

**Federal Law for the Protection of the Cultural Heritage of Peoples and
Indigenous and Afro-Mexican Communities
(LFPPCPCIA)
(DOF 17/01/2022)
and
Cultural Expressions, in the Federal Copyright Law
(DOF 24/01/2020)**

Mexico City, February 21st, 2022.

On January 17, 2022, the “Federal Law for the Protection of the Cultural Heritage of People and Indigenous and Afro-Mexican and Communities” (LFPPCPCIA) was published in the Official Gazette of the Federation, which entered into force the day after its publication. The corresponding regulation must be published within a period of 180 calendar days.

Among the objectives of the Law are to guarantee and recognize the right to ownership of the Indigenous and Afro-Mexican and Equiparable Peoples and Communities (IAEPC) over the elements of their culture and identity, promote their respect and development and recognize diversity of its manifestations. It contains provisions that allow the exercise of their free determination and autonomy and that allow them to define the elements of their culture and identity that are temporarily accessible, available with restricted access or inaccessible to third parties.

The National System for the Safeguarding of the Culture and Identity of the IAEPC is created and sanctions are included for the use, commercialization or exploitation without consent by third parties of elements of the culture and identity of the IAEPC.

The IAEPC are recognized the collective right to property over their cultural heritage, Knowledge and Traditional Cultural Expressions, as well as the manifestations associated with them that in a continuous or discontinuous manner, have practiced and were transmitted to them by members of their own community of previous generations. They also have the right to intellectual property of said cultural heritage.

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This recognition gives IAEPIC the power to decide the manifestations of its cultural heritage inaccessible to any kind of use or exploitation by third parties and those available with the prior agreement or consent of the interested parties.

This right that is recognized to the IAEPIC is inalienable, imprescriptible, unseizable and of a collective nature, therefore, for its use, authorization and/or express consent is required in accordance with the Law. The economic benefits derived from the authorized use, exploitation and commercialization will be paid to the community or communities that have allowed it, in accordance with their regulatory systems or, where appropriate, the contract entered into with third parties.

By virtue of the Law, the Cultural Heritage Protection System is created, as well as the IAEPIC National Registry. Mechanisms for the solution of controversies, infractions, sanctions and crimes are introduced and it is anticipated that the peoples and communities may request mediation or promote directly before the National Institute of Indigenous Peoples or before any entity of the Ministry of Culture that implements the procedure of complaint, which will be filed with the National Copyright Institute (INDAUTOR) respecting due process but prioritizing the exercise of the rights of peoples and communities.

Infractions are established as 1) reproducing, copying or confusingly imitating elements of cultural heritage without the authorization of the owner or owners of the rights; 2) misappropriation or use by third parties without authorization and for the IAEPIC's own benefit; 3) fail to comply with the terms of the authorization granted for the use, exploitation or commercialization of elements of cultural heritage or; 4) having given an authorization without having been duly assigned by the town or community; 5) show off as the owner without being one; 6) make available to the public without the consent of the communities by any known electronic means or by knowing elements of the Cultural Heritage.

The infractions will be sanctioned by the INDAUTOR and sum to 500 to 15,000 units of measurement and updating equivalent to \$2,358.38 USD (Exchange Rate \$20.40) up to \$70,750.00 USD (Exchange Rate \$20.40) and 2,000 to 50,000 units of measurement and updating equivalent to US dollars. \$9,433.33 USD (Exchange Rate \$20.40) up to \$235,833.33 USD (Exchange Rate \$20.40).

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On the other hand, it is typified as a crime, the improper use and exploitation of cultural heritage to whomever reproduces, copies or imitates by any means and for profit in series or industrially elements of cultural heritage as well as, for distributing, selling or exploiting or commercializing in the same term's elements of the cultural heritage of the IAEPIC.

It is also configured as a crime when it is alleged that the creation or authorship was inspired by cultural manifestations of the IAEPIC, these being similar in degree of confusion and without free, prior and informed consent.

The crimes are prosecutable ex officio and will be sanctioned, depending on the case, from two to eight years in prison and a fine of 500 to 15,000 units of measurement and updating, equivalent in US dollars to \$2,358.38 USD (Exchange Rate \$20.40) up to \$70,750.00 USD (Exchange Rate \$20.40) and in the case of improper reproduction, from three to ten years in prison and fines of 2,000 to 50,000 units of measurement and updating, equivalent in US dollars equivalent to \$9,433.33 USD (Exchange Rate \$20.40) up to \$235,833.33 USD (Exchange Rate \$20.40).

In the case, in which it is alleged that the creation or authorship was inspired by the cultural manifestations of the IAEPIC without consent, the sanction will be from two to eight years in prison and a fine of 500 to 15,000 units of measurement and updating, equivalent to American dollars equivalent to \$2,358.38 USD (Exchange Rate \$20.40) up to \$70,750.00 USD (Exchange Rate \$20.40).

In the analysis of the LFPPCPCIA, it is important to take into account the amendments to the Federal Copyright Law (LFDA) published in the Official Gazette on January 24, 2020, in relation to the Seventh Title of Chapter III "Of Cultures Popular and Traditional Cultural Expressions". In these reforms, new obligations were established for those companies or persons that use or exploit literary, artistic, popular and artisanal works, primitive, collective and derived from popular cultures or Traditional Cultural Expressions with elements of the culture and identity of the Indigenous Peoples and Communities of Mexico. As in the LFPPCPCIA, in the LFDA, the written consent of the communities is required for the direct or indirect use or exploitation of such works for profit.

By virtue of the promulgation of the LFPPCPCIA and the reforms to the LFDA, there must be the written authorization of the corresponding Indigenous or Afro-Mexican Community, for the posting,

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representation, publication, communication, use in any form or making available for the purposes of profit; of a literary and artistic work, of popular and craft art or of the TCEs. If there is any doubt about the community or people from whom the written authorization for use or exploitation should be requested, the interested party will request a inquiry from the Ministry of Culture to identify the owner, and the National Institute of Indigenous Peoples (INPI) must participate in its capacity as technical authority.

In the same way, in the event that CH is intended to be used, either as brand logos, designs or industrial models, in advertising campaigns, cinematographic, audiovisual works, videos, video games, textile designs, jewelry, artistic representations, among others, so as not to incur in the infractions and/or crimes foreseen in any of these two laws or to be subject to complaints before the National Copyright Institute.

If you require additional information, you can contact Basham's Intellectual Property team.

SINCERELY,

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