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# TMT 2023

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## **Mexico: Trends & Developments**

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## Trends and Developments

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### Overview

The relevance of every aspect of TMT services in a post-pandemic world is undeniable, and this increasing trend will continue to be seen in Mexico in the forthcoming years. The most recent official data available shows that 60.6% of homes in Mexico have internet access, representing 84.1 million users, and 91.6% of the population have access to a television, of which 42.8% have paid television (71.5 million people).

With respect to users of mobile phones, a total of 88.2 million people have at least one mobile phone. Telecom operators reported an annual revenue of MXN428,686 million (approximately USD21 billion). By segmenting the revenue information between the main operators that offer fixed services and those that offer mobile services, it is evident that the former had an accumulated real revenue of MXN181,346 million, a number possibly related to the increased use of fixed broadband in household activities during the pandemic. Mobile operators had annual revenues of MXN224,724 million.

Regarding social media, surveys reveal that Facebook is the social network with the highest percentage of users in Mexico (97% of social network users said they have access to Facebook). WhatsApp was the second most-used platform by Mexicans, accounting for 95% of those surveyed. In third place was Instagram, with 73%.

The data shows that the users require more efficient and faster connections to interact with basically everything in their ecosystems. From a

company's perspective, Mexico is a fertile environment to continue offering more "anything as a service" (XaaS) or Xtech services, which has led not only to the operation of those services or businesses being analysed, but also protection from an IP standpoint to allow companies to have IP rights that are enforceable against any violator.

The increase in revenue resulting from new technologies, the continued success of recently implemented technology and innovative business models will be worth following in Mexico in the coming years.

### Deployment of 5G Networks and Related Services

Undoubtedly, the deployment of 5G networks by the two major telecommunications service providers has raised great expectations amongst users and service providers and has encouraged the users to start migrating to service plans that run on these networks (although still noded with 4G).

Currently, AT&T has coverage in 25 cities and Telcel has coverage in 40; Telcel forecasts reaching 120 cities with approximately 58 million clients by the end of 2023. The current challenge is to adapt these plans to make them accessible to the majority of Mexicans, who currently pay, on average, MXN145 (approximately USD8).

The issue of data consumption is also something to bear in mind, as well as the availability of devices that can operate with this technology. One of the confirmed benefits of 5G networks is

the faster download speeds; for example, if the current available plans offer between 10 and 15 gigabytes, the user will consume the capacity contracted in the plan by downloading a couple of movies.

The cost structure must also be lightened for the operators so that they can invest more and at a faster pace to make this deployment a reality. Considering this challenge, the main element currently being discussed amongst policymakers is the overpricing of the radio-electric spectrum, which in Mexico is 85% more than in other countries. Therefore, the reduction of this cost by the tax authorities is currently under discussion before the next public bid is launched.

Also, in January 2023, the regulator began the public consultation to obtain the bases and information necessary to launch the IFT-12 public bid, corresponding to the allocation of a radio-electric spectrum for the development of 5G technology. The consultation, which is expected to end in February, is intended to gather data, opinions, and specific and substantiated proposals from all those interested in the matter to prepare the draft for the next public bidding process. With this allocation, the regulator seeks to launch into the market frequencies suitable for mobile telephone and broadband services. With this, 330 national megahertz (MHz) could be made available to the market, of which 90 MHz are in low bands (below 1 GHz) and at least 240 MHz more are in medium bands.

The definition of the cost and the preparation of the coming bidding process would be key for the completion of the full deployment of these networks, allowing the latency to reduce to a minimum and the number of connected devices to multiply exponentially.

The trend services that are aimed to be rendered with the availability of this technology are gaming with augmented reality, IoT, telemedicine with the management of automated medical devices (operating robots), security systems, and autonomous cars. Service providers in these industries are already exploring business alliances and investment opportunities to be right there from the start.

