

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

MEXICO

Special 301 Recommendation: IIPA recommends that Mexico be elevated to the Special 301 Priority Watch List in 2007.

EXECUTIVE SUMMARY

The sheer dimension of the piracy problem in the Mexican market remains severe. Conservative estimates of trade losses due to copyright piracy in Mexico exceeded \$1 billion in 2006. Piracy involving hard goods, optical discs, Internet piracy, street piracy, and unauthorized photocopying at universities continued at high levels. The Mexican Government must focus not only on increased and more effective enforcement efforts, but also needs to increase resources for enforcement agencies and improve public awareness of the nature and repercussions of rampant piracy. More effective methods to work with state and municipal governments to attack the problem of rampant street piracy are needed. Judicial training must be intensified. Border measures must be strengthened.

To be clear, the efforts of various Mexican enforcement agencies differed greatly in terms of cooperation and results. The federal government, by and large, performed strongly last year. The criminal authorities (PGR) and administrative agencies (IMPI and SHCP) worked with rightsholders and took significant actions last year. However, performance by the state government is far less satisfactory, with only 4 of the 32 state governments appearing to be interested in combating illegal trade and piracy. Municipal government enforcement has been truly ineffective, with most of the local governments abdicating any responsibility, and permitting the widespread sale of all kinds of illegal merchandise, including pirated and counterfeit goods. Notwithstanding the immense piracy problem and despite numerous raids taken by police, prosecutions remain few as prosecutors are reluctant to push cases through the system and judges are quick to dismiss cases.

Furthermore, there are a number of bills pending, some for years, which would strengthen measures for law enforcement authorities (for example, amending the criminal code to grant *ex officio* authority). There is a long legislative agenda of proposed copyright law and criminal code amendments which need to be addressed in 2007.

PRIORITY ACTIONS IN 2007

Enforcement

- Focus efforts to fight piracy in well-know street markets (San Juan de Dios in Guadalajara) and distribution centers (such as like Tepito in the Federal District) where vast quantities of pirated goods are sold in broad daylight;
 - Significantly improve investigations and raids against pirates involved in commercial distribution and street piracy;
 - Insist that PROFECO use its *ex officio* powers to stop piracy in street markets;
 - Insist that state and municipal governments take a proactive role and be held accountable for fighting piracy at the street level.
- Improve police coordination between federal, state and municipal enforcement authorities.

- Stop illegal photocopying by copyshops on or near major university campuses.
- Improve administrative enforcement by the Mexican Industrial Property Institute (IMPI), for example: (a) IMPI agents should be accompanied by police with the authority to gain entry into the targeted premises during inspections; and (b) impose higher sanctions on door-closings in administrative raids (i.e., refusals to admit inspectors during a governmental audit or raid).
- Provide IMPI with additional resources (including personnel) to conduct inspections.
- Involve the PGR's Organized Crime Division work closely with copyright industry and carry out systematic and effective investigations and actions against chief pirates who are involved with organized crime.
- Encourage prosecutors to act swiftly on complaints and recommend maximum sentences, including jail time, to the courts in order to improve deterrence.
- Involve the tax authorities (SAT) in sustained anti-piracy actions.
- Continue to track the importation of blank optical media products.
- Improve border enforcement.
- Issue mandatory sentencing guidelines, or at a minimum suggested guidelines, in the courts.
- Continue to provide, and expand on, IPR trainings for law enforcement officials, including judges.
- Issue deterrent sentences for criminal copyright infringement.
- Enact and enforce decrees to ensure the procurement and use of legal computer software in governmental agencies, especially at the state and municipal levels.

Legislation

- Support passage of four bills which would amend the criminal code to: (a) give *ex officio* authority for police; (b) impose criminal sanctions for the unauthorized circumvention of technological protection measures; (c) impose sanctions for the piracy of open TV signals; and (d) impose penalties for the unauthorized camcording of films in theaters.
- Support, with additional amendments, the passage of a bill to amend the Copyright Law to provide technological protection measures for works and sound recordings (amendments here should track developments made on the criminal code, above).
- Support passage of the bill to amend the Copyright Law to eliminate the private copy provision in the current law.
- Block the passage of an amendment to the Copyright Law which would create a legal monopoly to the existing author's society in order to receive remuneration for the reproduction, distribution, publishing and transmission of their works.
- Improve legislative and regulatory schemes to fill gaps in administrative enforcement measures and to equalize treatment of copyrights with trademarks.
- Work with the copyright industries on developing copyright legislation which would fully implement Mexico's WIPO Treaties' obligations as well as correct some longstanding inadequacies in the current law.
- Pass amendments to the Film Law to prevent parallel imports of films.
- Implement legislation that heightens penalties, establishes minimum penalties for specific conducts like door-closing and evidence-concealment, sets parameters or guidelines for imposing sanctions, and grants robust powers to federal inspectors.

