

## REGULATIONS UNDER THE FEDERAL COPYRIGHT LAW

New Regulations published in the Official Gazette of the Federation (OGF) on May 22, 1998

### TEXT IN FORCE

Latest version published in the Official Gazette of the Federation on September 14, 2005

[In the margin, there is a seal with the national coat of arms, which reads: "United Mexican States – Presidency of the Republic"]

I, **ERNESTO ZEDILLO PONCE DE LEÓN**, President of the United Mexican States, pursuant to my authority under Article 89, paragraph I of the Political Constitution of the United Mexican States, and on the basis of Articles 13, 34 and 38 of the Fundamental Law on the Federal Public Administration, hereby issue the following

## REGULATIONS UNDER THE FEDERAL COPYRIGHT LAW

### TITLE I GENERAL PROVISIONS

#### SOLE CHAPTER

**Article 1.-** The purpose of the present instrument is to regulate the provisions of the Federal Copyright Law. Its implementation, for administrative purposes, shall be the responsibility of the Secretariat of Culture through the National Copyright Institute and, in the cases provided for by the Law, the Mexican Industrial Property Institute.

The provisions of the Law and of the present Regulations shall be implemented without prejudice to the provisions of international treaties concluded and ratified by Mexico.

*Paragraph added: Official Gazette September 14, 2005*

*Article amended Official Gazette 17-12-2015*

**Article 2.-** For the purposes of these Regulations:

- I. "the Law" shall mean the Federal Copyright Law;
- II. "the Secretariat" shall mean the Secretariat of Culture;
- III. "the Secretary" shall mean the Secretary of Culture;
- IV. "the Institute" shall mean the National Copyright Institute;
- V. "the Director-General" shall mean the Director-General of the National Copyright Institute;
- VI. "the Registry" shall mean the Public Copyright Registry;
- VII. "the Official Gazette" shall mean the Official Gazette of the Federation;
- VIII. "the Penal Code" shall mean the Penal Code for the Federal District in Matters of Ordinary Jurisdiction and for the Whole Republic in Matters of Federal Jurisdiction;

- IX.** "the Civil Code" shall mean the Civil Code for the Federal District in Matters of Ordinary Jurisdiction and for the Whole Republic in Matters of Federal Jurisdiction;
- X.** "reservation" shall mean the reservation of rights to exclusive use;
- XI.** "societies" shall mean collective management societies.

Article amended Official Gazette 17-12-2015

**Article 3.-** Formalities and procedures carried out with the Institute shall be subject to payment of the appropriate fees set out in the Federal Law on Fees.

**Article 4.-** Except where a law or regulation provides otherwise, the official response time for any procedure provided for in the Law or in these Regulations shall be 10 working days.

If the applicable deadline expires without a response having been provided, it shall be understood that the decision is not in the applicant's favor.

## **TITLE II COPYRIGHT**

### **CHAPTER I MORAL RIGHTS**

**Article 5.-** The exercise of moral rights by the Mexican State shall be the responsibility of the Secretariat through the Institute.

**Article 6.-** The owner of the physical medium of a literary or artistic work shall not, under any circumstances, be liable for the deterioration or destruction of the work or of its physical medium caused merely by the passage of time or by the habitual use thereof.

**Article 7.-** Literary and artistic works may be preserved, restored or protected by agreement between the author and the owner of the physical medium or of the sole copy, as the case may be.

### **CHAPTER II ECONOMIC RIGHTS**

**Article 8.-** For the purposes of the Law and of these Regulations, "royalties" shall mean the financial remuneration generated by the use or exploitation of works, performances, phonograms, videograms, books or broadcasts in any form or medium.

**Article 9.-** The payment of royalties to the author, to the owners of related rights or to their successors in title shall be made independently to each person entitled to them, separately and in accordance with the mode of exploitation in question, either directly, through an agent or through collective management societies.

*Article amended: Official Gazette September 14, 2005*

**Article 10.-** Royalties for the communication, public transmission, making available, performance, exhibition or public presentation of literary or artistic works and of performances, phonograms, videograms, books or broadcasts made for direct or indirect profit-making purposes shall be payable to the authors, the owners of related rights or their successors in title.

*Article amended: Official Gazette September 14, 2005*

**Article 11.-** An activity carried out for direct profit-making purposes shall mean an activity the purpose of which is to obtain a financial benefit as an immediate consequence of the use or exploitation of copyright, related rights or reservations of rights; use of the image of a person; or any act carried out in order to obtain a device or system the purpose of which is to deactivate the electronic protection devices of a computer program.

Use shall be deemed to be for indirect profit-making purposes where it results in an advantage or benefit in addition to the main activity carried out by the official in the industrial, commercial or service establishment in question.

Such acts or activities shall be classified as profit-making irrespective of whether or not the expected profit is actually obtained.

**Article 12.-** For the purposes of Article 133 of the Law, the following shall be considered direct communication to the public of phonograms:

- I. public performance, effected in such a way that two or more persons may access the phonograms, whether through analog or digital reproduction, reception of a transmission or broadcast, or any other means;
- II. public communication through broadcasting; or
- III. transmission or retransmission by wire, cable, optical fiber or other similar medium.

The payment referred to in Article 133 of the Law shall be made independently to each category of owners of copyright and related rights in the mode of exploitation in question.

The provisions of this Article shall be applicable, where appropriate, to cinematographic and audiovisual works.

**Article 12 bis.-** For the purposes of Article 131, Subparagraph III of the Law, the authorization or prohibition of the distribution of phonograms by means of signals or broadcasts shall include the making available to the public or public communication of phonograms in any form and also public access to them by means of telecommunication.

Forms of making available to the public or public communication shall include transmissions by electronic media, through the electromagnetic spectrum and wire or wireless telecommunication networks.

*Article added: Official Gazette September 14, 2005*

**Article 13.-** The reproduction, direct or indirect, total or partial, of the phonogram in copies, the first distribution thereof by sale or any other means, or the modification or adaptation thereof into another phonogram shall not be considered direct communication to the public.

**Article 14.-** For the purposes of the Law, copies of works, books, phonograms or videograms that have been made without the authorization of the owner of the copyright or of the related rights in Mexico or abroad, as applicable, shall be considered unlawful.

The powers referred to in Articles 27, Subparagraph V, 125, Subparagraph II and 131, Subparagraph II of the Law may be exercised only with respect to the import of unlawful copies.

**Article 15.-** An end-user acting in good faith shall not be obliged to pay damages for the use of encrypted program-carrying satellite signals pursuant to Article 145, Subparagraph I of the Law, provided that such use is not carried out for profit.

### **TITLE III TRANSFER OF RIGHTS**

#### **CHAPTER I GENERAL PROVISIONS**

**Article 16.-** Instruments, agreements and contracts by which economic rights in a future work are transferred shall specify the detailed characteristics of the work, the deadlines for and terms of delivery, the remuneration payable to the author and the period of validity.

**Article 17.-** Instruments, agreements and contracts by which economic rights are transferred, pursuant to the Law, for a period of more than 15 years shall always indicate the specific reason therefor and shall be registered with the Registry.

A period of more than 15 years may be agreed upon in the case of:

- I. works which are so lengthy that their publication involves a much higher level of investment than that usually required for other works in the same class;
- II. musical works that require a longer broadcasting period;
- III. incidental contributions to a more extensive work, such as prologues, presentations, introductions, prefaces and other similar contributions;
- IV. literary or artistic works, including musical works, that are incorporated in the electronic media programs referred to in Article 111 of the Law; and
- V. other works for which the investment cannot be recouped within 15 years, owing to their nature, the scale of investment involved, the number of copies or the number of performers participating in the performance.

**Article 18.-** Instruments, agreements and contracts by which the author's economic rights are transferred shall state clearly and precisely the proportional share that shall be payable to the author or the fixed remuneration determined, as appropriate. The same rule shall govern all subsequent transfers of rights in the same work.

**Article 19.-** Compensatory remuneration for private copying shall be that payable to the author, the owners of related rights or their successors in title for copying or reproduction carried out pursuant to Article 40 of the Law.

**Article 20.-** Compensatory remuneration for private copying may be collected by authors, owners of related rights and their successors in title personally or through a society.

**Article 21.-** Audiovisual synchronization means the simultaneous mixing, total or partial, of a musical work with a series of images that produce the impression of movement.

**Article 22.-** Anyone who attaches or files a claim for the profits from or proceeds of the exercise of the author's economic rights may request the judicial authorities to authorize the exploitation of the work where the owner refuses to do so without just cause.

## CHAPTER II

### PUBLISHING CONTRACTS FOR LITERARY WORKS

**Article 23.-** Where a publisher has not made copies of a work available to bookstores for a period of six months, it shall be presumed that the publisher has no copies thereof with which to meet public demand.

