

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE



1747 PENNSYLVANIA AVENUE, NW • SUITE 825 • WASHINGTON, DC • 20006-4637 • TEL (202) 833-4198 • FAX (202) 872-0546 • WWW.IIPA.COM • EMAIL: INFO@IIPA.COM

April 2, 2003

Ambassador Peter Allgeier  
Deputy U.S. Trade Representative  
Office of the U.S. Trade Representative  
600 17th Street NW  
Washington, DC 20508

His Excellency Antonio O. Garza  
U.S. Ambassador to Mexico  
Paseo de la Reforma 305  
Mexico City, D.F., Mexico

Alan P. Larson  
Under Secretary for Economic, Business and Agricultural Affairs  
U.S. Department of State  
2201 C Street, NW  
Washington, DC 20520

Grant Aldonas  
Under Secretary for International Trade  
U.S. Department of Commerce  
14th & Constitution Ave. NW  
Washington, DC 20230

Re: Mexico: Copyright Enforcement  
and Pending Legislative Reform

Gentlemen:

Mexico is the second largest U.S. trading partner. It is also a market where, notwithstanding recent improved efforts by Mexican law enforcement authorities, piracy levels and losses remain unacceptably high. Estimated trade losses due to copyright piracy topped \$731 million in 2002.<sup>1</sup>

<sup>1</sup> This loss figure does not include a 2002 estimate of losses to the entertainment software industry which estimated annual losses in the prior year (2001) at over \$200 million.

In recent months, the criminal anti-piracy actions taken by Mexican authorities have been generally positive. Unfortunately, however well intentioned, these actions have had little impact on the levels of piracy in the Mexican market. A coordinated national anti-piracy campaign -- led with the support of the Fox Administration at its most senior levels -- that targets the high levels of piracy is long overdue.

There are, in addition, gaps in the law and regulations that require improvement in order to afford copyright owners with a similar level of protection afforded trademarks, especially in administrative actions. In the legislative realm, the Mexican Senate in December 2002 adopted proposed amendments to the 1996 Copyright Law, much to our dismay. Simply stated, these proposals do not come close to implementing Mexico's obligations under NAFTA, TRIPS and the WIPO Treaties. It is important to the copyright industries that this package, as drafted, not be adopted by the Chamber of Deputies (a debate was scheduled for April 4 but we understand that it has now been delayed). In many cases, not only does the pending bill fail to adequately address issues that arise in conjunction with Mexico's new obligations under the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), but it inexplicably undermines existing provisions of Mexican law. All efforts should be taken to encourage Mexico to reject this current draft, and undertake a more rational, thorough and comprehensive effort to modernize its 1996 Copyright Law.

IIPA and its members ask that U.S. government officials continue to engage their Mexican colleagues, at the highest levels, to press for continued progress and to undertake enhanced efforts to deter piracy and improve legal measures. We request that the Mexican government take the following steps to address the rampant piracy problem and legal reforms:

- Reject the pending copyright bill. This bill fails to implement Mexico's obligations under the two WIPO Treaties and eliminate NAFTA and TRIPS deficiencies; several proposals represent drastic reverses in the adequacy of substantive copyright protection. Renewed efforts to prepare a comprehensive bill which comports with Mexico's bilateral and international obligations should be undertaken, with industry input solicited (and U.S. government expertise invited as well);
- Expand the government's anti-piracy program to all major cities;
- Take action against Internet piracy;
- Vastly improve investigations and raids against pirates at both levels of commercial distribution and street piracy;
- Encourage prosecutors to bring cases swiftly and press for maximum sentences in order to improve deterrence;
- Improve administrative enforcement by IMPI, and expand IMPI's regional capabilities;
- Improve judicial training efforts on copyright enforcement;
- Improve legislative and regulatory schemes to fill gaps in enforcement measures to equalize copyrights with trademarks;
- Enact and enforce decrees to ensure the procurement and use of legal computer software in governmental agencies, especially at the state and municipal levels.