Security and Partnership for Prosperity in North America (SPP)¹

This trilateral initiative between the U.S., Mexico and Canada was launched in March 25, 2005. Working groups on various issues have been established and are consulting with private sector representatives in the three countries to set specific goals and identify concrete steps the governments can take to implement those goals. With respect to intellectual property, a draft "action

¹ For more information on this trilateral initiative, visit the SPP website at <http://www.spp.gov/>.

strategy” was compiled in late 2006 and is being finalized in time for the April 2007 SPP Summit in Mexico. IIPA has not seen the final product, but understands that there are elements with respect to issues such as enforcement, public awareness and industry metrics, for example. The copyright industries have been heartened by the attention and willingness the Mexican government has attached to this process, especially with working with its neighboring governments on enforcement matters. It is premature to comment on whether the SPP forum will result in any specific anti-piracy operations – which are especially important given our common borders, both in the physical and online realm.

MEXICO										
Estimated Trade Losses Due to Copyright Piracy										
(in millions of U.S. dollars)										
and Levels of Piracy: 2002-2006²										
INDUSTRY	2006		2005		2004		2003		2002	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Sound Recordings & Musical Compositions ³	486.6	67%	376.5	65%	326.0	60%	360.0	61%	459.0	68%
Entertainment Software ⁴	182.0	85%	137.7	75%	132.2	76%	136.9	66%	NA	NA
Business Software ⁵	296.0	63%	263.0	65%	222.0	65%	220.0	63%	168.9	55%
Motion Pictures ⁶	NA	NA	483.0	62%	140.0	70%	50.0	45%	50.0	40%
Books	41.0	NA	42.0	NA	42.0	NA	40.0	NA	40.0	NA
TOTALS	1,005.6		1,302.2		862.2		806.9		717.9	

COPYRIGHT PIRACY IN MEXICO

Copyright piracy remains a serious problem in Mexico, with 2006 reflecting, unfortunately, no significant improvement in piracy. Piracy involving hard goods, optical discs, Internet piracy, photocopying and street sales continued at high levels. Notwithstanding the immense piracy problem and despite numerous raids taken by police, prosecutions remained few as prosecutors remain reluctant to push cases through the system and judges are too quick to dismiss cases that are not being actively pursued by prosecutors. The business software industry did report a slight improvement

² The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2007 Special 301 submission at www.iipa.com/pdf/2007spec301methodology.pdf. For information on the history of Mexico under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

³ RIAA reports that the 2000-2005 estimated losses due to recording piracy in Mexico reflect losses experienced by the overall industry, including both U.S. and Mexican record companies. The losses are calculated using a third-party survey to improve accuracy of the estimate.

⁴ ESA’s reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry “losses.” The methodology used by the ESA is further described in Appendix B of this report.

⁵ BSA’s 2006 statistics are preliminary. They represent the U.S. publishers’ share of software piracy losses in Mexico, and follow the methodology compiled in the Third Annual BSA/IDC Global Software Piracy Study (May 2006), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA’s 2005 piracy statistics were preliminary at the time of IIPA’s February 13, 2006 Special 301 filing; the 2005 data was revised and posted on the IIPA website in September 2006 (see <http://www.iipa.com/statistics.html>), and the 2005 revisions (if any) are reflected above.

⁶ MPAA’s trade loss estimates and piracy levels for 2006 are not yet available. However, such numbers will become available later in the year and, as for 2005, will be based on a methodology that analyzes physical or “hard” goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As the 2006 loss numbers and piracy levels become available, they will be posted on the IIPA website, <http://www.iipa.com>.

in lowering piracy levels of its products last year, likely a result, in part, of continuing good cooperation with administrative enforcement authorities. In order to bring down piracy levels in Mexico, it is essential to attack manufacture, distribution, sale and importation.