**Article 24.-** In order to guarantee the right to choose a different publisher for a new edition, the author or the owner of the economic rights shall notify the current publisher in writing of the terms of any offer received; the current publisher shall have 15 days in which to express its interest in producing the new edition. If it fails to do so, its right shall be considered waived, and the author shall be free to conclude a contract for the new edition with whomever best serves his interests.

**Article 25.-** Due notice of termination of the publishing contract for a literary work shall be given.

**Article 26.-** The rules set out in this Chapter shall apply to publishing contracts for musical works, plays, broadcasts, audiovisual productions and advertising, insofar as they are compatible with the nature thereof and the provisions of the Law.

## TITLE IV COPYRIGHT PROTECTION

### CHAPTER I GENERAL PROVISIONS

**Article 27.-** Works derived from anonymous works may be exploited, provided that the name of the author of the original work is not made known and that no owner of economic rights has been identified.

Where the author or the owner of the economic rights claims ownership of the work and there is no agreement between the parties, the judicial authorities shall be responsible for determining the royalties; however, amounts received in good faith by the author of the derived work or by a third party shall be retained by them.

**Article 28.-** The author of a derived work shall not require the permission of the owner of the rights in the original work in order to file a claim in respect of his original contributions that are protected pursuant to Article 78 of the Law.

**Article 29.-** Where a work that is translated into another language is itself a translation, the translator shall mention the author's name and the language of the original work, as well as the name of the first translator and the language of the translation on which his translation is based.

**Article 30.-** In the case of works of joint authorship, the names of all the authors shall be mentioned, even if not all of them use or exploit the work.

## CHAPTER II PHOTOGRAPHIC, THREE-DIMENSIONAL AND GRAPHIC WORKS

**Article 31.-** Copies of a graphic or photographic work in a series shall bear the author's signature, the number of copies in the series and the consecutive number corresponding to the copy.

Where an author dies before signing the copies in a series produced by him, they may be signed by the surviving spouse or, in the absence of such spouse, relatives who are consanguineous in the first degree, provided that they are owners of the economic rights in the works. Where there are several such relatives, one of them shall be designated.

*Article amended: Official Gazette September 14, 2005*

**Article 31 bis.-** For the purposes of Article 92*bis* of the Law, "three-dimensional works of art" shall mean all those three-dimensional visual artistic creations that are fixed on a flat or three-dimensional surface, including pictorial works, sculptures and drawings.

*Article added: Official Gazette September 14, 2005*

**Article 31 ter.-** In order to fulfill the obligations set out in Article 92*bis* of the Law, the following provisions shall apply:

- I. Auctioneers, owners of commercial establishments, traders or merchants shall keep the amount that they hold in deposit until it is delivered to the author, his successors in title or the relevant collective management society, or until it is handed to the competent authority.

The forms of and time periods for payment by the depositary and the amounts paid shall be subject to the tariff set by the Institute or, where appropriate, the terms of the contract concluded by the interested parties or, in the absence of such contract, the customary practice in the place where the deposit was established.

Administrative expenses for the depositary shall correspond to the amount deposited. In all cases, the time of due notification of resale shall be used as the basis for establishing when expenses began to be generated.

- II. Notifications to collective management societies or, where appropriate, authors or their successors in title pertaining to the resale of three-dimensional or photographic works of art or original manuscripts of literary and artistic works shall be effected in writing and shall contain at least the author's name, the title of the work, the date and place of resale, and full details of the reseller and the resale price, together with a copy of the invoice or of the legal document that allows the details to be verified and the payment to be effected.

Notifications shall have effect in accordance with the applicable legal provisions; in all cases a confirmation of receipt by the interested person or proof of sending or transmission of the notification of the resale must be obtained.

In cases where the information about the author's identity or whereabouts that is needed for the purposes of notification is not available, auctioneers, owners of commercial establishments, traders or merchants shall post, in a visible and publicly accessible place within the commercial establishment where the resale took place, a notice indicating the title of the work, the resale price, the dates of sale or resale and, where appropriate, the author's details.

The relevant collective management societies, directly or at the request of auctioneers, owners of commercial establishments or merchants, may provide a list once a year of all their members, indicating their registered works and accompanied by a copy of the document attesting that the author has mandated the society to receive the relevant resale royalty on

his or her behalf. This may include information from the reciprocal representation agreements concluded by the collective management society.

The period of two months for notification of a resale that has taken place shall be counted from the day following the actual date on which payment for the resale is made in full, unless otherwise agreed or expressly stated in the relevant tariff.

- III. In order to collect resale royalties, interested parties must present the documents duly accrediting them as authors or successors in title; collective management societies must provide the proof required by the Law.

Auctioneers, owners of commercial establishments, traders or merchants shall deliver to the author or his successors in title the amounts in cash that they have collected from resales and, where appropriate, shall provide the information necessary for payment.

The author or his successors in title may demand all the information necessary for the payment of the amounts owed in accordance with the resale right in three-dimensional or photographic works of art or original manuscripts of literary and artistic works. Where the interested party accepts, without reservation, payment for the resales to which he is entitled, it shall be presumed that due process has been followed.

Auctioneers, owners of commercial establishments or merchants and interested parties may agree the terms and conditions for resale payments to which they are entitled on the basis of the tariff set by the Institute.

Collective management societies that have received payments of this type shall mention that fact in the reports requested by the Institute in accordance with the law.

- IV. Collective management societies may receive notifications of resale, even if they do not have the relevant representation, containing the information indicated in section II of the present Article, which they shall be obliged to keep and to make available to the relevant owners where necessary or where they are requested to do so; they shall also be obliged to post the relevant notices, including in electronic media, in a visible and publicly accessible place within their premises.

Information on the resale of a work shall be made available to foreign collective management organizations, in accordance with the reciprocal representation agreements concluded by the collective management society.

- V. For the purpose of facilitating access to information and the collection of resale royalties to which they are entitled, authors, their successors in title or collective management societies may conclude accords or agreements with auctioneers, owners of commercial establishments, traders or merchants.

*Article added: Official Gazette September 14, 2005*

**Article 31 quater.-** The author or his successors in title may, through the Institute, request the information necessary to ensure payment of royalties for the resale of three-dimensional or photographic works of art or original manuscripts of literary and artistic works, as referred to in Article 92bis of the Law, from auctioneers, owners of commercial establishments, traders or merchants involved in the resale and from collective management societies that have received the relevant notifications.

*Article added: Official Gazette September 14, 2005*

**Article 32.-** Authors' or printers' proofs or those produced for non-commercial purposes may be offered for sale only when the entire series is sold out and at least five years have passed since they were produced.

**Article 33.-** Registration with the Registry of a work that contains a portrait or photograph of a person shall not imply permission to use or exploit it as required under Article 87 of the Law.

### **CHAPTER III CINEMATOGRAPHIC AND AUDIOVISUAL WORKS**

**Article 34.-** Audiovisual production contracts shall establish the proportional share or fixed remuneration for the authors or owners referred to in Article 97 of the Law, which shall govern every instance of exploitation of the audiovisual work. Where the contract does not mention any mode of exploitation, such exploitation shall be deemed to be reserved for the authors of the audiovisual work.

The provisions of the present Article shall apply, where relevant, to the acting and performances included in the audiovisual work.

**Article 35.-** The authors of the audiovisual work and the performers who participate in it shall receive a share of the royalties generated by the public performance of the work.

### **CHAPTER IV COMPUTER PROGRAMS AND DATABASES**

**Article 36.-** The meaning of "electromagnetic spectrum" shall correspond to the provisions of Article 3, Subparagraph II of the Federal Law on Telecommunications.

**Article 37.-** Electronic media are those that allow remote access by the public to literary and artistic works through the radio spectrum or telecommunication networks.

## **TITLE V LIMITATIONS ON COPYRIGHT**

### **CHAPTER I LIMITATION IN THE PUBLIC INTEREST**

**Article 38.-** The procedure for obtaining authorization referred to in Article 147 of the Law may be initiated ex officio or at the request of a party. In the former case, the procedure shall be initiated by the Secretariat through the Institute.

**Article 39.-** Copyright limitation in the public interest shall be declared where, in the opinion of the Federal Executive, the following circumstances exist:

- I. the work or copies thereof are necessary for the advancement of national science, culture and education pursuant to the ruling issued by the Institute;
- II. no publisher or owner of the author's economic rights in the work has been identified, or if one has been identified, he refuses without just cause to reproduce or publish the work; and
- III. no alternative work exists for the advancement of the branch of national science, culture or education in question.