### **E-commerce Everywhere and for Everything**

Among the most popular trends in the Mexican market have been platforms, web pages, apps, and all other forms of commerce carried out by electronic or optic means or by any other technology. Now, these are the first option for all types of services.

Certain guidelines and specifications need to be met mainly for the protection of consumers. Depending on the type of services, other technical standards, like security regulations, encryption, or data privacy provisions, must also be considered. However, in general terms, investing and making available e-commerce businesses in Mexico is fairly simple. Non-regulated educational services, the sale and purchase of all types of goods, financial services, information services and insurance services were the most requested services. The increase in internet access available to the population has made this feasible. The basic premise of net neutrality in Mexico is associated with the principle of ensuring that all users can freely access all content, applications and services of their choice.

Also, internet access service providers must treat the traffic generated by their users under the same conditions regardless of content, origin or destination, and this has allowed this new manner of doing business to take shape. Accordingly, the applicable law establishes an obliga-

tion for concessionaires and authorised resellers to provide internet access services that respect users' free choice to access any content, application, or service without discrimination and with privacy, transparency and information.

Likewise, Mexican net neutrality is specific in stating that service providers must take the measures or actions necessary for traffic management and network administration to guarantee the capacity, speed and quality contracted by the user, regardless of the content, origin, destination, terminal or application, including services provided through the internet. Therefore, players intending to invest and diversify in Mexico should continue to consider this manner of doing business.

## **The Transformation of the Media Sector**

Content in traditional broadcasting and distribution platforms requires express authorisation and classification, which must also be highlighted to the audience.

Advertisements in television broadcasting need to be appropriate for all members of the public, and there are express limitations in relation to alcohol, tobacco, bars and advertising that could be deemed offensive or not moral.

Advertising on traditional broadcasting systems must keep a balance with the time assigned to the programming. On TV stations, advertising time cannot exceed 18% of programming time. Furthermore, during electoral periods there are specific obligations for broadcasters, such as assigning broadcasting time to the National Electoral Institute and avoiding selling and transmitting advertising space for political campaigns during the period established by the Institute.

The aforementioned restrictions are not established for content delivered over the internet or any other platform. These platforms offer a catalogue of content and do not offer a limited amount of linear programming. They do not require a concession to offer the service, and they do not have guaranteed quality since they depend on the user's internet connection. They can be viewed at a time and in a sequence decided by the user. Although they require the user to have a device with internet access (ie, the user must have an additional service), they are the first form of entertainment to reach users. Accordingly, over-the-top media services for audio-visual content have found an extraordinary niche within the Mexican market, offering a near-term opportunity for business.

Additionally, in September 2021, a new law came into effect that changed how the publicity sector interacts with media, agencies, and advertisers. Certain specific requirements and restrictions were imposed to oblige these actors to reinvent and adapt their customary manner of doing business. A year and a half after this drastic change, the players have adapted, and internet advertising (mainly through digital platforms and social media) is the place to go, considering entertainment trends aimed at internet-offered content.

## **Metaverse Development**

The metaverse is the next step to be achieved when speaking about new technologies. Although it is not yet fully-developed, businesses have started to become interested in accessing the metaverse, placing their trade marks in it, operating virtual offices, having a presence in this new parallel reality, and analysing how to comply with the current applicable laws.



There is a high probability of losing control of privacy in the metaverse due to the technological developments that allow personal data to be used and marketed without users even knowing (ie, without consent). On the other hand, companies, organisations, and even governments are aiming toward protective approaches as they have become aware of the dangers of losing privacy in this new reality. As a result, new manners of carrying out data privacy compliance and analysis are beginning to be implemented.

Algorithms, AI, and whatever comes next in shaping the metaverse are the future handlers of personal data. Therefore, having proper technical standards, software, data repositories and technology has occupied the efforts of software developers and data privacy and intellectual property lawyers.

