

## THE SECRETARY OF PUBLIC EDUCATION

DECREES amendments and additions to various provisions of the Regulations under the Federal Copyright Law

In the margin, a stamp bearing the national coat of arms, reading: Mexico – Presidency of the Republic.

I, VICENTE FOX QUESADA, President of Mexico, by virtue of the powers invested in me under Article 89(I) of the Political Constitution of Mexico, and based on the provisions of Articles 13, 34 and 38 of the Organic Law on Federal Public Administration, issue the following:

### DECREE AMENDING AND ADDING TO VARIOUS PROVISIONS OF THE REGULATIONS UNDER THE FEDERAL COPYRIGHT LAW.

**ARTICLE ONE.-** Amend Articles 9, 10, 31, 50, 51, 137, 138 and 167(IV) and add Articles 10 with a second paragraph, 12bis, 31bis, 31ter, 31 quarter and 167(V) to the Regulations under the Federal Copyright Law, to read as follows:

**“Article 1.-** ...

The provisions of the Law and these Regulations shall apply without prejudice to the provisions of the international treaties concluded and ratified by Mexico.

**Article 9.-** The payment of royalties to the author, to the holders of related rights, or to their successors, shall be made independently for each one who is entitled thereto, separately and according to the exploitation procedure in question, directly, via an agent or through collective management societies.

**Article 10.-** Royalties for the communication, public transmission, making available to the public, execution, exhibition or public performance of literary or artistic works, as well as performances, phonograms, videograms, books or broadcasts, made directly or indirectly for profit, shall be generated for the authors, holders of related rights or their successors.

**Article 12 bis.-** For the purposes of the provisions of Article 131(III) of the Law, the authorization or prohibition of the distribution of phonograms through signals or broadcasts shall include the making available to the public or public communication of the phonograms in any form whatsoever, as well as their public access by means of telecommunications.

The forms of making available to the public or public communication shall include broadcasts by electronic means, through the electromagnetic spectrum and wire and wireless telecommunications networks.

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

Copies of a series made by the author who passed away before signing them may be signed by the surviving spouse or, failing this, by blood relatives of the first degree, provided that they hold the economic rights in the said works. If there are several such persons, they shall designate one person from among their midst.

**Article 31 bis.** – For the purposes of the provisions of Article 92 bis of the Law, works of three-dimensional arts shall be understood as any artistic creations of a sculptural or visual nature, fixed on a flat or three-dimensional surface, and shall include the pictorial or sculptural branches and drawings.

**Article 31 ter.**- To ensure compliance with the obligations stemming from Article 92 bis of the Law, the following provisions shall apply:

- I. Auctioneers, owners of trading establishments, traders or commercial agents shall keep in the form of a deposit the amount retained until delivery to the author, his/her successors in title or the corresponding collective management society, or when the corresponding remittance is made to the competent authority.

The forms, terms and amounts of remuneration for the role of depositary shall be subject to the provisions concerning the rate set by the Institute or, as the case may be, to the terms of the contract concluded by the interested parties or, failing this, to customary practice on the market on which the deposit was constituted.

Administrative expenses due to the nature of the depositary shall be deducted from the same amount deposited. In any event, the term for establishing the start of the time from which expenses shall be deemed to run shall be based on reliable notification of resale.

- II. Notifications to collective management societies or, where appropriate, to the authors or their successors of the resale of the works of three-dimensional or photographic arts or original manuscripts of literary or artistic works shall be made in writing and shall contain at least the name of the author, the title of the work, the place and date of resale, full particulars of the reseller and the price of the resale, accompanied by a copy of the invoice or legal document allowing verification of the information and the effective execution of liquidation.

Notification shall take effect in accordance with the applicable legal provisions, and in any event an acknowledgement of receipt must be obtained from the interested party or proof that the resale information has been sent or transmitted.

In cases where there are no particulars to identify the author or his location, to ensure his notification, the auctioneers, owners of trading establishments, traders or commercial agents shall affix, in a visible place accessible to the public in the trading establishment where the resale took place, a notice containing the title of the work,

the price of the resale, the date of adjudication or resale and, where appropriate, the particulars of the author.