**Article 40.-** Where the procedure is initiated at the request of a party, the applicant shall:

- I. provide the Institute with evidence that the application is in compliance with the Law and these Regulations;
- II. indicate the number of copies to be published;
- III. determine the possible price and proposed use or purpose of the reproduced copies; and
- IV. guarantee compensatory remuneration for the whole print run and make it available to the owner of the economic rights.

Once the application has been received, the Institute shall have 30 days in which to accept or reject it.

The Institute may advise the applicant to rectify any errors or submit missing evidence within 10 days. Once that period has elapsed, the Institute shall have 30 days in which to accept or reject the application.

**Article 41.-** The procedure with the Institute shall be carried out as follows:

- I. the owner of the economic rights in the work in respect of which authorization is sought for publication or translation shall be summoned in person and informed of the initiation of the procedure;
- II. the interested party shall have 15 days in which to make whatever statement best serves his interests and to submit any evidence in his possession; and
- III. once the file has been submitted, the Institute, after studying it, shall issue a ruling on the legitimacy of the authorization.

Where the address of the owner of the economic rights is not known, publication in the Official Gazette of the official letter initiating the procedure shall have the effect of a personal notification.

**Article 42.-** The ruling on legitimacy issued by the Secretariat through the Institute shall contain at least the following:

- I. the characteristics of the work and information about the ownership of the moral rights and also of the economic rights, where applicable; and
- II. an analysis of the reasons for which the application is considered to comply with the legitimacy requirements.

**Article 43.-** On the basis of the ruling, the Federal Executive may issue a decree limiting the economic rights for reasons of public interest, which shall be published in the Official Gazette. Such decree shall contain, inter alia:

- I. the title of the work;
- II. the name of the owner of the moral rights and also of the economic rights, where applicable;
- III. the number of authorized editions and copies, their price and their use or purpose; and

- IV. the compensatory remuneration payable to the owner of the economic rights, which may not be lower than the usual market rate for the class of publication and work in question.

The decree authorizing the publication or translation of the work shall be subject to the provisions of the international treaties and agreements relating to copyright and related rights signed and ratified by Mexico.

## **CHAPTER II LIMITATION OF ECONOMIC RIGHTS**

**Article 44.-** The reproduction of complete works or parts of a work, phonogram, videogram, performance or publication shall not constitute an infringement of copyright provided that it is done for non-profit purposes and for the sole aim of making the work accessible to the blind, the deaf or the mute; the exception provided for in this Article shall include translations or adaptations in special languages intended to communicate the works to such persons.

**Article 45.-** The limitations referred to in Article 151 of the Law shall be valid provided that they do not affect the normal exploitation of the performance, phonogram, videogram or broadcast in question and do not cause harm to the rights owners.

**Article 46.-** Works produced in the official service of the Federation, states or municipalities shall be deemed to have been produced pursuant to Article 83 of the Law, unless expressly agreed otherwise in each case.

## **TITLE VI RIGHTS IN NATIONAL SYMBOLS AND POPULAR CULTURES**

### **SOLE CHAPTER**

**Article 47.-** The reproduction, public communication or any other form of use of, and the exercise of moral rights in, national symbols shall be consistent with the provisions of the Law on the National Coat of Arms, Flag and Anthem.

**Article 48.-** Literary or artistic works of popular art or craft whose author cannot be identified may be:

- I. verbal expressions, such as popular tales, legends, traditions, popular poetry and the like;
- II. musical expressions, such as popular songs, rhythms and instrumental music;
- III. corporal expressions, such as dance and rituals;
- IV. tangible expressions, such as:
  - a) works of popular art or traditional craft, including pictorial works or drawings, wood carvings, sculptures, pottery, terracotta, mosaics, cabinetmaking, ironware, jewelry, basketmaking, glassware, stonework, metalwork, leather goods, typical costumes, spinning, textiles, needlework, tapestries and the like;
  - b) popular or traditional musical instruments, and

- c) architecture specific to each ethnic group or community; and
- V. any native expression constituting a literary or artistic work of popular art or craft that can be attributed to a community or ethnic group that is native to or well established in Mexico.

## **TITLE VII RELATED RIGHTS**

### **SOLE CHAPTER**

**Article 49.-** Performances, phonograms, videograms, books and broadcasts shall be protected in accordance with the Law, irrespective of whether or not they incorporate literary and artistic works.

**Article 50.-** The exhaustion of the right referred to in the last paragraph of Article 118 of the Law shall include only the modes of exploitation expressly authorized by the performer, on the condition that the relevant moral rights are respected and that users who use physical media for profit-making purposes pay the relevant remuneration.

The fixation, public communication or reproduction of the fixation of a performance that goes beyond the scope of the authorization granted shall entitle the performer to oppose the act in question, in addition to seeking reparation for the material and/or moral harm and the payment of damages.

*Article amended: Official Gazette September 14, 2005*

**Article 51.-** Performers shall have the right to seek reparation for material and/or moral harm and the payment of damages where the use of a performance infringes the Law.

*Article amended: Official Gazette September 14, 2005*

**Article 52.-** Performers shall receive a share of the amounts generated by the public presentation of their performances that are fixed on phonograms. Reference shall be made in performance contracts to the provisions of the present Article.

## **TITLE VIII REGISTRATIONS**

### **CHAPTER I**

#### **PROVISIONS COMMON TO REGISTRATION AND RESERVATIONS**

**Article 53.-** Applications or requests that are filed with the Institute shall be filed in duplicate on the official forms published in the Official Gazette, accompanied by the attachments indicated on the forms. The Institute may not require more attachments than are established by the Law, these Regulations, the relevant form or the applicable tax provisions.

**Article 54.-** Where the official form is not needed, the written submission shall contain:

- I. the applicant's name; the address for service and receipt of notifications within the territory of the United Mexican States;
- II. documents attesting the legal status of the applicant and his or her legal agents or representatives; in the case of a legal person, documents attesting its legal existence;
- III. the application, drafted in clear and precise terms;

- IV. the facts and points of law on which the application is based;
- V. proof of payment of fees; and
- VI. where necessary, a translation into Spanish of accompanying documents that are written in a different language.

**Article 55.-** Applications or requests shall not contain overwritings or corrections. Once accepted for processing, they may not be modified by the applicant. Each application or request shall relate to one subject.

Applications and requests sent by mail, courier services or other equivalents shall be deemed to be actually delivered when they bear the Institute's stamp indicating the date and time of receipt.

Apart from exceptional cases in which the originals are required, the attachments may be ordinary copies, in which case the same fee as for the originals shall be payable.

**Article 56.-** The Institute shall, *ex officio*, declare the expiry of any procedures and applications where the interested party has to submit a request and has not done so within three months, provided that no other time period is established for that purpose in the Law or in these Regulations.

## CHAPTER II THE PUBLIC COPYRIGHT REGISTRY

**Article 57.-** In addition to the items referred to in Article 163 of the Law, the following may be registered with the Registry:

- I. powers of attorney granted pursuant to the Law and these Regulations;
- II. contracts that societies have concluded with users and contracts for representation that they have concluded with counterpart societies;
- III. instruments and documents through which the society appoints its administrative and monitoring bodies, administrators and agents;
- IV. notarized written proof of the establishment or modification of the society;
- V. videograms, phonograms and books; and
- VI. judicial or administrative decisions that in any way confirm, modify or cancel ownership of copyright or related rights.

**Article 58.-** The Registry shall have 15 days from acceptance of an application in which to make the appropriate decision or to issue the records or copies requested. In the case of the registration of documents relating to the assemblies of collective management societies or their statutes, the period shall be extended by 45 days.

**Article 59.-** The Registry shall be deemed to be acting in good faith and registration shall include sworn documents submitted by the applicants.

Registrations and notes submitted to the Registry shall be declarative and shall establish a legal presumption of ownership in favor of those who submit them, but shall not establish rights.

**Article 60.-** Where an application refers to several works, they shall be considered a collection of works under a single title for the purposes of registration.

**Article 61.-** Documents from abroad that are submitted as evidence of ownership of copyright or related rights shall not require authentication for the purposes of registration. The applicant shall be responsible for the translation, veracity and authenticity thereof.

**Article 62.-** Once registration has been carried out, the interested party shall have a period of 30 days in which to request delivery of the relevant certificate; once that period has expired, the applicant must request delivery ex post facto.

**Article 63.-** Where the issuance of certified copies is impossible because of the loss or destruction of or damage to the original, a copy of the certificate or proof of registration shall be issued at the request of the author, the owner of the economic rights or a competent authority.

The copy shall be made in accordance with the information, documents and reports on which the registration was based.

