeding, (iii) criminal proceeding, or (iv) an alternate mechanism for resolution of controversies**.

- Internet Service Providers **will not be required to supervise or monitor their networks** or to search for copyright infringements.
- **Fines** will be imposed:
 - i. Whoever abuses the procedure **by making a false statement** in a notice or a counter-notice
 - ii. To the online service provider **that does not remove the infringing content.**
 - iii. To the internet service provider **that does not provide the information that identifies the alleged infringer.**
- Contrary to what has been sustained by different organizations and what has been mentioned on social networks, **this procedure does not violate freedom of expression**, since the right to counter-notice is provided to the person whose content was removed; and where appropriate, the need to bring a legal proceeding in the event of a controversy between the parties so that a competent authority resolves under the law, pursuant to the parties' right to be heard and due process.

Should these measures have an adverse effect on you, please do not hesitate to contact our team with expertise in intellectual property matters, who can be of assistance:

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