For more detailed suggestions regarding actions Mexican authorities could take on enforcement and similar reforms, please view the Appendix to this letter.

## Copyright Law Reform in Mexico

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IIPA strongly believes that the copyright law amendments presently pending in the Mexican Chamber of Deputies should not be adopted by the Deputies in this legislative session. We have heard that the Chamber of Deputies was scheduled to debate this bill on April 4, 2003, but that this vote has now been delayed. Mexico must propose comprehensive amendments that effectively implement the WIPO Treaties and cure existing deficiencies in its copyright law. IIPA and its members have been working with local colleagues as well as the U.S. government to request that the message about this flawed legislation be delivered to the Mexican government at the highest levels.

The Mexican Senate approved a package of proposed amendments to the Mexican Copyright Law in December 2002. This process appears to have been prompted by efforts of the Mexican collecting societies in 2001-2002 to amend certain sections of the law in their favor. However, this bill simply fails to address the comprehensive reform needed by Mexico to: (1) effectively implement the obligations of the WIPO Treaties (of which Mexico is a member), and (2) correct existing deficiencies in the law with respect to Mexico's obligations under the NAFTA Intellectual Property Chapter (Chapter 17) and the WTO TRIPS Agreement. Not only does the December 2002 bill omit key WIPO Treaties' implementation issues (such as technological protection measures, temporary reproduction, and rights management information), some of the amendments actually undermine current Mexican law and create new problems for the copyright industries, including NAFTA-incompatible provisions adversely affecting U.S. copyright owners. For example, Article 26*bis* of the proposed amendments, which would grant an unwaivable right of remuneration to authors for any public communication/transmission/exhibition of their works to be paid through a collecting society, would violate the contractual rights provisions of the NAFTA (Article 1705.3) if applied to U.S. motion pictures since this new provision would be inconsistent with the contractual arrangements between program participants and the film producer.

The same deficiency applies to amended Article 117 in respect of performers and producers of phonograms. Other examples that implicate Mexico's TRIPS or NAFTA obligations are the continuing reciprocity provisions in Article 198 of the current law and the exclusion of "private groups" from the definition of "public" in violation of Article 1721.2 of the NAFTA. IIPA has provided the USG with a fuller analysis of these deficiencies in a separate memorandum.

One of the oddest aspects of this legislation relates to the new Article 131*bis* which provides that phonogram producers have the right to receive compensation for the use or exploitation of their phonograms, for direct or indirect profit-making purposes, by any means of public communication or making available. We fail to understand this proposal inasmuch as the current Mexican copyright law gives phonogram producers an exclusive right over any exploitation of their phonograms which would appear to be reduced to a mere right of compensation under this legislation.

Finally, the proposed amendment to Article 40 of the Copyright Law would implement a private copying levy on analog and digital products and blank media. This private copying provision has several serious flaws: (1) the exception to application of the levies if there are systems that impede unauthorized reproduction is ambiguous, and (2) the provision violates Article 195 of the

Copyright Law, which gives the author the right to decide whether or not to join a collecting society to enforce his/her/its economic rights, by automatically giving this right to collecting societies. Levies are at best a stop-gap protection for copyright owners and should be applicable only where copy management technologies are absent or unprotected under law. In cases where technical measures are available, no levies should apply.

## **Copyright Piracy in Mexico: Update for 2002**

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Piracy in Mexico reflects growing trends throughout this hemisphere: the growth of commercial CD-R burning as the piratical tool of choice (especially affecting the recording, motion picture and business software industries) and the growth of DVD-R and CD-R piracy adversely affecting the audiovisual industry.