**Article 64.-** Registration certificates shall mention, as a minimum:

- I. the certificate type;
- II. the registration number;
- III. the legal basis for registration;
- IV. the date on which the certificate was issued;
- V. in the case of contracts, agreements and powers of attorney, the names of the parties, their nature and the purpose of the contract;
- VI. the position of the official authorized to sign the certificate; and
- VII. the name and handwritten signature of the official authorized for that purpose.

**Article 65.-** The interested parties may request the correction of transcription or other errors directly attributable to the Registry within three months of the issuance of the certificate.

**Article 66.-** In the event of a notice of indictment, prior investigation or administrative procedure relating to copyright or related rights, the Registry shall be obliged to note such circumstance in a temporary entry in its records.

Once the executory judgement has been announced, the Registry shall make the appropriate final entries.

**Article 67.-** A margin note shall be made where, at the request of the author or the owner of the economic rights, it is necessary to:

- I. modify the title of the work;

- II. mention an author or collaborator who was omitted in the registration application;
- III. indicate the owner of the economic rights or add an owner that was omitted in the registration application;
- IV. modify the period of validity established in the contract;
- V. change the company or trade name of the owner of the economic rights of the author and of the principal in the case of registration of a power of attorney;
- VI. change the name of the society, subject to authorization issued by the Institute;
- VII. revoke a power of attorney;
- VIII. specify whether the work is original or derived;
- IX. declare the merger of legal persons that own the economic rights of the author;
- X. amend societies' statutes;
- XI. delete a name that has been declared erroneously as an author, collaborator, owner or party on the registration certificate; and
- XII. add any other similar information.

The registered information referred to in I, II, III, IV, VIII and XI may be modified only with the consent of all parties interested in the registration. Likewise, basic concepts or information may be modified only with the consent of all parties interested in the registration.

In the absence of unanimous consent of the interested parties, a margin note may be entered only by a judicial decision.

A margin note shall have effect from the date on which it is entered.

**Article 68.-** Model or sample contracts shall be those that are identical to each other in all their clauses and in which only the particulars vary.

**Article 69.-** The procedure for cancellation or correction for reasons of error shall be initiated officially as follows:

- I. the Registry shall notify the concerned party personally of the grounds for canceling or correcting the entry in question, granting him a period of 15 days in which to make, in writing, whatever statement best serves his interests; and
- II. once that period has expired, and subject to consideration of the relevant background information, the appropriate administrative decision shall be issued; the interested party shall be notified thereof at the address that he indicated in the registration application.

### **CHAPTER III RESERVATION OF RIGHTS TO EXCLUSIVE USE**

**Article 70.-** Reservations may be granted independently for one or more of the goods subject to protection referred to in Article 173 of the Law; in the case of periodical publications, this shall be without prejudice to the powers of the Secretariat of Governance in that regard.

The Institute shall inform the Secretariat of Governance of all decisions that it issues relating to reservations granted for periodical publications and shall inform the interested parties that they must comply with the relevant administrative provisions.

**Article 71.-** For the purposes of Article 173, Subparagraph III of the Law, the actual physical and psychological characteristics of a given person shall not be the subject of a reservation.

**Article 72.-** For the purposes of Article 188, Subparagraph I, item b) of the Law, "generic" shall mean:

- I. indicative words or words that are used in everyday language to designate both the category of items and the specific items for which the reservation is sought, in accordance with Article 173 of the Law;
- II. words that describe the category for which the reservation is sought;
- III. names or designations of general branches of knowledge;
- IV. names or designations of sports or sporting competitions, where their use is sought for periodical publications, serial broadcasts or advertising material; and
- V. articles, prepositions and conjunctions.

**Article 73.-** For the purposes of Article 188, Subparagraph I, item e) of the Law, the express consent of the interested party shall be necessary where the relevant application includes any or all of the following: a reproduction of a given person's face or his body language, features or general characteristics, in such a way that it is clear that it is the same person, even if his face, expression, features or general characteristics are modified or distorted and his name is replaced by a fictitious one.

**Article 74.-** For the purposes of Article 231, Subparagraph II of the Law, the use of the image of a person without the relevant authorization shall not constitute an infringement of a commercial nature, where it is carried out for information or journalistic purposes or in exercise of the right of freedom of expression.

**Article 75.-** Titles, names, designations or characteristics which, because of their habitual and continuous dissemination, use or exploitation in the national territory or abroad, can be identified by a given section of the public shall be considered well known.

**Article 76.-** In order to obtain a reservation of rights, a prior ruling on its legitimacy may be requested from the Institute, in accordance with the provisions of Article 188 of the Law.

Once the request has been made, the Institute shall issue the relevant ruling within 15 days. In the case of advertising material and personalities, the period may be extended for a further 30 days.

The prior ruling shall be for information purposes only and shall not confer on the applicant any preferential right, nor shall it imply an obligation on the Institute to grant a reservation.

**Article 77.-** The date and time of filing of reservation applications shall determine the order of priority among them.

**Article 78.-** Owners of reserved rights shall communicate to the Institute:

- I. changes of address for service and receipt of documents and notifications;
- II. changes in the owner's name, designation or trade name; and
- III. transfers of the rights protected by the relevant certificates, so that they may have effect with respect to third parties.

The notification shall be submitted in writing and shall refer to the relevant reservation number. Once the notification has been received, the Institute shall make appropriate margin notes and shall issue the relevant certificate within 15 days.

**Article 79.-** Once the period of validity of the reservation has expired, the reservation shall automatically lapse without the need for an administrative declaration if it has not been renewed.

**Article 80.-** Applications for an administrative declaration of invalidity or cancellation shall indicate:

- I. the number, title and name or designation of the reservation subject to proceedings;
- II. a brief outline of the grounds for the application; and
- III. the legal basis, with reference to the applicable legal precepts or principles.

An application for an administrative declaration shall be accompanied by the documents and records on which it is based and the relevant evidence, as well as the relevant copies thereof. Once the application has been filed, the Institute shall have 15 days in which to accept or reject it.

**Article 81.-** Once the application for an administrative declaration of invalidity or cancellation has been accepted, the Institute shall notify the owner concerned, granting him a period of 15 days in which to make, in writing, whatever statement best serves his interests, to raise objections and defenses and to submit evidence.

The notification shall be sent to the address indicated in the relevant reservation application or the last declared address on record in the file.

**Article 82.-** Where the address of the owner concerned changes without the Institute being informed accordingly, the notification referred to in the previous Article shall be effected through the publication of decrees in the Official Gazette on three consecutive days, at the applicant's expense.

**Article 83.-** In proceedings for an administrative declaration of invalidity or cancellation of a reservation, any kind of evidence except for oral and confessional evidence or evidence that is contrary to morality or the law shall be admissible.

**Article 84.-** Where any document that is available in the Institute's archives is offered as evidence, the interested party shall specify the file in which it is to be found so that it can be included in the relevant proceedings.



**Article 85.-** In administrative declaration proceedings, issues on which a special ruling has already been handed down shall be settled when the appropriate decision is issued.

## **TITLE IX INTERNATIONAL STANDARD NUMBERS**

### **CHAPTER I GENERAL PROVISIONS**

**Article 86.-** The Institute shall be responsible for assigning International Standard Book Numbers (ISBN) and International Standard Serial Numbers (ISSN) in Mexico, as referred to in Article 53, Subparagraph IV of the Law.

**Article 87.-** "Catalog card" shall mean the set of information provided by the publisher or the applicant that makes it possible to identify a particular title or edition of a title or a particular serial publication, as applicable; that information must be provided in the relevant format.

**Article 88.-** In order to obtain an International Standard Book Number or an International Standard Serial Number, the catalog card of the title or edition of the title or of the serial publication for which the number is sought shall be provided. Once the application has been accepted, the Institute shall issue the appropriate decision within five days.

**Article 89.-** The Institute shall:

- I. assign prefixes to each publisher, in the case of the International Standard Book Number;
- II. validate the content of the catalog card provided to it by the publisher or applicant;
- III. validate the International Standard Book Numbers and International Standard Serial Numbers that it assigns;
- IV. maintain the main archives;
- V. send an updated list of national publishers to the International ISBN Agency each year; and
- VI. send to the ISSN International Centre an updated list of International Standard Serial Numbers assigned by the Institute each year.

**Article 90.-** International Standard Book Numbers and International Standard Serial Numbers shall not be assigned for the following publications:

- I. ephemeral printed material, such as calendars, theater or concert programs, advertising material, leaflets, and other similar publications;
- II. posters;
- III. art prints and art folders without a title page or text;
- IV. publications without text;
- V. phonograms, except for those referred to in Articles 95, Subparagraph V and 101, Subparagraph V of these Regulations;

- VI. serial publications such as newspapers or magazines, in the case of International Standard Book Numbers, although they shall be assigned to yearbooks and monographic series; and
- VII. books or editions of brochures containing more than five pages that are not published periodically, in the case of International Standard Serial Numbers.