From an IP standpoint, it is pertinent to highlight the way multiple pieces of software interact and change the way trade marks and content, such as NFTs, can be offered and protected. This challenge brings evolution to IP, which will derive new interpretations as to what can or cannot be protected or used without authorisation.

Also, from the beginning of their product development, metaverse handlers are considering populating the individual's data features using k-anonymity standards and de-identification techniques to "manage" those unwanted traits that may damage the acceptance of these new desired anonymous or parallel interactions.

Accordingly, all matters related to the metaverse are among the most important new business trends to be explored in Mexico.

## **Protecting Intellectual Property Associated with Technology**

The use of technology is part of our daily activities; this has led consumers and companies to provide a more efficient and secure environment, specifically when it comes to personal data. However, the development of these new technologies has placed companies in a position where they have to determine the type of information that may be seen by the user (ie, source code).

Information on the method of protecting a source code is becoming more frequently requested by companies, which has required them to provide tailor-made strategies that may include secret industrial policies, work-for-hire agreements, amendments to individual labour contracts, non-disclosure agreements or other collateral analyses.

Furthermore, trade marks in digital environments such as the metaverse have influenced the Nice Classification to incorporate terms such as non-fungible tokens to bring more certainty to their holders.

IP receiving increased attention from companies is a positive result, bringing "win-win" situations to holders. On one side, having different strategies to protect technology brings confidence to the holders and developers. On the other hand, the consumer is also benefiting from the tools provided by technology in its day-to-day operations.

Therefore, it is likely that the interest from companies in protecting other intangible assets besides trade marks will continue growing and challenging IP specialists to create tailor-made strategies focusing on such protection without affecting the operation of the technology.

Contributed by: Paola Morales V. and Daniel Legaspi J, **Santamarina y Steta SC**

**Santamarina y Steta SC** stands out for its highly valued expertise. With more than 80 lawyers in its Mexico City, Monterrey, and Querétaro offices, Santamarina y Steta's clients rely on a specialised multidisciplinary team for TMT, IP, data privacy, e-commerce, and consumer protection. Santamarina y Steta's team has assisted Honeywell in its aerospace and telecommunications services; Paramount Pictures and Grupo CIE in their media requirements; Tesla, Walmart, and New Balance in their e-commerce and data privacy needs; Walmart Con-

nect in some advertising services; and Solera, Kolonus, and Teleperformance in registering the IP side of their apps. It has also assisted other start-ups that have required assistance in applying the best strategy to protect their IP. The firm is known and regarded for its proficiency in the design of structures for foreign investments to participate in telecommunications, broadcasting, IT services, and new tech industries. In addition, the firm's resourcefulness consistently allows it to meet the demands of clients in developing disruptive business models.

## Authors



**Paola Morales V.** has over 22 years of experience and is the leading partner of the TMT, e-commerce, privacy and data protection practices at Santamarina y Steta SC. She

has advised international and local clients in the TMT sector implementing their businesses and investments in Mexico from a transactional and regulatory standpoint. Likewise, she reviews, negotiates and prepares legal instruments for e-commerce operations in Mexico and data privacy compliance. Paola is a member of ITECH Law and Abogadas MX, and she recently served as a jury member in the "Innovation and Best Practices in the Protection of Data Privacy Contest" organised by the National Institute for Transparency, Access to Information and Personal Data Protection.



**Daniel Legaspi J.** has over 15 years of experience and is the partner leading the IP, franchising, licensing, and IP technology practices at Santamarina y Steta SC. His

practice specialises in assisting national and international clients in maximising the profitability of their intangible assets by developing and executing customised strategies in and out of Mexico through the assistance of the firms' other practices. He has been a panelist, speaker, and professor in intellectual property, entrepreneurship, and technology through the International Trademark Association (INTA), the Inter-American Association of Intellectual Property (ASIPI), and other associations and universities. He is part of the Executive Committee of the National Chamber of Commerce (CANACO), where he leads the IP practice.

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