



Copyright and USMCA Supreme Court declared admissible the claim of unconstitutionality against the recent amendments in this matter

The claim of unconstitutionality 217/2020 submitted by the National Commission of Human Rights (CNDH) against several amendments to various articles of the Federal Copyright Law and the Federal Criminal Code (recently approved on the occasion of the USMCA), was declared admissible by the Supreme Court of Justice on August 17, 2020.

In summary, the unconstitutionality of the articles of the Federal Law on Copyright is announced, as well as related articles of Federal Criminal Code, because according to the CNDH, they hold vague and ambiguous provisions, which may result in censorship of

opinions, and the free circulation of ideas in networks, as well as the violation of judicial guarantees by the newly given faculty to **Online Service Providers** to remove content allegedly infringing copyright or related rights.

Let us remember that these new amendments establish that **“effective technological protection measures”** are any technology, device, or component that controls access or the use of an author’s work; for example, the software that allows access to an entertainment platform when the key is given correctly.

On the other hand, an **Online Service Provider** is a person who performs any of the following actions: a) temporary storage carried out through an automatic process, b) storage at the request of a user, of the material that is hosted in a system, c) directing or linking users to an online site. For example, hosting services, search engines, entertainment platforms.

In the same way, the amendments consider the possibility that **Online Service Providers** can remove, withdraw, eliminate and disable content that is stored, transmitted, or published through

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their systems when copyright is allegedly infringed, or related rights (“Notice and Take Down”).

By proceeding with this claim of unconstitutionality, the Chamber of Deputies, the Chamber of Senators and the Federal Executive were ordered to render an statement within 10 business days. Deloitte Legal will continue reporting the development of this constitutional control mechanism.

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