**Article 91.-** The Institute may conclude coordination agreements with third parties relating to other forms of assignment of International Standard Book Numbers or International Standard Serial Numbers.

**Article 92.-** Where it deems appropriate, the Institute may publish, in accordance with the volume assigned:

- I. International Standard Book Numbers and the corresponding titles or editions of titles; and
- II. International Standard Serial Numbers and the titles of the corresponding serial publications.

## **CHAPTER II THE INTERNATIONAL STANDARD BOOK NUMBER**

**Article 93.-** The International Standard Book Number is the identification given to a title or an edition of a title from a particular publisher, in accordance with international custom.

**Article 94.-** The International Standard Book Number consists of:

- I. a group identifier: indicates the country of publication;
- II. a publisher prefix: designates each individual publisher;
- III. a title identifier: assigned to each title individually or to the edition of a title published by a particular publisher; and
- IV. a check digit: the last digit of the International Standard Book Number, which is obtained from a calculation based on the other digits for the purpose of checking that the number as a whole has been correctly assigned.

The group identifier is the identifier agreed with the international body responsible for International Standard Book Numbers.

The set of digits must be preceded by the letters ISBN.

**Article 95.-** Only the following may have an International Standard Book Number:

- I. books or printed matter with more than five pages;
- II. microform publications;
- III. publications in special languages for the disabled;
- IV. mixed media publications;

- V. literary works recorded on phonograms;
- VI. machine-readable tapes designed for producing lists;
- VII. computer programs; and
- VIII. other similar media, including audiovisual media.

**Article 96.-** The Institute shall maintain a register of natural and legal persons involved in publishing activities on an ongoing or intermittent basis.

**Article 97.-** The Institute may assign International Standard Book Numbers even if the applicant does not have the catalog card information, but the publisher shall provide that information within six months of the date of assignment of the Number.

**Article 98.-** The International Standard Book Number assigned to a particular title or edition of a title shall appear printed in the publication on the reverse of the title page, on the legals page or in a visible place.

### **CHAPTER III THE INTERNATIONAL STANDARD SERIAL NUMBER**

**Article 99.-** The International Standard Serial Number is the identification which, in accordance with international custom, is given to a title or a publication that appears in successive or periodic parts, may include numerical or chronological designations and is intended to be published indefinitely.

**Article 100.-** The International Standard Serial Number is formed of eight digits divided into two groups of four, separated by a hyphen, which include a check digit that allows the serial publication to be identified, whether or not it is still being published and irrespective of its place of origin, language or content. The set of digits must be preceded by the letters ISSN.

**Article 101.-** Only the following may have an International Standard Serial Number:

- I. printed matter or brochures that are published periodically;
- II. microform periodical publications;
- III. periodical publications in special languages for the disabled;
- IV. mixed media periodical publications;
- V. periodical publications recorded on phonograms;
- VI. machine-readable tapes designed for producing lists, provided that they are published periodically; and
- VII. other similar media for periodical publications, including audiovisual media.

**Article 102.-** The International Standard Serial Number shall appear in the top right-hand corner of the title page or cover of each issue of the serial publication or in a visible place.

**TITLE X  
THE NATIONAL COPYRIGHT INSTITUTE**

**SOLE CHAPTER**

**Article 103.-** The Institute, as the administrative authority for copyright matters, shall have the following powers:

- I. protecting copyright and related rights pursuant to national legislation and the international agreements and treaties signed and ratified by Mexico;
- II. promoting the creation of intellectual works through the holding of competitions, contests or exhibitions and the awarding of prizes and other forms of recognition that encourage creative activity by authors;
- III. promoting international cooperation through the exchange of administrative and legal experience with institutions responsible for the registration and legal protection of copyright and related rights;
- IV. administering, supervising and maintaining the Registry;
- V. preserving and protecting the cultural heritage registered with the Registry;
- VI. liaising with various public and private institutions, national, foreign and international, with regard to action aimed at promoting and protecting copyright and related rights, encouraging and developing cultural creations and disseminating popular cultures;
- VII. providing information and engaging in technical and legal cooperation, as required by federal authorities;
- VIII. encouraging the culture industry to participate in the development and protection of copyright and related rights;
- IX. receiving applications for reservations and, where appropriate, granting them;
- X. substantiating administrative declarations of cancellation and invalidity;
- XI. intervening in disputes that arise with regard to rights protected by the Law, in accordance with the settlement and arbitration procedures established by the Law;
- XII. appointing experts when requested to do so, pursuant to the Law;
- XIII. issuing technical rulings as required by the Judiciary, the Federal Public Prosecutor's Office or an arbitration panel;
- XIV. substantiating and settling applications for judicial review;
- XV. disseminating information and rendering service to the public in matters of copyright and related rights;
- XVI. disseminating works of popular art and craft;

- XVII.** participating in specialized human resources training through the formulation and implementation of training programs;
- XVIII.** authorizing and terminating, where appropriate, the operation of societies;
- XIX.** collaborating in and supporting negotiations on the substantive aspects of copyright and related rights in the international treaties and agreements that contain provisions in that regard;
- XX.** participating, in coordination with the competent departments of the Secretariat, in administrative negotiations that fall within the scope of its powers; and
- XXI.** other such powers as may be granted under the Law and these Regulations.

The Institute may issue clarifications and interpretations at the request of a competent authority and provide guidance to individuals in response to inquiries about the administrative application of the Law and these Regulations; however, if the response to such inquiries entails the substantive settlement of a possible dispute between individuals, the interpretation of the provisions of the Law and these Regulations shall fall within the competence of the federal courts.

**Article 104.-** The secondment and internal organization of the Institute's administrative units and the distribution of the powers provided for in the Law shall be established in the Institute's Rules of Procedure.

**Article 105.-** The Director-General shall be responsible for representation and for dealing with, processing and ruling on matters that fall within the Institute's competence; in order better to coordinate and carry out the work, he may delegate powers to subordinate public servants.

**Article 106.-** The Director-General of the Institute shall have the following powers:

- I.** representing the Institute;
- II.** the technical and administrative management of the Institute;
- III.** drafting the Institute's Rules of Procedure and the relevant procedural handbooks and submitting them to the Secretariat for approval;
- IV.** proposing annual programs of activities to the Secretariat;
- V.** making proposals to the Secretariat for the appointment and dismissal of the Institute's departmental directors;
- VI.** proposing the conclusion of such agreements and contracts as may be necessary for the performance of the Institute's functions and, where appropriate, drafting the relevant texts;
- VII.** proposing and publishing tariffs for the payment of royalties, as referred to in Article 212 of the Law; and
- VIII.** other such powers as may be conferred by this instrument and other legal provisions.

**Article 107.-** In the event of the Director-General's temporary absence or incapacity, the matters falling within his competence shall be dealt with by the relevant departmental director, in accordance with the Institute's organizational handbook. The departmental directors shall be replaced in turn by

their immediate hierarchical subordinates, in accordance with the competence of each, or by a person determined by the Director-General.

## **TITLE XI COLLECTIVE MANAGEMENT OF RIGHTS**

### **CHAPTER I REPRESENTATION**

**Article 108.-** Agents or the society, as appropriate, may exercise only those rights the administration or management of which has been expressly conferred on them.

If a mode of exploitation is omitted from the power of attorney granted to the society or the agent, the exercise thereof shall be reserved for the author or the owner of the right.

**Article 109.-** Under Article 196 of the Law, in order to be an agent, an application must be submitted in order to obtain the Institute's authorization, which shall be granted where the applicant has not been convicted of any premeditated economic crime. Once the application has been filed, the Institute shall have 15 days in which to accept or reject it.

**Article 110.-** Once the application has been accepted, the Institute shall, as appropriate, issue the official letter of authorization within 30 days, and the agent shall be authorized to carry out the individual administration of copyright and related rights.

**Article 111.-** The power of attorney referred to in Article 196 of the Law shall:

- I. state the powers conferred on the agent, with express reference to each of the modes of exploitation that he is responsible for administering;
- II. include an express prohibition on substitution or delegation;
- III. be in force;
- IV. include accountability mechanisms for each of the rights conferred on the agent;
- V. provide for appropriate remuneration; and
- VI. mention that the power of attorney may be revoked at any time.

**Article 112.-** Special power of attorney shall apply only to the collection of payments for and administration and defense of the modes of exploitation indicated in the power of attorney. Agents may not, under any circumstances or for any reason, carry out other activities reserved under the Law for societies.

The agent shall fulfill all the obligations for which societies are responsible insofar as they are applicable.

