

THE SECRETARY OF PUBLIC EDUCATION

HEREBY DECREES the following with regard to the amendment of the Federal Copyright Law.

At the margin, a stamp of the National Seal that reads: Mexico.- Presidency of the Republic.

VICENTE FOX QUESADA, President of Mexico, informs the country's inhabitants:

That the Honorable Congress of the Union has forwarded to me the following

DECREE

"THE CONGRESS OF MEXICO HEREBY DECREES:

THE FEDERAL COPYRIGHT LAW IS AMENDED AS FOLLOWS:

ARTICLE ONE.- Articles 27(I) and (III), 29, 78 (first paragraph), 86, 88, 89, 90, 118 (last paragraph), 122, 132, 133, 134, 146 and 213 of the Federal Copyright Law are amended and Articles 26 bis, 83 bis, 92 bis, 117 bis, 131 bis and 216 bis are added, as follows:

Article 26 bis.- The author and his successor in title shall be entitled to royalties for the public communication or transmission of his work by any medium. Copyright shall be non-waivable. Such royalties shall be paid directly by any person who effects the public communication or transmission of the works directly to the author or to the collective management society representing him, subject to the provisions of Articles 200 and 202(V) and (VI) of the Law.

The amount of the royalties shall be set directly between the author or, as the case may be, the corresponding collective management society and the persons effecting the public communication or transmission of the works as per Article 27(II) and (III) of this Law. Failing such agreement, the Institute shall set a rate in accordance with the procedure provided for in Article 212 of this Law.

Article 27.- ...

I.- The reproduction, publication, edition or material fixation of a work in copies, effected by any process, be it printed, phonographic, graphic, plastic, audiovisual, electronic, photographic or other similar means.

III.- ...

(e) Any other known or future means.

Article 29.- ...

I.- The life of the author and, from the time of his death, 100 additional years.

In the event that the work belongs to various coauthors, the 100 years shall run from the death of the last coauthor, and

II.- One hundred years after disclosure.

Article 78.- Derived works such as arrangements, compendiums, expanded versions, translations, adaptations, paraphrases, compilations, collections and transformations of literary or artistic works shall be protected as far as their original content is concerned, but may only be exploited with the authorization of the holder of the economic right in the original work, subject to the consent of the holder of the moral right, in the cases provided for in Article 21(III) of the Law.

Article 83 bis.- In addition to the provisions of the previous Article, those persons who participate in the performance of a musical work for consideration shall be entitled to payment of the royalties generated by the public communication or transmission of the work, according to the provisions of Articles 26 bis and 117 bis of this Law.

For a work to be considered as having been commissioned, the terms of the contract shall be clear and precise; in case of doubt, the interpretation that is most favorable to the author shall prevail. The author shall also be empowered to draw up his contract when he is commissioned to create a work.

Article 86.- Professional photographers may only display photographs made on a commission basis as samples of their work, subject to authorization. Such authorization shall not be necessary when such photographs are displayed for cultural or educational purposes or for non-profit publications.

Article 88.- Unless otherwise agreed, the exclusive right to reproduce a pictorial, photographic, graphic or sculptural work shall not include the right to reproduce it in any type of article as well as the commercial promotion of the same.

Article 89.- A series of a graphic or photographic work shall be the outcome of the making of various copies from a master copy made by the author.

Article 90.- For the purposes of this Law, a series of copies of a graphic or photographic work duly signed and numbered shall be considered originals.

Article 92 bis.- Authors of works of sculpture or photographic works shall be entitled to receive from the seller a percentage of any resale price therefor from a public auction or commercial establishment, or through a dealer or trader, with the exception of works of applied art.

I.- The foregoing percentage for the authors shall be fixed by the Institute pursuant to Article 212 of the Law.

II.- The right provided for in this Article shall be non-waivable, shall be transferred solely by *mortis causa* succession and shall lapse 100 years after the death of the author or the statement of his death.