Sound Recordings and Music: Mexico is the third largest market for pirated sound recordings in the world. Piracy of sound recordings in Mexico in 2002 resulted in \$459 million in losses, with piracy levels of approximately 68%, according to a survey conducted by BIMSA, a renowned market research company. This survey was coordinated by the recording industry in Mexico to obtain a more scientifically accurate picture of the full piracy impact. Moreover, the industry has been forced to reduce personnel by approximately 37% during the last two years. The industry also reduced the number of recordings and releases which ultimately will endanger the future of the business. Music cassette piracy has long been a serious problem in Mexico, and remains at a very high 75% piracy level. Sadly, pirates have mostly shifted from cassettes to the CD-R format, thereby greatly threatening the remaining market in Mexico for legitimate music. CD-R pirate sales in 2002 are estimated at 100 million units, which represents about 68% of the entire domestic market. Retailers and medium-sized wholesalers are closing, and the legitimate businesses (both multinational and independent labels) are under a great deal of pressure to remain in operation. The neighborhood of Tepito in Mexico City continues to be a major problem, accounting for approximately 65% of the pirate music product manufactured and distributed in Mexico. In November 2002, the Mexican Supreme Court, which is located near vendors of pirated music, moved some of its operations to another part of town because the music from the pirate vendors was too loud.<sup>2</sup>

Business Software: The estimated level of piracy for business software applications in Mexico has remained basically the same over the past few years, with the 2002 piracy level dropping slightly to 54%. Preliminary estimated trade losses due to software piracy in Mexico rose to \$182.2 million last year. The Mexican federal government is among the most “legal” in all of Latin American with respect to its software licensing efforts and government agencies. However, Mexico has never issued a government legalization decree. Mexican states and municipalities should make further commitment on legal software use and a federal decree could serve as a model for the States; BSA is working with Mexican industries to achieve state government legalization at present.

Motion Pictures: Estimated annual losses to the U.S. motion picture industry due to audiovisual piracy in Mexico remained at \$50 million in 2002. As in prior years, MPA’s primary concern in Mexico is black-market piracy, and especially the new and impressive growth of optical

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<sup>2</sup> “Mexico’s Top Judges Moving Offices Because Music Pirates Too Loud?” RIAA press release, Nov. 26, 2002.

disc piracy (CD-R and DVD-R), which directly threatens the growing DVD market. The main distribution centers for optical disc piracy are well known to MPA and law enforcement authorities: Tepito and Plaza Meave in Mexico City and Plaza San Juan de Dios in Guadalajara. This optical disc pirate product is distributed in Mexico's extensive and nation-wide street market system. The problem is that this new form of piracy may begin to develop in quality as it has in quantity or that high quality pirate DVD may begin to arrive from Asia. As this optical disc piracy has grown, VHS black market piracy has been reduced. Nevertheless, areas such as Tepito continue to generate millions of pirate audiovisual units every year. In addition to these operations, there are other pirate distributors that specialize in distributing higher quality videos exclusively to video rental outlets. MPA is concerned that these distribution systems will begin to distribute pirate DVD to video stores. This pirate system competes directly with the legitimate home video industry in the rental market. MPA, in coordination with enforcement authorities, primarily IMPI, has advanced significantly in eliminating piracy from many video stores, perhaps as much as 50% of all legitimate stores (2,000 of 4,000), however these pirates continue to operate in the Guadalajara and Bajio areas, where enforcement efforts have not been effective by IMPI and have not been given priority by criminal authorities. Finally, television piracy continues to be a concern, although it is being effectively addressed by government authorities working in coordination with MPA.

Book Publishing: Reports indicate that estimated losses due to book piracy in Mexico were constant over the last two years, at \$40 million for 2002. Unauthorized photocopying by universities (such as UNAM) and educational institutions (like ITESM) is widespread, and these institutions have photocopy centers on their premises. Unfortunately, photocopying by students is considered to be "not for profit" and is permissible under current Mexican law; this loophole must be closed. In some cases, materials taken from U.S. books are posted on the institution's intranet for classroom use, without permission and without payment to the publishers. Universities in Mexico are estimated to consume anywhere from 5 to 10 billion pages of copyrighted materials each year, all without paying anything. The local reprographic rights organization (RRO), CEMPRO (*Centro Mexicano de Protección y Fomento a los Derechos de Autor*), was established in mid-1998, but only started collecting small amounts for the first time in 2001; so far, these are voluntary payments. Universities should be required to make mandatory payments to the RRO (perhaps at a rate of 1.5 to 3 cents/ 15 to 30 centavos per page). There are also indications that trade publishers are starting to have some books pirated. This would affect legitimate licensees of American authors, either published in Mexico or imported from Spain. Most books sold in Mexican and Latin American universities are translated into Spanish, or published originally in Spanish; these are published primarily in Mexico by wholly-owned subsidiaries of U.S. companies, and so losses on translations include both lost royalties as well as the entire publishing profit.