**Article 113.-** The agent shall notify the Institute immediately in writing of each principal with whom he is connected within 30 days of the granting of the relevant power of attorney; failure to do so shall result in revocation of the authorization granted.

**Article 114.-** The Institute shall keep a record both of authorized agents and of the principals with whom they are connected, which may be consulted freely.

## **CHAPTER II COLLECTIVE MANAGEMENT SOCIETIES**

**Article 115.-** Authors, owners of related rights and their successors in title, whether Mexican or foreign nationals, may join societies, subject to the restrictions set out in the Law and in these Regulations.

**Article 116.-** Persons entitled to join a society may belong to one or more societies, in accordance with the variety of economic rights that they own.

**Article 117.-** Societies may not in any way restrict the contractual freedom of their members.

**Article 118.-** The Institute shall authorize societies to act for the defense of the rights and prerogatives of authors or owners of related rights and their successors in title, in accordance with the following:

- I. the branch or category of creation of works;
- II. the category of owners of related rights; and
- III. the mode of exploitation, where a number of different categories of creation of works or of owners of related rights are involved, and provided that this is justified by the nature of the rights managed by the society.

**Article 119.-** In order to obtain authorization to operate a society, an application shall be filed in writing, to which shall be attached:

- I. the draft charter and statutes of the society, which shall:
  - (a) be consistent with the Law;
  - (b) mention the branch or categories of creation whose authors and owners it represents or the category or categories of owners of related rights that belong to it; and
  - (c) refer to the society's governing, administrative and monitoring bodies and indicate the names of the persons who belong to them;
- II. a list of initial members;
- III. the catalogs of works administered by the society, as appropriate; and
- IV. a sworn statement by the applicant with regard to the information contained in the application.

**Article 120.-** Once the application has been filed, the Institute shall have 30 days in which to analyze the documentation provided and to verify that it is consistent with the provisions of the Law and these Regulations, and may accept or reject it or contact the applicant with advice.

If, on examination of the statutes and other documents accompanying the application, rectifiable errors are found to have been made, the Institute shall advise the applicant in writing to rectify the

errors identified within 30 days. That period may be extended at the reasoned request of the applicant for up to a further three periods of equal length. If the deadline expires without the applicant having acted on the advice, the application shall be deemed to have been withdrawn.

Once the application has been accepted or, where appropriate, the errors have been rectified, the Institute shall issue the appropriate decision within 30 days.

**Article 121.-** Once authorization has been granted, the interested party shall, within 30 days, have the charter notarized by a notary public. Once the charter is notarized, he shall register the charter and the statutes of the society with the Registry within an equal period of time. If the deadlines indicated expire without the aforementioned action having been taken, the society's authorization to operate shall be deemed invalid.

Once the application has been filed, the Registry shall have 30 days in which to effect the registration.

**Article 122.-** The statutes of the society shall be proposed freely by the assembly but shall nonetheless be consistent with the provisions of the Law and shall contain rules governing:

- I. the lifetime of the society;
- II. the administration of members;
- III. the exclusion of members; and
- IV. the dissolution of the society.

**Article 123.-** The society shall be organized and shall function in accordance with the following rules:

- I. the general assembly shall meet in ordinary session at least twice a year;
- II. the assembly shall meet in extraordinary session when:
  - (a) it is convened by the administrative body;
  - (b) it requests the administrative body to convene an extraordinary session on the basis of one third of the total number of votes, calculated in accordance with the Law and these Regulations and the statutes of the society; or
  - (c) it is convened by the monitoring body;
- III. the statutes shall specify the number of members of the administrative and monitoring bodies; and
- IV. minorities that account for at least 10 per cent of the votes shall be entitled to be represented in that proportion in the monitoring body.

**Article 124.-** Ordinary and extraordinary assembly sessions shall be held in accordance with the following rules:

- I. they shall be convened by the administrative body or the monitoring body, as appropriate;



- II. the official announcement of the holding of the assembly shall be published on a single occasion in the Official Gazette and for two consecutive days in two widely circulated newspapers, at least 15 days in advance of the date on which the assembly is to be held;
- III. for an assembly to be deemed legally constituted, at least 51 per cent of the total number of voting members shall be present;
- IV. if the assembly cannot meet on the appointed day owing to lack of a quorum, a second official announcement shall be issued and published in the same form, indicating the circumstances, and the assembly shall be held at least 10 days later, irrespective of the number of votes represented; and
- V. resolutions legally adopted by the assembly shall be binding on all members, even those absent or voting against. Where assembly resolutions are contrary to the Law, these Regulations or the statutes, members may challenge them in the courts within 30 days of their adoption.

**Article 125.-** For the purposes of Article 206 of the Law, the provisions relating to limited companies shall be applicable to the society, as appropriate.

**Article 126.-** The provisions of Article 198 and the second paragraph of Article 200 of the Law relating to the principle of reciprocity shall be applicable without prejudice to the provisions of Articles 7 and 8 of the Law.

**Article 127.-** The society shall prepare an annual expenditure budget, which shall not exceed the percentages that, in accordance with Article 205, Subparagraph XI of the Law, are established in its statutes.

**Article 128.-** Once authorized, the society may use any name, provided that it is authorized by the Secretariat of Foreign Affairs and does not cause confusion with another name; in any case, the name must be followed by the phrase "Collective Management Society" or the abbreviation "CMS".

**Article 129.-** The report referred to in Article 203, Subparagraph VII of the Law shall be submitted in writing to the general assembly at the first ordinary session of each year and shall be made available to members on request.

**Article 130.-** The society, through its administrators, shall make available to members and users the lists containing the names of the owners of economic rights that it represents and, where appropriate, shall inform members of the amount of royalties collected on their behalf or pending payment.

**Article 131.-** Any member may report suspected irregularities in the administration of the society to the monitoring body in writing; the monitoring body shall mention such irregularities in its reports to the general assembly and shall accordingly prepare such conclusions and proposals as it may deem appropriate.

**Article 132.-** The members of the society's administrative and monitoring bodies shall bear joint liability with their predecessors under civil and criminal law for irregularities committed by their predecessors if they knew about them and did not report them to the general assembly or the competent authority.

**Article 133.-** The Institute may, *ex officio* or at the request of a party, revoke the society's authorization to operate in the cases provided for in Article 194 of the Law.

**Article 134.-** The requests for reports, inspections and audits referred to in Article 207 of the Law shall be subject to the following formalities:

- I. the reports required by the Institute from the society's administrative body shall be submitted within a period of 30 days; in the cases provided for in Article 194 of the Law, the period shall be three months;
- II. the Institute may carry out inspection visits in order to verify the society's fulfillment of the obligations established by the Law, these Regulations and its statutes;
- III. where the information provided or the inspection visit carried out brings to light probable infringements in the handling and distribution of the society's resources or those of its members, the Institute may order audits, by written agreement, with a view to checking the society's financial and accounting situation;
- IV. audits shall be carried out during working days and hours, under the society's supervision, by persons authorized by the Institute, which may, where the circumstances so justify, authorize audits to be carried out during non-working days and hours;
- V. the persons dealing with the audit on the society's behalf shall provide every kind of facility and such books and other documentation as are required for the procedure; and
- VI. once the audit is completed, the persons commissioned to conduct it shall prepare a report on the outcome of the procedure, which shall be evaluated by the Institute with a view to determining appropriate measures in accordance with the applicable legal provisions.

**Article 135.-** Anyone who recklessly institutes proceedings for revocation of the society's authorization to operate shall be liable for any damage and harm caused.

**Article 136.-** The reporting requirements and the carrying-out of inspection and audit visits shall not be subject to appeal until a final ruling has been issued on the substance of the matter.

## TITLE XII DISPUTE SETTLEMENT

### CHAPTER I GENERAL PROVISIONS

**Article 137.-** In the event of any infringement of the rights and prerogatives established by the Law, the affected party shall be entitled to bring the appropriate civil, criminal or administrative action.

*Article amended: Official Gazette September 14, 2005*

**Article 138.-** The filing of actions under the Law shall not affect the right to institute other proceedings pursuant to the Law, the Federal Civil Code, the Commercial Code, the Law on Industrial Property or, where appropriate, the applicable ordinary law, or the right to file criminal reports or charges.

*Article amended: Official Gazette September 14, 2005*

### CHAPTER II SETTLEMENT PROCEDURE

**Article 139.-** The administrative procedure known as settlement shall be initiated with the Institute by means of a written submission containing the following information:

- I. the name of the applicant or of his representative, if any;
- II. the address for service and receipt of notifications;
- III. the name and address of the person or persons against whom the complaint is filed, or of their representatives;
- IV. a brief account of the grounds for the complaint, expressed in clear and precise terms;
- V. the documents necessary to attest the applicant's legal status;
- VI. a copy of the initial submission and the attachments thereto for each of the persons against whom the complaint is filed;
- VII. a copy of the relevant proof of payment of fees; and
- VIII. the date and signature.