III.- Auctioneers, owners of commercial establishments or commercial agents who have been involved in the resale shall notify the corresponding collective management society or, as the case may be, the author or his assignees, within two months, and shall provide the necessary documents for the corresponding settlement to take place. Likewise, when they act on behalf of or on commission for the seller, they shall be jointly responsible with the seller for the payment of the royalty, for which purpose they shall deduct the foregoing percentage from the price. In any event, they shall be considered the depositories of the amount of the said percentage.

IV.- The same right shall apply with regard to original manuscripts of literary and artistic works.

Article 117 bis.-

Performers shall have a non-waivable right to receive remuneration for the use or exploitation of their performances, made for direct or indirect profit-making purposes, by any means, public communication or method of provision.

Article 118.- ...

These rights shall be considered exhausted once the performer has authorized the incorporation of his performance in a visual, audio or audiovisual fixation, provided that the users who use such carriers for profit make the appropriate payment.

Article 122.- The term of protection granted to performers shall be 75 years starting from:

...

Article 131 bis.- Producers of phonograms shall have the right to receive remuneration for the use or exploitation of their phonograms which are made directly or indirectly for profit, by any means, public communication or making available to the public.

Article 132.- Phonograms shall bear the symbol (P) accompanied by an indication of the year in which the first publication took place.

Failure to meet the above requirements shall not cause a producer of phonograms to lose his rights, but makes him liable to the sanctions provided for by law.

It shall be presumed, barring evidence to the contrary, that the producer of phonograms is the natural person or legal entity whose name appears on the lawful copies of the phonogram preceded by the circled "P" symbol and followed by the year of first publication.

Producers of phonograms shall inform the collective management societies of the information on the label of their productions and on the master copies that are exported, indicating the countries in each case.

Article 133.- Once a phonogram has been lawfully introduced into commercial circulation, neither the performers nor the producers of phonograms may object to its direct communication to the public, provided that the persons using it for profit-making purposes make the corresponding payment to them. Failing an agreement between the parties, the payment of their royalties shall be made in equal shares.

Article 134.- The protection referred to in this Chapter shall be for 75 years after the first fixation of the sounds in the phonogram.

Article 146.- The rights of the broadcasting organizations referred to in this Chapter shall be valid for 50 years after the first broadcast or original transmission of the program.

Article 213.- The Federal Courts shall hear cases which arise in conjunction with the application of this Law; however, when such cases affect only private interests, they may be heard, if the parties concerned so choose, by the courts of the States or the Federal District.

Civil actions brought shall be grounded, conducted and resolved on the basis of the provisions of this Law and its regulations, as supplemented by the Federal Code of Civil Procedure before Federal Courts and by common legislation before common law courts.

Article 216 bis.- Reparation for material and/or moral damage and also compensation for damage resulting from the infringement of rights, as granted by this Law, shall in no case be less than 40 per cent of the public sale price of the original product or original service, for any type of services involving an infringement of any of the right(s) protected by this Law.

With the support of experts, the judge shall fix the amount of reparation for damage or compensation for damage in those cases where it cannot be determined, in accordance with the foregoing paragraph.

For the purposes of this Article, moral damage means that caused by the infringement of any of the rights set out in Article 21(I, II, III, IV and VI) of this Law.

TRANSITIONAL

First.- This Decree shall enter into force on the day following its publication.

Second.- Any provisions which contradict this Decree are hereby repealed.

Third.- The Regulations under the Federal Copyright Law published in the **Official Gazette of the Federation** on May 22, 1998, shall be amended and supplemented in the 90 days following the entry into force of this Decree, with a view to aligning the provisions of the same with these amendments and additions.

Mexico City, D.F., April 30, 2003.- Deputy **Armando Salinas Torre**, President.- Sen. **Enrique Jackson Ramírez**, President.- Deputy **Adela Cerezo Bautista**, Secretary.- Sen. **Lydia Madero García**, Secretary.- Titles".

Pursuant to the provisions of Article 89(I) of the Political Constitution of Mexico, and for due publication and compliance therewith, I hereby issue this Decree from the Headquarters of the Federal Executive Branch, in Mexico City, Federal District, on July 22, 2003.- **Vicente Fox Quesada**.-Title.- Secretary of the Government, **Santiago Creel Miranda**.- Title.