Entertainment Software: Videogame piracy on all platforms (from cartridges to CD-ROMs) continues to be widespread in Mexico. Pirate videogames continue to be shipped from Asia through the U.S., with little change from the previous year. There is also significant local CD-burning of videogame content. Counterfeit Nintendo videogame cartridges continue to flood the market. The company reports that the both the U.S. Customs Service and the Mexican Customs Authorities have made numerous seizures in 2002 of counterfeit cartridges and packaging components destined for Mexico.

**MEXICO**  
**ESTIMATED TRADE LOSSES DUE TO PIRACY**  
*(in millions of U.S. dollars)*  
**and LEVELS OF PIRACY: 1998 – 2002<sup>3</sup>**

INDUSTRY	2002		2001		2000		1999		1998	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Sound Recordings & Music <sup>4</sup>	459.0	68%	366.8	61%	300.0	63%	80.0	50%	80.0	50%
Business Software Applications <sup>5</sup>	182.2	54%	146.9	55%	145.7	56%	108.8	56%	122.0	61%
Motion Pictures	50.0	40%	50.0	40%	50.0	40%	60.0	55%	62.0	55%
Entertainment Software	NA	NA	202.5	83%	NA	90%	NA	NA	170.1	85%
Books	40.0	NA	40.0	NA	30.0	NA	37.0	NA	35.0	NA
<b>TOTALS</b>	<b>731.2</b>		<b>806.2</b>		<b>525.7+</b>		<b>285.8+</b>		<b>469.1</b>	

## Copyright Enforcement in Mexico

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The copyright industries report that cooperation between industry and Mexican authorities has improved over the past year.

The recording industry reports two raids in December 2002 and January 2003 on a major supplier to the pirates of blank CD-Rs. Over 15 million units were seized. Two individuals were arrested in the raids and identified as key members of that organization. Both individuals remain in jail as of this writing.

MPA reports significant new interest in coordination from both PFP (Federal Preventative Police) and PGR (Office of the Attorney General) including interest from the PGR's Organized Crime Unit. The PGR has consistently organized monthly meetings with MPA at high levels, to discuss coordinated actions. The PFP has also been very open to MPA. This new sense of cooperation is resulting in more enforcement activity, but, as noted below, has yet to be translated into effective prosecution leading to deterrent sentencing.

<sup>3</sup> The methodology used by the IIPA member associations to calculate these estimated piracy levels and losses in Mexico is the same used to collect statistics during the annual Special 301 process, and is posted on IIPA's website ([www.iipa.com](http://www.iipa.com)) at <http://www.iipa.com/pdf/2003SPEC301METHODOLOGY.pdf>.

<sup>4</sup> RIAA reports that the 2000-2002 estimated losses due to recording piracy in Mexico reflect losses experienced by the overall industry, including both U.S. and Mexican record companies. The 1999 numbers reflect U.S. losses only.

<sup>5</sup> BSA loss numbers for 2002 are preliminary, and will be finalized in mid-2003. Note that BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in Mexico, and may differ from BSA's trade loss numbers released separately in its annual global piracy study which reflects losses to (a) all software publishers in Mexico (including U.S. publishers) and (b) losses to local distributors and retailers in Mexico.

**Prosecutions and Criminal Judgments:** Over the last several years, the copyright industries' experience with criminal copyright enforcement in Mexico has ranged from erratic to discouraging. The good news is that the industries are beginning to see improvement in this area as a number of individuals have been sentenced to effective jail terms. Unfortunately, the piracy situation remains dire and these sentences, while recognized as a step in the right direction, reflect that there remains a need for the Mexican authorities to intensify efforts to create real deterrents against piracy. While the industries praise the Attorney General for initiating some successful raids and large seizures, these actions have been restricted mostly to Mexico City. Raiding efforts must be expanded to other cities and prosecution must be improved.