**Article 140.-** On receipt of the initial submission and the attachments thereto, the Institute shall, within 10 days, inform the person or persons against whom the complaint has been filed by means of a summons, granting them 10 days in which to respond and indicating a date for the holding of the settlement meeting. The summons shall contain the warning referred to in Article 218, Subparagraph III of the Law.

The parties shall be informed of the summons referred to in the present Article personally or by certified mail with confirmation of receipt.

A lack of response from the party or parties against whom the complaint has been filed shall not prevent the holding of the settlement meeting.

The response may be submitted at the time of the settlement meeting, where this falls within the 10 days following the filing of the initial submission.

**Article 141.-** If, at the end of the settlement procedure, the parties have not reached an agreement and have not applied for arbitration proceedings, the Institute shall make a note accordingly in the record of the settlement meeting, and the parties shall remain entitled to exercise their rights in the ways and means that best serve their interests.

**Article 142.-** The Institute may at any time propose solutions to the conflict of interests between the parties, provided that neither party objects; such proposal of the Institute shall not constitute a statement on the de facto or de jure situations existing between the parties.

### **CHAPTER III ARBITRATION**

**Article 143.-** When the Institute prepares the list of arbitrators referred to in Article 221 of the Law, it shall have the written consent of the persons on the list and a sworn written statement from them that they meet the requirements of Article 223 of the Law.

**Article 144.-** The parties may appoint as an arbitrator a person not included on the list of arbitrators referred to in the previous Article; in that case, the person appointed must comply with the provisions of that Article.

**Article 145.-** In order to ensure that the arbitration panel is always composed of an odd number of members, the Institute may, in accordance with Article 222 of the Law, appoint an arbitrator where necessary.

**Article 146.-** In the event of the permanent or temporary absence of an arbitrator, a replacement shall be appointed in the same manner as his predecessor, within 10 days of the date on which the arbitration panel learned of the absence. If no such appointment is made, the Institute shall make the appointment.

**Article 147.-** The period referred to in Article 224 of the Law may be extended by agreement between the parties.

**Article 148.-** The Institute shall be obliged to assist the arbitration panel with notifications, monitoring of the proceedings and any merely procedural matters relating to the arbitration.

**Article 149.-** A record shall be kept at the Institute of all actions carried out during the arbitration proceedings. The arbitration panel shall be obliged to submit a copy of such records and of writings, evidence and other documents and records relating to the proceedings.

The file that is established at the Institute shall be considered the original for the purposes of any certification requested by the parties and the enforcement of the relevant award.

**Article 150.-** Any decision or award by the arbitration panel shall be issued by a majority of the votes. With regard to merely procedural matters, the arbitration panel may authorize the presiding arbitrator to carry them out himself.

**Article 151.-** The arbitration panel shall notify the Institute of the award, and the Institute shall notify the parties within five days. Where the award is not signed by an arbitrator, the reason for the absence of a signature must be given.

**Article 152.-** The Institute shall publish annually, by agreement published in the Official Gazette, the tariff for proceedings, together with the list of arbitrators.

The tariff shall cover expenses relating to the notification, substantiation and monitoring of proceedings, and also the arbitrators' fees.

The fees payable to all the arbitrators shall be equal.

**Article 153.-** Expenses relating to witnesses and experts shall be paid by the party that calls the witnesses and experts; additional expenses relating to arbitration shall be settled in accordance with the tariff.

**Article 154.-** The parties shall agree, at the start of the proceedings, what authority the panel has to order the payment of expenses and costs or how they are to be distributed.

**Article 155.-** The arbitration panel may not charge additional fees for clarifications, corrections or additions to the award.

**TITLE XIII  
ADMINISTRATIVE PROCEEDINGS**

**CHAPTER I  
COPYRIGHT INFRINGEMENTS**

**Article 156.-** The prosecution of copyright infringements under administrative law may be initiated *ex officio* or at the request of a party in the cases referred to in Article 229 of the Law.

**Article 157.-** The complaint must be filed with the Institute in a written submission containing:

- I. the name of the plaintiff and of his representative, if any;
- II. the address for service and receipt of notifications;
- III. the name and address of the suspected infringer, where appropriate;
- IV. a description of the infringement of the Law or of these Regulations;
- V. a brief account of the grounds for the complaint, expressed in clear and precise terms;
- VI. the law applicable to the case;
- VII. documents attesting the plaintiff's legal status;
- VIII. the documents on which the complaint is based and relevant evidence;
- IX. proof of payment of fees; and
- X. the date and signature.

Once the complaint has been filed, the Institute shall have 15 days in which to accept or reject it.

**Article 158.-** At the time of filing of the complaint, the interested party may request the competent authority to take one of the measures aimed at preventing or averting the infringement of copyright or related rights and institute the relevant proceedings.

**Article 159.-** On submission of the complaint, the Institute shall inform the suspected infringer so that he may respond and submit evidence in his defense within 15 days.

Once that deadline has passed, or sooner if the suspected infringer has responded, the Institute shall set a date for the hearing of evidence and arguments within 10 days.

When the evidence has been presented and the arguments heard, the Institute shall issue a decision within 15 days of the hearing.

**Article 160.-** Anyone who recklessly institutes such administrative proceedings shall be liable for any damage and harm caused.

**CHAPTER II**  
**APPLICATIONS FOR REPORTS, INSPECTION VISITS AND**  
**PRECAUTIONARY AND GUARANTEE MEASURES**

**Article 161.-** The Institute shall be responsible for inspection and monitoring in order to check compliance with the Law and these Regulations; for that purpose, it shall have the power to request reports and information.

**Article 162.-** All persons shall be obliged to provide the Institute, within 15 days, with such reports and information as are requested of them in writing in connection with their compliance with the Law and these Regulations.

**Article 163.-** The owners or managers of the following types of establishment shall be obliged to allow access by the Institute's staff who are commissioned to carry out inspection visits:

- I. establishments in which copyright, related rights or reservations of rights are exploited;
- II. establishments in which copies of books, phonograms, videograms, computer programs or reproductions of images of a person are printed, published, produced, manufactured, stored, distributed, sold, reproduced, imported, exhibited, communicated, performed, transmitted or offered for sale;
- III. establishments in which any other type of fixation of literary or artistic works is used; or
- IV. establishments in which acts are carried out that in any way make it possible to obtain a device or system the purpose of which is to deactivate the electronic protection devices of a computer program.

**Article 164.-** Owners of copyright and related rights, their representatives and the societies to which they have entrusted the administration of their rights, and also the owners of reservations for exclusive use, may request the competent judicial authority to take the precautionary measures provided for in the Federal Code of Civil Procedure.

**Article 165.-** The party requesting precautionary or guarantee measures shall be liable for the payment of damages to the person against whom such measures are carried out, pursuant to Article 393 of the Federal Code of Civil Procedure, where:

- I. a measure is requested but the request was not submitted within the period specified in the Law;
- II. a measure is requested but the required security has not been provided; and
- III. the final executory judgement states that there has been no infringement or threat of infringement of the rights of the party requesting the measure.

**CHAPTER III**  
**TARIFFS**

**Article 166.-** The tariffs referred to in Article 212 of the Law shall provide a basis for agreement between the parties on the payment of royalties and shall constitute objective criteria for the quantification of damages by the judicial authorities.

**Article 167.-** Applications to initiate the procedure for the establishment of tariffs for the payment of royalties shall contain:

- I. the name and address of the society filing the application or, where applicable, those of the chamber, group or association of users, and also those of the person on whose behalf the application is filed and documents attesting his legal status;
- II. the name and address of the chamber, group or association of users or, where applicable, those of the society or societies to which the tariff would apply;
- III. the mode of exploitation and the type of establishments to which the tariff will apply;
- IV. the facts and points of law on which the proposed tariff is based; the tariff shall:
  - a) be based on objective criteria that can be determined by means of a simple arithmetic operation;
  - b) establish, in the case of modes of exploitation in which different classes of owners of copyright and related rights participate, the share of the overall tariff to be allocated to each class of owners; and
  - c) state the information, objective criteria or, where applicable, established practices that provide the basis for calculation of the payment to be made by the various categories of users to whom the tariff applies; and
- V. details of the system or means of distributing to members the sums collected by the society or, where applicable, the chamber, group or association of users to whom the tariff applies.

*Subparagraph amended: Official Gazette September 14, 2005*

*Subparagraph amended: Official Gazette September 14, 2005*

*Subparagraph added: Official Gazette September 14, 2005*

**Article 168.-** Once the application has been received, the Institute shall notify the chamber, group or association of users or society in question so that it may, within 30 days, make whatever statement best serves its interests in connection with the proposed tariff.