Copyright owners have been working, and will continue to work, closely with law enforcement authorities, on piratical production and distribution. The Mexican government should deal with the strong market for pirated goods in parallel with efforts to address the production side of piracy. Without the government's sustained efforts to close down the notorious pirate markets, efforts to address production and distribution will continue to be hindered. The entertainment software industry reports that several of its planned enforcement actions were severely hampered in 2006 due to limited police resources, which were diverted to address matters that arose out of the disputed presidential elections and the resulting disruption in Mexico City. Enforcement slowed during the Fall 2006 election cycle, but picked up after that.

In March 2006, members of several copyright-based industries announced the formation of a new coalition dedicated to fight piracy. The new Institute for the Protection of Intellectual Property and Legitimate Commerce (IPIIC) lists its members as: AMPROFON (the Mexican Association of Phonogram Producers), BSA (the Business Software Alliance), CNIV (The National Chamber of the Garment Industry), and PRONAPHON (the National Producers of Phonograms). This association essentially gave a legal status to the group that was meeting with PGR and other government agencies.

Street piracy, organized crime and efforts to legitimize markets: A major problem throughout Mexico involves widespread, and well-entrenched, street piracy. For example, Tepito, one of the world's largest centers of pirate product and contraband sales (as well as of drugs and weapons), is well organized and continues to be politically protected. There are at least 80 very large, very well-known, "black markets" in Mexico. By some estimates, there are an estimated 44,000 points of sale involved with distributing infringing copyrighted materials. The main distribution centers for optical disc piracy are well known to law enforcement authorities: Tepito, Plaza Meave, Eje Central, Plaza de la Computación, Lomas Verdes in Mexico City, CAPFU in Puebla, Las Pulgas in Monterrey and San Juan de Dios in Guadalajara. Raids in Tepito and other large pirate markets are only conducted at night, as it is unsafe for law enforcement to run actions during the day. The morning after a raid where often tons of pirate product is confiscated, there is no real impact in the market because the same shops reopen and continue their business. There are very few, if any, arrests being made. However, if more police resources were committed to anti-piracy actions, then law enforcement would be able to conduct more raids in these markets. Not only has the volume of optical disc piracy increased in this market system, the market system itself has increased in size and extension. Pirates are also using the subway stations, where there is great circulation of people, to sell pirate CDs and DVDs.

These markets are very well structured, with discrete distribution chains, indicating in many cases that organized crime is involved. Some of these organized crime groups have exports and distribution activity to most of the Central American countries as well as a growing possibility to export to the U.S. and its Latin markets. On the other hand, Mexico imports a lot of blank media from Southeast Asia (China, Taiwan) which, because of high taxes in Mexico, enter Mexico as U.S. exports. The growth of these unregulated markets is now a political, economic and public security concern to local authorities. There is now no counterweight to their growth and many authorities believe that the street markets need local control, both on the municipal and state levels. It remains imperative that any anti-piracy campaign by the government include as a top priority reducing this kind of distribution network.

Audiovisual piracy: MPA reports that Mexico is the most important Latin American market for the U.S. audiovisual industry and is ranked 9th in worldwide all-media revenue for MPA member companies. Mexico has the highest rate of optical disc piracy of filmed entertainment in the hemisphere. More than six times as many illegal DVDs were sold on the streets of Mexico (176 million) than legal DVDs (25 million) in 2005. It is estimated that Mexico imports around 800 million blank media units per year, most of which are used to create pirated product. Camcording piracy is another problem; in 2006, five illegally-camcorded movies were confirmed as originating in Mexican theaters. These films, with Spanish subtitles or dubbing, were quickly distributed on the Internet and reproduced into illegal DVDs for worldwide consumption. Although Internet piracy is currently not a major problem in Mexico, MPA reports that with the increased availability of broadband both in homes and Internet cafes, illegal Internet downloads and Internet-based hard good sales of CD-Rs and DVD-Rs are expected to become a more serious threat to legitimate sales and distribution in the near future. By the end of 2006, there will be 3.2 million households with broadband connections, with this number expected to increase to 6.1 million by the end of 2007 and 11.5 million by the end of 2008. The legitimate Mexican audiovisual industry employs approximately 100,000 writers, actors, producers, and technicians, and drives the business of film, video and television studios, post-production facilities, film and video distributors, 3,600 cinemas, 6,800 video outlets, 6,000 retailers (including 4,000 owner-operated outlets) selling legitimate film product, and 400 pay-TV operators. MPA reports that in 2006, Mexico was one of the few countries where theatrical admissions has increased over 2005, despite the huge piracy. In contrast, the home entertainment market has decreased over the past two years, and a growing signal theft problem is starting to show up.