In addition, few criminal prosecutions are brought by the PGR. Less than 4% of all criminal investigations of copyright piracy result in a criminal sentence. With rare exception, the Mexican judiciary stills views copyright piracy as a minor offense and fails to issues deterrent-level sentences. Administrative fines for copyright infringement are only half that available for trademark counterfeiting; this inequity must be equalized. Other agencies, such as the federal tax authorities as well as state and municipal authorities, need to become much more involved in anti-piracy activities.

**Organized Crime Law Reform:** On December 3, 2002, the Mexican Chamber of Deputies approved legislation which reforms the Federal Law Against Organized Crime. If passed by the Senate, copyright infringement would become a crime punishable under this organized crime legislation. This means that copyright pirates could face 20-40 years in jail, in addition to the penalty for the underlying IP crimes, if organized crime elements in piratical behavior is proved; this would represent an increase from the prior 12-year maximum [note: the maximum imprisonment penalty for software piracy is 10 years]. This reform also gives Mexican police three new enforcement tools: holding suspects under house arrest for up to 30 days; tapping phones; and protecting witnesses (without the suspect/defendant knows the witness's identity). In announcing the passage of this legislation, then-Secretary of the Economy Luis Ernesto Derbez said that the object was to slash piracy by 10-15% per year until 2006.<sup>6</sup> The Specialized Unit Against Organized Crime has 50 agents, and also has responsibilities for combating drug trafficking, terrorism and auto-theft.

**Judicial Reform:** The Mexican judiciary continues to view copyright infringement as a minor offense, issuing very few deterrent sentences, given the high level of piracy in the country. The July 2002 convictions of four defendants involved in sound recording piracy represent hope that the tide has changed and more deterrent sentences will result in appropriate cases. Mexico should consider adoption of mandatory sentencing regulations, or the Supreme Court itself should set out recommended guidelines. Regardless of the chosen mechanism, it is critical that the Mexican government ensure that judges understand the severity of copyright cases, and that they act accordingly by delivering strong and deterrent sentences. In the absence of deterrent sentencing, prosecution is a futile exercise.

**Administrative Enforcement by IMPI; Support of INDAUTOR:** Administrative enforcement through the Mexican Industrial Property Institute (IMPI) has improved in some respects. For example, BSA acknowledges the support provided by IMPI to BSA during the Zero Tolerance Campaign against software piracy run nationwide this year in Mexico, in particular IMPI's self-

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<sup>6</sup> "Mexico heats piracy fight," Variety.com, December 9, 2002.

initiated actions against suspected software pirates, and IMPI's joint participation in press releases and similar activities. The Zero Tolerance Campaign will continue at least through 2003. BSA and IMPI signed a cooperation agreement on April 12, 2002. Still, some unfortunate resolutions favoring pirates have been issued. In addition, IMPI inspectors are often denied entry by defendants, and low IMPI fines do little to deter piracy when entry is denied.

With respect to INDAUTOR (the Mexican copyright office), this agency lent additional support to the Zero Tolerance Campaign. MPA is especially pleased with the coordination of IMPI with the PFP and strongly encourages continued cooperation between these two agencies. An IDSA member company also notes that while IMPI administrative actions have been helpful, there continue to be many problems with the agency, especially in certain trademark counterfeiting actions.<sup>7</sup> MPA also reports that INDAUTOR has improved its enforcement slightly (14 cases) and should be encouraged to participate in all anti-piracy coordination.

