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EY LAW Flash

Changes in Intellectual Property regulations in Mexico under the new USMCA



The enactment of the Free Trade Agreement between Mexico, the United States of America and Canada (USMCA) has resulted in major changes in intellectual property regulations, and so on July 1, 2020, the date on which the USMCA came into force, amendments to the *Federal Copyright Law* and to the *Federal Criminal Code* were published in the Official Gazette. In addition, the new *Federal Law for Industrial Property Protection* has been enacted, superseding the former Industrial Property Law, which has been repealed.

The main modifications are as follows:

Reforms to the Federal Copyright Law (effective as of July 2, 2020):

- ▶ Holders of patrimonial rights (also known as monetary rights) may authorize or prohibit the exhibition, access and public availability of their work by technological means
- ▶ Addition of Chapter V "*Technological Protection Measures, Information on Rights Management and Internet Service Providers*" to Title IV "*Copyright Protection*" and incorporation of related sanctions
- ▶ Internet content must be removed upon request of a third-party when there is an infringement of copyright
- ▶ Incorporation of higher fines for copyright and commercial infringements, and for copyright violations contained in the law

Reforms to the Federal Criminal Code (effective as of July 2, 2020):

- ▶ Sanctions will be imposed on those who, without proper rights, receive or distribute an originally encrypted and encoded satellite signal carrying programs
- ▶ Sanctions will be imposed on those who manufacture, import, sell or lease a device or system to decrypt an encrypted satellite signal carrying programs, without authorization from the legitimate distributor of said signal
- ▶ Sanctions will be imposed as part of the actions undertaken against piracy and copyright infringement

Enactment of the Federal Law for Industrial Property Protection (effective 90 business days after its publication):

- ▶ The new law incorporates the possibility of submitting filings through the electronic services provided by the Mexican Institute of Industrial Property (IMPI)
- ▶ The IMPI may order the suspension or removal of digital content that violates trademarks or copyrights and combat illegal domain names
- ▶ The possibility of submitting multi-class applications has been introduced, covering in a single application different products or services of the Nice classification

- ▶ The law has introduced the possibility of requesting an extension on the term of a patent for the period that the IMPI unreasonably delays the granting of the patent and up to a maximum of 5 years
- ▶ The owner of a patent cannot undertake legal action against anyone who uses, manufactures, offers for sale or imports a product with a valid patent, exclusively for the purpose of generating tests, information and experimental production necessary to obtain health records of medicines for humans, which will help prevent delays in the development of generic drugs, once the patent expires
- ▶ The Law incorporates the possibility of filing a claim for compensation on the grounds of a violation of the industrial property rights regulated by the Law:

- (i) Before the IMPI, once the administrative procedure is completed
- (ii) Directly before the corresponding courts, in terms of the applicable legislation, and without the need for prior administrative declaration, provided that certain conditions are met

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