Piracy of sound recordings and musical compositions: The recording industry in Mexico continues to be one of the top ten pirate markets in the world. Burned CD-Rs and DVD-Rs are the format of choice for almost all pirates. Recording and music piracy in Mexico represents \$486.4 million in losses and covers approximately 67% of all units sold in the country. The level of piracy has increased slightly in the last year by two percentage points (from 65% to 67%) due to mostly the spread of street vendors in south and central Mexico. The key areas of anti-piracy actions such as Mexico City, Jalisco and Monterrey have either remained at the same level or decreased. Tepito has continued to be a major problem for the recording industry for far too many years; it accounts for approximately 65% of the pirate music product manufactured and distributed in the country. Another major concern for the industry is Internet piracy, which is threatening the development of an emerging legal download business now represented by two new important websites: Tarabu.com and Beon.com. According to a recent market survey, conducted by IPSOS-BIMSA, in 2006 1.7 billion illegal music files and 221 million illegal music videos were downloaded in Mexico via P2P networks. The number of songs downloaded per year is close to double the number of songs contained in the legitimate records sold in 2005 in the whole country. A conservative projection shows that around the country are 4.4 million Internet users who use P2P networks to download music, music videos and movies. Due to this critical situation, the Mexican recording industry (represented by AMPROFON) and the music publishers' association (EMMAC) decided to participate in a global litigation program, announced by IFPI in 18 countries during 2006, filing 20 civil actions against individual users of P2P networks and 6 cases against Internet cafés' owners and administrators. Although these cases are still being processed in the judicial system, more cases are expected to be filed in 2007.

In addition, 2006 also reflected a major anti-piracy effort against Internet cafés by the recording industry. In September 2006, anti-piracy groups across Latin America carried out a coordinated campaign to combat illegal music downloading at Internet cafes. The operation, named "Cyber Shutdown," took place in cities in Mexico, Brazil, El Salvador, Colombia, Chile and Argentina, with the support of more than 2,000 law enforcement officers. IFPI reports that the strategy behind this campaign was based on intelligence developed through local research that indicated Internet cafés were becoming a significant factor in the growth of digital and physical music piracy. In Mexico, 12 raids were conducted by PGR and PFP and 242 computers, 12 servers, 24 stand alone burners and

52,799 illegal music files removed in Internet cafes in the capital city area. Unfortunately, the PGR did not conduct more raids in the last trimester of the year due to the political turmoil caused by the presidential campaign and election.

Business software piracy: The estimated level of business software piracy in Mexico declined slightly in Mexico, down to 63%. BSA partnered with IMPI to conduct actions, with unprecedented results and wider geographical coverage. Teaming up with the Copyright Office (INDAUTOR) has produced a high volume of conciliations, with good results, quantitatively and qualitatively. BSA reports that preliminary estimated trade losses due to business software piracy in Mexico rose last year to \$296 million. BSA remains very concerned with continuing end user piracy. This industry also reports problems with Tepito and San Juan de Dios (in Guadalajara) which serve as manufacturing (burning labs) and selling points for pirated software. Higher fines need to be imposed on parties who close the doors or conceal evidence during a governmental inspection or raid. Copyright certificates from abroad must be given full recognition. The number of actions should increase. Electronic audits should be fully implemented. Additional staffing in governmental agencies is necessary (particularly inspectors and conciliators). Government officers need to be more empowered to conduct investigations and raids, to issue resolutions and impose sanctions whenever applicable.

In 2006, the Mexican Software Consortium was launched. The Consortium is a Public-Private-Partnership formed by the Ministry of Economy, through the "Prosoft" initiative, together with the Mexican Internet Association (AMIPCI), the Instituto Politécnico Nacional (IPN), the Instituto Tecnológico Autónomo de México (ITAM) and the Instituto Tecnológico y de Estudios Superiores de Monterrey (ITESM), among others. The Consortium is holding a national road show to promote local technological innovation, and the protection of inventions and works of art. It also runs a hotline where inventors and innovators are offered assistance on how to protect their inventions.

In early 2006, BSA concluded a study on software piracy in Mexico, focusing on the Mexican psyche, motivations and perceptions surrounding software piracy. The results of the study have been shared with government officers and representatives of the media. These results constitute a useful tool in understanding the specifics of software piracy locally, and building an educational outreach campaign that is closer to the Mexican way of thinking.