**Border Measures:** The recording industry negotiated an agreement with the Finance Ministry, which includes Customs, to address the problem of pirate CD-Rs. This agreement calls for limiting the number of ports of entry for CD-R and CD burners as well as providing training and assistance to customs authorities. The effective implementation of this agreement is viewed by the recording industry as an integral part of the overall anti-piracy campaign. The recording industry reports that this agreement, along with additional support from IMPI actions with Customs (Aduanas), have contributed very positively to the seizures of large shipments of blank CD-R products. Approximately 47 million blank CD-Rs have been intercepted to-date. These actions are based on a number of infractions including smuggling, tax evasion and the infringement of patent rights in the blank CD-R disc. Because of IMPI's enforcement authority under the Mexican Industrial Property Law, IMPI coordinates actions with Customs which in turn conducts the actual confiscation. The seizure of such massive imports of product is aimed at addressing the source of the piracy problems caused by widespread CD-R burning – the discs themselves.

While there has been increased cooperation between the copyright holders and Mexico Customs, IDSA and its members report that there continues to be problems with actually stopping and seizing pirate and counterfeit product at the border. Customs does not seize infringing product entering the country without an official order from IMPI; this is true even in cases where the product is clearly infringing. Because IMPI does not issue immediate authorizations to seize products which have been identified by Customs as infringing, the suspect merchandise is usually allowed to enter the country because Customs does not have authority to detain the shipment for more than a few hours. There must be greater cooperation between these two agencies in order to improve border enforcement, and expedite the procedures by which Customs may make immediate seizures of

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<sup>7</sup> For instance, IDSA reports that raids run by IMPI against counterfeit products under its trademark jurisdiction are necessarily confined to established retailers as inspections at informal markets continue to be risky. There is also a significant time delay (between one to three years) between the raids and seizures of counterfeit products and the resolution of the infringement action. In the interim, the counterfeiters have either moved on or changed their business activities. Trademark cancellation procedures are also weak. Although IMPI has jurisdiction over the issuance and cancellation of trademark registrations, the cancellation procedure for trademarks fraudulently obtained by a pirate sometimes takes IMPI thirty (30) months to resolve. Added to which, a court challenge to the resolution may permit use of the invalid trademark for another year.

clearly infringing products. Given the importance of border enforcement to stop the flow of infringing product, the Mexican government must allocate more resources to the training of Customs officials particularly in identifying infringing product, and developing leads and cases that result in more seizures of infringing product at the borders.

**Enforcement statistics:** The chart below represents IIPA's compilation of copyright anti-piracy actions taken during the 2002 in Mexico, as reported by individual IIPA member associations.

**COPYRIGHT ENFORCEMENT SUMMARY  
 in MEXICO for 2002**

	Motion Picture Association Cases	Business Software Alliance Cases	Recording Industry (local and U.S.) Cases	Totals
<b>Number of raids</b>	511	--	529	1,040
<b>Criminal raids</b>	172 (161 PGR, 11 PFP)	--	518	690
<b>Administrative raids</b>	340 (326 IMPI, 14 INDA)	53	11	404
<b>Number of persons held in pre-trial detention</b>	0	--	219	219
<b>Number of indictments</b>	13	--	64	77
<b>Number of cases resulting in fines or jail terms</b>	3	5	16	24
<b>Level of sentences Imposed</b>	1 for 6 months (suspended); 2 for 6 years (both on appeal)	Approx. US\$20,000 per defendant	1.5 to 6 years and fines up to US\$18,000	(see columns)
<b>Ratio of convictions to number of criminal raids conducted</b>	1.7%	--	3.1%	3.5%
<b>Pirate Copies Seized</b>	683,842 pirate copies (230,033 optical discs – including 226,950 CD-Rs, 590 DVDs, 2,493 DVD-Rs) plus 453,809 VHS tapes	22,346	6,485,056 <sup>8</sup>	Approx. 7.2 million pirate copies (see columns)
	Motion Picture Association Cases	Business Software Alliance Cases	Recording Industry (local and U.S.) Cases	Totals

<sup>8</sup> The recording industry reports that of the total 6,485,056 pirate units seized in this time period, 5,903,622 were pirate CD-Rs and 581,434 were pirate audiocassettes. In addition, the industry reports the seizure of 47,039,222 units of blank CD-Rs.