The corresponding collective management societies may, directly or at the request of the auctioneers, owners of trading establishments or commercial agents, provide annually a list of all of their members in relation to their registered works, accompanied by a copy of the document accrediting the mandate given by the author empowering it to collect the corresponding fee on his behalf. This information may include revenue derived from the mutual representation agreements concluded by the collective management society.

The term of two months for notification of resale shall run from the day following the effective date of the receipt of the resale price in full, unless otherwise agreed or expressly stipulated in the corresponding fee.

- III. To recover the amount corresponding to the fee, the interested parties shall submit the documents proving they are the authors or their successors in title; in the case of collective management societies, they shall supply the proof provided for by the Law.

Auctioneers, owners of trading establishments, traders or commercial agents shall deliver the amount in cash to the author or his successors in title that was agreed as the fee corresponding to the resale price and, where appropriate, shall provide the necessary information for liquidation.

The author or his successors may require all necessary information for the settlement of the amounts due by virtue of the commission corresponding to the resale of works of three-dimensional or photographic arts or original manuscripts of literary or artistic works. In the event that the interested party unreservedly accepts the payment for the fees to which he is entitled, it shall be assumed that there are no apparent defects.

The auctioneers, owners of trading houses or commercial agents and the interested parties may agree on the terms and conditions of the payments corresponding to the fees to which they are entitled, taking the rate fixed by the Institute as a basis.

Collective management societies which receive payments in this capacity shall mention it in the reports required by the Institute under the law.

- IV. The collective management societies may receive notifications of resale, even if they do not have the respective representation, with the information mentioned in subparagraph II of this Article, with the obligation to keep it, make it available to the respective holders as necessary or as required and to affix the corresponding notices, including by electronic means, in a visible place on their premises that is accessible to the public.

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

- V. With a view to facilitating the exchange of information and the collection of the fees to which they are entitled, authors, their successors in title or collective management societies may conclude agreements or accords with auctioneers, owners of trading establishments, traders or commercial agents.

**Article 31 quater.-** The author or his/her successors in title may, through the Institute, request the necessary information to ensure payment of the fees for the resale of the works of three-dimensional or photographic arts or original manuscripts of literary and artistic works referred to in Article 92 bis of the Law, from auctioneers, owners of trading establishments, traders or commercial agents, who have been involved in the resale, and from the collective management societies which have received the corresponding notifications.

**Article 50.-** The exhaustion of the right referred to in the last paragraph of Article 118 of the Law covers only the exploitation procedures expressly authorized by the performers, provided that the corresponding moral rights are respected and that the users who use the material media for profit pay the respective fees.

The fixation, public communication or reproduction of the fixation of the performance effected, over and above the authorization granted, shall entitle the performer to oppose the act in question, in addition to demanding reparation for the material and/or moral damage, as well as compensation for damage.

**Article 51.-** Performers shall be entitled to demand compensation for damage to property and/or pain and suffering, as well as compensation for damage, when the use of a performance infringes the provisions of the Law.

**Article 137.-** Any violation of the rights and prerogatives established by the Law shall entitle the affected party to bring the appropriate civil, criminal or administrative proceedings.

**Article 138.-** The bringing of the actions provided for in the Law shall not affect the right to initiate other proceedings in accordance therewith, the Federal Civil Code, the Code of Commerce, the Industrial Property Law or, where appropriate, the applicable common legislation, as well as to lodge a criminal complaint or institute criminal proceedings.

**ARTICLE 167.-**

- I.

II.

III.

IV. De facto and de jure considerations on which the proposed fee is based, which shall:

(a) ...

(b) ...

(c) state the elements, objective criteria or, where appropriate, established practices which justify the calculation of the payment to be made by the various categories of users to which the fee applies; and

V. Specify the system or form in which the partners or members shall distribute the amounts collected by the society or, where appropriate, the chamber, group or association of users which profit by the fee.”

#### **TRANSITIONAL ARTICLES**

**ONE.-** This Decree shall enter into force on the day following its publication in the Official Journal.

**TWO.-** Any provisions opposed to this Decree are hereby repealed.

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