As a result of the 2006 study, BSA launched a national digital animation contest entitled: "It all starts with an idea, and it could be yours!" It involved students between the ages of 15-30. The contest was launched by the Director General of IMPI on World Intellectual Property Day, which was hosted by WIPO and IMPI. It was a joint effort of the BSA, IMPI, INDAUTOR and IPN. The contest resulted in the selection of nine animated works that will be shown to Mexican children between six and twelve years old.

Entertainment software piracy: Entertainment software piracy on all platforms remains at a very high level, virtually unchanged from previous years, despite the industry's enforcement efforts in Mexico. Pirated entertainment software is sold blatantly throughout Mexico in permanent markets and on the street. Many of these permanent markets, such as Tepito and Plaza Meave in Mexico City, are also notorious production points and wholesale distribution centers of pirated games. It is believed that Tepito and Plaza Meave have deep connections with organized crime. Despite these links, piracy at both markets continues to flourish with impunity despite the fact that the industry (along with other copyright groups) has raised this issue of criminal strongholds with government officials on numerous occasions at various levels.

The most damaging form of piracy is hard-goods, as evidenced by the enormous quantities of burned optical discs and counterfeit cartridges that are present in the Mexican market. The industry's

enforcement work has revealed that large pirate operations are manufacturing optical discs locally through the use of CD and DVD burners and distributing them to a network of retailers. Also, even small pirate retailers located in informal markets are engaged in CD/DVD burning for on-the-spot orders of pirated games. Local CD-burning is common for console games, including Xbox®, PlayStation2®, GameCube, and increasingly, the Xbox 360™ which was released last year, as well as PC games. Counterfeit cartridges are imported from Asia, often in components which are then assembled in Mexico. Despite the flood of such counterfeits, there have been few seizures at the border due to the Customs agency's limitations in inspecting suspect shipments and its inability to take *ex officio* action against pirated and counterfeit entertainment software products.

Another significant problem is circumvention activity, which involves the bypassing of technological protection measures that the industry uses to protect its copyrighted games. This is often done by the installation of "modification chips" in consoles, which enables them to play pirated games. This activity occurs openly in many markets, alongside the sale of pirated games. The entertainment software industry is unable to bring enforcement actions against individuals and businesses that engage in circumvention activity, given that Mexican criminal law does not clearly prohibit the distribution and sale of circumvention devices and software. Finally, BSA reports that Internet-based piracy is expected to increase as the Mexican broadband market grows, although the industry has not yet determined the size of the online piracy problem in Mexico. The Entertainment Software Association (ESA) estimates that the value of pirated videogame product in the Mexican marketplace was \$182.0 million in 2006, with a 85% piracy rate.

Book piracy: Illegal photocopying of books remained a huge problem for the publishing industry in 2006. Schools and universities have photocopy machines in their libraries, in addition to private on-campus photocopying businesses, and selected contents of books are regularly copied. This copying routinely surpasses permissible levels even under the deficient provisions of the copyright law.⁷ Copy shops in and around the UNAM (the national university) in Mexico City charge as little as 2-3 US cents per page, undercutting the market for legitimate texts. Universities often condone, either directly or indirectly, infringing activity on campus. 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. Both enforcement officials and education/university officials should take a more active role in fighting this unauthorized reproduction, especially activity occurring on campus or using campus facilities. Universities should implement policies discouraging this activity, complete with consequences for those who engage in it. The local reprographic rights organization (RRO), CEMPRO (*Centro Mexicano de Protección y Fomento a los Derechos de Autor*), established in mid-1998, started collecting small amounts of licensing royalties in 2001. These payments remain voluntary, and are thus not a good source of revenue for legitimate companies, though some publishers report that payments have improved a bit. AAP estimates that book piracy losses in Mexico were at \$41 million in 2006.