<b>Other materials related to infringing activities which were seized (itemized)</b>	902 VCRs, 120 CD-R burners	7 CD burners	1,000 CD-Writers 63 high-speed duplicating machines, 39 CPUs, 18 million inlay cards, 51,553 jewel boxes, 897 offset machines, 50,000 crystal boxes	(see columns)
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## Conclusion

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We ask that U.S. government continue to engage their Mexican colleagues, at the highest levels, to press for continuing the progress made to-date and to undertake enhanced efforts to deter piracy. The Mexican government needs to take additional steps to lower the debilitating piracy levels that are devastating the legitimate market for copyrighted products in Mexico. IIPA and its members have stated before that it is critical that President Fox understand that the U.S. Government, the U.S. creative community and, equally importantly, the Mexican creative community, have shared interests in reducing the level of copyright theft in Mexico.

Sincerely,



Eric H. Smith  
President  
International Intellectual Property Alliance

cc: Regina Vargo, USTR  
James Mendenhall, USTR  
William Lash, Commerce  
Walter Bastian, Commerce  
Tony Wayne, State  
J. Curtis Struble, State  
Judge James Rogan, USPTO  
Marybeth Peters, USCO  
John C. Malcolm, DOJ  
Congressional Mexico Caucus



## APPENDIX

### SUGGESTED ACTION ITEMS TO IMPROVE COPYRIGHT ENFORCEMENT IN MEXICO

It is essential that the Fox Administration follow-up on the commitments of former Economy Secretary (now Foreign Minister) Luis Ernesto Derbez to apply "zero tolerance" to piracy in Mexico, include a similar commitment from Attorney General Rafael Macedo, address the urgent need for effective copyright enforcement to combat endemic piracy in Mexico, and implement specific measures to achieve practical results. The new Economy Secretary, Fernando Canales Clarion, should publicly renew the prior commitment of his ministry. Treasury Secretary (Hacienda) Francisco Gil Diaz should also make a public commitment, especially regarding prosecuting piracy as a crime of tax evasion.

IIPA outlines several actions, in the short-term and the mid-term, which the copyright industries believe the Mexican government can and should take. Below is an illustrative (non-exhaustive) list of our key suggestions:

#### (A) Short-term actions:

- The public announcement by President Fox of a specific, intensified copyright anti-piracy campaign, combined with immediate action, would give credence to his Administration's efforts to fight corruption and improve economic development in Mexico.
- Immediately increase the resources available to the Office of the Attorney General (PGR) and other relevant agencies charged with enforcing the criminal law against copyright piracy.
- The pending bill to amend the Mexican Copyright Law should be which passed the Senate in December 2002 need substantial modification; those amendments (which may be considered by the Chamber of Deputies in the March-April 2003 legislative session) totally fail to implement Mexico's existing obligations under TRIPS, NAFTA and the WIPO Treaties (see detailed discussion on law reform, below).
- The PGR needs to expand its anti-piracy campaign nationwide, instead of focusing primarily on Mexico City. Guadalajara and Monterrey are important locations that need intense and immediate coverage and attention.

