

Copyright on the Internet and Liability of Service Providers

What the proposed amendments to the Federal Copyright Law would do, who they reach, and what could change for companies and users.

Passed the Chamber of Deputies

Still in the legislative process.

IMPI fines

For providers that fail to comply.

Termination policy

Also for internet access providers.

The distribution of films, music, photographs, books, and other content on the internet may infringe copyright when carried out without authorization and outside the exceptions permitted by law. For example, this may occur when a person offers films through a subscription-based platform without holding the relevant rights or makes unauthorized copies of books available to the public.

Beyond the person distributing the content, a question arises: under what circumstances may the company providing the connection, hosting the files, or facilitating access also be held liable?

The proposed **amendments to the Federal Copyright Law (Ley Federal del Derecho de Autor)** seek to clarify these circumstances and establish fines that may be imposed by the Mexican Institute of Industrial Property (Instituto Mexicano de la Propiedad Industrial, or **IMPI**). They would also require companies providing internet access to have a policy for terminating service to repeat infringers.

Scope and Legislative Status

The bill was approved by the Chamber of Deputies and remains in the legislative process. The proposed amendments described herein remain subject to the outcome of that process and their potential publication in the Official Gazette of the Federation (Diario Oficial de la Federación).

Although the proposal has also been referred to in public debate as the “Anti-Meme Law,” it is distinct from the criminal law reform concerning piracy, trademark counterfeiting, and the deceptive use of the Government’s institutional identity.

Which Service Providers Are Covered?

To understand the potential effects, it is useful to distinguish between two activities:

Providing internet access

Supplying the connection that allows an individual to browse the internet, transmit information, or use applications.

E.g., Telmex through its Infinitum service.

Providing online services

For example, hosting files uploaded by users or facilitating the discovery of content through search tools and links.

E.g., Google through Google Drive.

A single company may perform several of these functions. The obligations applicable to it will depend on the services it actually provides.

Service Termination Policy for Repeat Infringements

The law already provides for policies requiring online service providers to terminate the accounts of repeat infringers. This may be relevant, for example, to a file-hosting service through which a user repeatedly publishes unauthorized copies of films.

The proposed reform would introduce a similar requirement for companies providing internet access. These companies would be required to maintain a service termination policy, keep it permanently available on their websites, incorporate it into their terms and conditions, and establish minimum user notification mechanisms.

The scope of this measure warrants particular attention: terminating a hosting account and canceling an internet connection have different consequences, since the latter may affect access to multiple services and activities.

The proposed text does not specify how many infringements would constitute repeat infringement, the period over which they would be counted, or how they would have to be substantiated. Accordingly, the proposal should not be interpreted to mean that any claim by a rights holder would, in and of itself, be sufficient grounds for terminating the service.

When Could a Service Provider Be Held Liable?

Under the proposed framework, a service provider's liability would arise if it failed to comply with the applicable legal conditions for exemption from liability and, in addition, fell within one of the following circumstances:

Knowing participation

The provider contributes to, induces, or causes the infringing conduct and has knowledge of it.

This circumstance could be examined, for example, if a hosting service deliberately promotes and facilitates the distribution of unauthorized copies of films by its users, knowing that they lack the necessary authorization.

Control and direct financial benefit

The provider has the ability to control the user's conduct and derives a financial benefit directly attributable to the infringement.

An illustrative example would be a platform that can prevent the distribution of illicit copies of books and charges commission on each sale made by its users.

These examples require an assessment of the facts and evidence in each case. The mere circulation of infringing content over a network would not be sufficient to establish the liability contemplated by the proposal. Nor would the ordinary charge for an internet connection or subscription, by itself, demonstrate the existence of a financial benefit directly attributable to an infringement.

For companies

The review should focus on the services they provide, how they handle complaints, and the measures they take upon becoming aware of a potential infringement.

For users

It will be particularly important for policies to distinguish between claims and substantiated infringements and provide clear notification and review procedures.

Impact on Users

For users of services such as Google Drive, Dropbox, Microsoft OneDrive, and YouTube, the proposed reform could result in stricter enforcement of copyright protection policies through the disabling of file-sharing links, the removal of content, or, in cases of repeated infringement, account restrictions or termination. These measures could affect, for example, individuals who distribute unauthorized copies of books, films, music, or educational courses.

It will be important for users to be able to understand the reasons for any such action and to have access to mechanisms for challenging errors, demonstrating that they have the necessary authorizations, or establishing that their use of the content is permitted by law.