COPYRIGHT ENFORCEMENT IN MEXICO

It is important to acknowledge those Mexican agencies which have been performing well on the anti-piracy front and those which experience problems in achieving results. The federal agencies, with some exceptions, have been taking actions and working with rightsholders. Work done by the PGR, IMPI and SHCP is improving. In contrast, anti-piracy actions taken by the States was not strong in 2006. Only four of the 32 State governments appear to be interested in combating illegal trade and piracy; these are the State of Mexico, the Federal District, Jalisco and Puebla. Enforcement at the

⁷ The Mexican copyright law is deficient in that it allows students to copy one complete copy of every work, provided it is not done for profit. This provision violates TRIPS and should be revised.

municipal government level is very weak. Mexico has 2,400 municipal governments, and about 190 of them have populations of over 100,000 inhabitants. Each one of these municipalities has regulations related to commercial establishments, markets and street vendors. However, even with regulations in place and inspectors to enforce them, local anti-piracy actions have not been taken (possible reasons include local politics (votes) and corruption). Unfortunately, many of these local governments deflect their responsibility entirely, insisting that enforcement should be done only by the PGR.

It is hoped that the National Anti-Piracy Agreement is fully implemented in 2007, as a result of a public-private collaboration that focuses on specific actions and results.

Criminal enforcement: raids, seizures and cooperation with the police and PGR: A major structural impediment to enforcement remains in that piracy is still a “private” offense and a complaint (*querrela*) must be prepared by the rightsholders and filed with the PGR before they consider conducting a raid. For years, the industries have been supporting amendments to the criminal code which would permit *ex officio* actions. As discussed below, a notorious problem in 2006 involves the limited police resources available for PGR raids.

PGR: The industries continue to report generally good cooperation with police in various jurisdictions around Mexico in 2006. Before the 2006 elections, the Assistant Attorney General for the Mexico City area met regularly with private sector representatives to review anti-piracy actions. The industries are waiting to know more as to which prosecutors will be appointed to the IPR sections of the PGR. The PGR interacts directly with the industry through its anti-piracy coordinating committees, especially at the state level. These committees have proved effective in several states, including Nuevo Leon, Morelos and Puebla, in allowing the private sector both to communicate and to direct some PGR action against street piracy. By order of the Assistant Attorney General for Regional Offices, each state PGR office has specific anti-piracy goals for the year (investigations, seizures, but notably, not arrests or indictments), including monthly meetings with the local private sector affected by piracy. Unfortunately, anti-piracy efforts have been concentrated in PGR with little or no support, in general, in most of the States and larger cities.

Another PGR unit (**PGR-SEIDF**, the “Subprocuraduría” Specialized in Investigation of Federal Crimes) has worked with industries and achieved significant results. SIEDF includes the Specialized Piracy Unit, with which has achieved results against piracy in the main black markets such as Tepito, San Juan of God, Simitrio, Capu, etc. However, this unit does not have sufficient personnel nor the capacity to dismantle the main networks of organized crime, which are closely associated with the black markets.

The recording industry reports that in 2006, 3,520 raids took place, from which 1,454 were street raids, 252 laboratories, 1,804 warehouses and 10 border operations. 40 persons were prosecuted and 15 condemnatory sentences were issued. Support continues from the Mexican federal and local police for several large actions. For example, on November 16, 2006, two big actions were completed. First, Mexican authorities raided 208 warehouses in Tepito and seized approximately 1 million blank CD-Rs, 310,000 recorded CD-Rs, 2.5 million Inlay cards, 40,000 cassette boxes and almost 1 kilogram of cocaine. Second, in a related operation Mexican authorities dismantled three laboratories with 85 burners and 1 million blank CDRs in Tepito. These actions are part of a holiday program that calls for stepped up operations to stimulate legitimate product sales. The significant amounts of pirate product seized are leading authorities to conduct follow-up investigations with the goal of determining a potential nexus to organized criminal groups in Tepito. In another large-scale action, in Veracruz, two warehouses and two laboratories were raided on October 21, 2006, with support from 200 federal and local police officers. Seized at these locations were 810,000 recorded CD-R units, 9,190,000 inlay cards, 72 burners and 600,000 DVD units, containing music videos and films. These Veracruz locations produced and distributed pirate product for the entire state. This

operation is the first of its kind in this part of Mexico and confirms the existence of a diversified network of pirating groups that incorporate both music and films piracy into their criminal enterprises. The local industry is encouraging the Attorney General to typify these pirate activities by these groups as organized crime cases. Despite a strong working relationship with Mexican IPR enforcement agencies, the recording industry's ability to bring criminal enforcement efforts was severely hampered in 2006 due to the limited police resources available for PGR raids.