- By either criminal or administrative procedures, the Mexican government must crack down on the estimated 50,000 street vendors that deal in piratical products.
- Legislation should be enacted stating that street piracy is a crime for which prosecution can be initiated ex officio by Mexican authorities, and not just by the injured parties.
- Judges should apply the copyright law and penal codes consistently and accurately in order to issue deterrent-level sentences against copyright infringement. Mexico should consider adoption of mandatory sentencing guidelines, or the judicial council itself should set out recommended guidelines.
- Permanent IMPI inspectors with authority to conduct raids should be appointed in major Mexican cities outside Mexico City, particularly in Monterrey and Guadalajara. It is worth mentioning that IMPI increased its fees by 50% in 2002 and it is expected that they will be increased again in 2003 by 35%. This will represent a cumulative increase of approximately 100% relative to 2001 fees. In addition, the copyright industries have to pay for IMPI inspectors' travel and lodging expenses in all cases conducted outside of Mexico City, which means that working with IMPI in the other Mexican states is extremely expensive and in some cases slower than in Mexico City.
- Piracy cases handled by IMPI should be expedited in order to conduct the requested inspections within two weeks from filing of the inspection petition.
- IMPI should take all appropriate measures to impose the maximum fine (10,000 minimum salaries) against serious copyright infringements. The business software industry reports that even though fines imposed by IMPI against software pirates have increased since 2001, they still tend to be below the maximum of 10,000 minimum salaries.
- Sustained and aggressive anti-piracy involvement by the tax authorities is also needed. Preferably, a public statement by the Secretary of Hacienda that tax evasion through piracy will be prosecuted and monthly participation at the Sub-Secretary level in the multi-institutional meetings by Tax and Customs authorities.
- State and municipal governments should take a proactive role in fighting piracy at street level.
- Mexican state and municipal governments need to be more proactive in legalizing the business software that they use. Issuing a decree at the federal level could prove to serve as a model for these local governments.

***(B) Mid-term action items:***

- IMPI's maximum fines for commercial copyright violations (10,000 minimum salaries) should be increased at least to the same level as the maximum fines provided for trademark violations in the Mexican Industrial Property Law (20,000 minimum salaries). This longstanding inequity requires a remedy.
- Legislation should provide that minimum deterrent fines be imposed when defendants prevent IMPI from conducting an administrative raid and/or securing all the materials and/or computers where illegal

products are detected. The purpose of enacting legislation stating minimum deterrent fines is that neither IMPI nor the Tribunal Fiscal (which has jurisdiction to review IMPI's resolutions) can reduce the amount of the fines below a certain statutory minimum. IMPI has argued that they cannot impose the maximum fines because they are later reduced by the Tribunal Fiscal.

- Legislation should be passed stating that those who provide materials and know or should have known that such materials would be used to carry out IP crimes, will also be responsible as accessories or for contributing to these crimes. Present legislation only penalizes those who “knowingly” provide materials for the commission of these crimes, so it is very difficult to prosecute them. (Note: The “knowingly” or “*a sabiendas*” requirement is provided in Article 424*bis*, section 1, paragraph 2, of the Mexican Federal Penal Code, and in Article 223, section 3, of the Mexican Industrial Property Law.
- Statutory damages applicable to copyright violations in civil cases should be established in the Mexican Federal Copyright Law. Statutory damages should be understood as a method established in the law that establishes the damages amount for the use and/or reproduction of protected works, especially in cases where the exact measure of damages may be difficult to determine. Articles 221 and 221*bis* of the Mexican Industrial Property Law provide for statutory damages for trademark violations and Article 428 of the Mexican Federal Penal Code provides statutory damages for copyright and trademark crimes. However, no statutory damages are provided for copyright violations in civil cases.
- Articles 221 and 221*bis* of the Mexican Industrial Property Law provide that the amount of damages to be awarded for the infringement of the industrial property rights protected under such law will not be inferior to 40% of the retail price of the protected work or service that is involved in the violation of any industrial property rights. Also, Article 428 of the Mexican Federal Penal Code provides a similar minimum amount of statutory damages for trademark and copyright violations. Statutory damages that are less than 100% of the retail price of a protected work are insufficient, and unfortunately provide a clear cost advantage to illegally use and/or reproduce protected works rather than legally acquiring them. Statutory damages in the amount of at least 100% the retail price of the protected work should be provided for copyright and trademark violations in civil and criminal cases. It is worth mentioning that statutory damages that far exceed 100% of the retail price of the protected work already exist in other countries, such as Brazil.
- It should be set forth in the Federal Penal Code that offering illegal products for sale through catalogs, product lists, listing activities using the Internet, and/or any other similar means is a crime. Most street pirates do not carry illegal products with them, but rather offer them through catalogs or product lists, so when the enforcement authorities search them, in a significant number of cases no illegal products are found. Consequently, it is very difficult for the copyright industries to prove that an IP crime was committed when the only evidence is the catalogs or product lists seized during the raids.

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