**Article 169.-** The chamber, group or association of users or, where applicable, the society in question may prepare a counter-proposal on the basis of Article 167, Subparagraph IV of these Regulations.

**Article 170.-** The Institute shall analyze and evaluate the proposals in accordance with the second paragraph of Article 212 of the Law.

If the proposals are reconcilable, the Institute shall, *ex officio*, adjust the parties' positions and shall propose such provisional tariff as it deems appropriate by means of publication in the Official Gazette.

When the tariff is published, the Institute shall grant the interested parties a period of 30 days in which to make whatever statement best serves their interests.

Once that period has expired, if there is no objection, the Institute shall propose a final version of the tariff by means of publication in the Official Gazette.

**Article 171.-** If there is any objection, the Institute shall receive the objectors' proposals, which shall comply with the provisions of Article 167, Subparagraph IV of these Regulations.

**Article 172.-** Once the proposals referred to in the previous Article have been received, the Institute shall analyze them and, in accordance with the third paragraph of Article 212 of the Law, shall publish the appropriate proposed tariff as a final version.

**Article 173.-** The tariffs issued by the Institute shall provide that the proposed amounts are to be increased on January 1 and July 1 each year by the same amount by which the National Consumer Price Index published each month by the Bank of Mexico increased in the six months immediately before.

## **TITLE XIV INFRINGEMENTS OF A COMMERCIAL NATURE**

### **SOLE CHAPTER**

**Article 174.-** The Mexican Industrial Property Institute shall be the competent authority to hear proceedings relating to infringements of a commercial nature, in accordance with the powers conferred on it by the Law, the Law on Industrial Property and the Customs Law.

**Article 175.-** For the purposes of the Law and these Regulations, "commercial and industrial scale" shall mean commercial transactions as defined in Article 75, Subparagraphs I and II of the Commercial Code.

**Article 176.-** Applications for an administrative declaration of an infringement of a commercial nature shall be accompanied, where appropriate, by an ordinary copy of the certificate or record of registration with the Registry.

**Article 177.-** Measures adopted by the Mexican Industrial Property Institute may, without prejudice to the provisions of Articles 199 and 212*bis* of the Law on Industrial Property, be applied to:

- I. copies of works, molds, printing blocks, sheets, books, periodical publications, phonograms and videograms and, in general, instruments and objects manufactured, produced or distributed in violation of the Law or these Regulations;
- II. objects, wrappers, containers, packaging, stationery, advertising material in any medium or similar articles directly or indirectly related to the objects referred to in the previous subparagraph;
- III. advertisements, signs, labels, stationery and similar objects that refer directly to any of the objects mentioned in subparagraph I of the present Article and that infringe one of the rights protected by the Law or these Regulations;
- IV. implements, instruments, materials, equipment, supplies and components used in the manufacture, preparation, production, storage, circulation or distribution of any of the objects referred to in the previous subparagraphs; and
- V. any other object that may provide evidence.



An order to suspend or cease suspected infringements of a commercial nature may apply to the representation, recitation, public performance, broadcast, transmission, communication to the public through telecommunication networks or any other form of use or exploitation of copyright, related rights, reservations of rights, image of a person, and also any other act that makes it possible to obtain a device or system, the purpose of which is to deactivate the electronic protection devices of a computer program.

Guarantee measures may apply to merchandise, products and any other goods involved in the infringements set out in Article 231 of the Law.

**Article 178.-** Inspection visits by staff commissioned by the Mexican Industrial Property Institute shall be carried out by agreement with the owner of the establishment or his legal representative or, in the absence of those persons, with the manager of the establishment.

For the aforementioned purposes, the person with whom the visit is agreed shall be considered the manager.

**Article 179.-** Inspection visits shall be carried out, without prejudice to the provisions of Articles 206 and 207 of the Law on Industrial Property, in the places referred to in Article 163 of these Regulations and in any other establishment in which any activity takes place that could result in one of the infringements set out in Article 231 of the Law.

**Article 180.-** Where, in proceedings relating to administrative infringements of a commercial nature, applications or requests from natural persons are submitted by an accredited agent through a simple power of attorney, the Mexican Industrial Property Institute may request confirmation thereof.

In the case of legal persons, the general power of attorney for litigation and collection of payments shall also be submitted or, where appropriate, the certificate issued by the Registry specifying that power.

**Article 181.-** Where the Mexican Industrial Property Institute initiates any proceedings relating to administrative infringements of a commercial nature, it shall notify the Institute so that it may make the relevant note in the Register or in the relevant file. The notice shall be accompanied by a copy of the application for an administrative declaration.

Once notice has been given, the Institute shall inform the Mexican Industrial Property Institute of the margin notes resulting from administrative or judicial proceedings that are in the Registry's records or in a reservation of rights, and also those of which it becomes aware following the issuance of said notice that may affect the substance of the administrative declaration proceedings for an infringement of a commercial nature.

**Article 182.-** Anyone who seeks the application of any of the provisional measures provided for in Article 199*bis* of the Law on Industrial Property against two or more suspected infringers may provide a single security to cover any damages that may be payable to those affected by the measure. In order to determine the measure, the Mexican Industrial Property Institute shall set the amount to be considered for each of the suspected infringers and shall make a note accordingly in the relevant file.

**Article 183.-** Parties shall be notified of procedural decisions issued in proceedings relating to an infringement of a commercial nature by means of lists prepared by the Mexican Industrial Property Institute; such decisions shall take effect on the day following their publication. The same rule shall

apply to default proceedings and to those cases in which the suspected infringers do not provide an address for service and receipt of notifications.

Final decisions shall be published in the Industrial Property Gazette and shall take effect on the day following the Gazette's release.

The Mexican Industrial Property Institute may give notice, by means of publication in the Industrial Property Gazette, of procedural decisions and any information on administrative declaration proceedings relating to infringements of a commercial nature.

**Article 184.-** In proceedings involving two or more suspected infringers, or in those in which it is not possible to determine the exact number thereof, the Mexican Industrial Property Institute may issue a separate final decision for each of the suspected infringers, provided that there is no evidence to be processed. A decision issued in respect of one suspected infringer shall not affect the right of the others to continue with the administrative proceedings.

### **TRANSITIONAL PROVISIONS**

**ONE.-** The present Regulations shall enter into force on the day following their publication in the Official Gazette.

**TWO.-** The Regulations for the Recognition of Exclusive Rights of Authors, Translators and Publishers, published in the Official Gazette on October 17, 1939, and all other administrative provisions that are contrary to the present Regulations are hereby repealed.

**THREE.-** Tariffs issued for the payment of royalties shall remain in force until the Institute proposes new ones.

**FOUR.-** The Secretariat shall issue the Institute's organizational and procedural handbooks within a period of 90 days.

**FIVE.-** The Registry shall keep all files and documents from Societies of Authors that were registered under the previous Law, but may not register any new documents from those societies and shall be reserved solely for the collective management societies established under the current Law.

**SIX.-** Professionals who provided their services to societies of authors established under the previous Law who wish to act as arbitrators may not do so until the period established under the current Law for those who act or have acted as arbitrators in collective management societies has expired.

Done at the Headquarters of the Federal Executive in Mexico City, Federal District, on May 15, 1998.  
– **Ernesto Zedillo Ponce de León.** – Initials. – Secretary of Public Education, **Miguel Limón Rojas.**  
– Initials. – Secretary of Trade and Industrial Development, **Herminio Blanco Mendoza.** – Initials.

## TRANSITIONAL ARTICLES OF DECREES OF AMENDMENT

### **DECREE amending and supplementing various provisions of the Regulations under the Federal Copyright Law**

Published in the Official Gazette of the Federation on September 14, 2005

**SOLE ARTICLE.** – Articles 9, 10, 31, 50, 51, 137, 138 and 167, Subparagraph IV of the Regulations under the Federal Copyright Law are hereby amended; and Article 1, second paragraph, Articles *12bis*, *31bis*, *31ter*, *31quater*, and 167, Subparagraph V are hereby added, as follows:

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### **TRANSITIONAL PROVISIONS**

**ONE.-** The present Decree shall enter into force on the day following its publication in the Official Gazette of the Federation.

**TWO.-** All provisions that are contrary to the present Decree are hereby repealed.

Done at the Headquarters of the Federal Executive in Mexico City, Federal District, on September 9, 2005. – **Vicente Fox Quesada.** – Initials. – Secretary of Economy, **Fernando de Jesús Canales Clariond.** – Initials. – Secretary of Public Education, **Reyes Silvestre Tamez Guerra.** – Initials.