For example, with PGR and the federal investigative agency's (AFI) resources being diverted to political matters, ESA reports that the PGR conducted only one raid in Mexico City (and this occurred only after an urgent meeting with the agency to schedule the raid on an expedited basis). The action took place in October 2006, when nine vendors at a popular Mexico City bazaar were raided. The raid resulted in the seizure of 8,356 pirated games for the Xbox, PlayStation2, GameCube and Game Boy Advance platforms, as well as numerous computers and CD/DVD burners. The ESA sought to conduct two more raids during the recent holiday season, but this, once again, was frustrated as police resources were diverted to other priorities. Several ESA member companies also work with IMPI and PGR officials on enforcement actions.

PROFECO: The Attorney General of Consumer Affairs (PROFECO) has the authority to take *ex officio* actions against black and informal markets, including the powers to seize product, close markets, and issue sanctions. PROFECO has been instrumental in identifying pirate product for the municipal authorities to take action on the license revocation programs in four key municipalities making up metropolitan Guadalajara. The recording industry reports 11 raids in Guadalajara conducted by PROFECO in 2006. PROFECO should get much more actively involved in fighting piracy at the street markets, especially in Mexico City, Puebla, Guadalajara and Monterrey. PROFECO's *ex officio* powers could be used to address widespread street piracy; however, the lack of concrete actions leads to the conclusion that PROFECO does not have political willingness to adopt effective measures against piracy.

PGR-SIEDO (Organized Crime Investigative Unit): This is the only division of the PGR which has not focused on piracy, due to PGR budget cuts ordered by the Congress in the beginning of 2004. SIEDO created, in name, a specialized area to fight organized criminal groups, but does not have the budget resources to appoint officials to work in this area. In 2004, the PGR empowered its Organized Crime Division to investigate piracy and has developed systematic coordination with the private sector. The Organized Crime Division has some of the PGR's best investigators and attorneys and has resources that the other divisions do not have, such as paid informants, wire-tapping authority and witness-protection programs. Unfortunately, no copyright-related actions were taken by this unit in 2006.

SSPF (Secretary of Public Federal Security): Six years ago, at the beginning of the Fox administration, the PFP (Federal Preventive Police) appeared to be a new option for combating piracy. Since 2004, however, it has moved its focus to combating child pornography.

SHCP and Customs: Historically these entities have not been involved in domestic actions. However, cracking down on tax evasion is a motivation in fighting street vendors, and that would suggest a motivation for SHCP to get more involved.

Anti-piracy efforts at the State level: In January 2007, Metro authorities resumed internal operations against piracy. With nearly 200 stations and 4 million daily users, the metro system is occupied by between 6,000 – 8,000 pirate vendors. Thanks to the support of the Metro police, a large volume of pirate products have been seized and five important leaders of thirteen organizations that sell piracy have been arrested. Also in recent months with the backing of the Government of the Federal District, the Metro has also assisted in the creation of eight cooperatives (formed by visually impaired

merchants) who sell cheaper “alternative” product as part of the film industry’s pirate product substitution program.

Few prosecutions: Although the PGR increased its commitment to seize pirate product from street markets, effective case preparation, indictments and prosecutions are still far below the needed commitment to have any significant effect. The obvious problem remains -- few criminal prosecutions are brought by the PGR.

COPYRIGHT ENFORCEMENT STATISTICS IN MEXICO IN 2006 (INCOMPLETE, STILL IN PROCESS)						
	MOTION PICTURE CASES	BUSINESS SOFTWARE CASES	ENTERTAINMENT SOFTWARE CASES	RECORDING INDUSTRY (LOCAL AND U.S.) CASES	2006 TOTAL	COMPARE 2005
TOTAL NUMBER OF RAIDS (CRIMINAL PLUS ADMINISTRATIVE)	NA	944		2,937		2,636
CRIMINAL RAIDS	NA	0	1 (ESA ONLY, NOT INCLUDING MEMBER COMPANY ACTIONS)	2,937		2,217
ADMINISTRATIVE RAIDS BY IMPI	NA	756				419
ADMINISTRATIVE VISITS BY INDAUTOR	NA	188				
NUMBER OF PERSONS HELD IN PRE-TRIAL DETENTION	NA	0				
NUMBER OF INDICTMENTS	NA	0		5		
NUMBER OF CASES RESULTING IN CRIMINAL FINES OR JAIL TERMS	NA			15		
NUMBER OF CASES RESULTING IN ADMINISTRATIVE FINES	NA					
LEVEL OF CRIMINAL SENTENCES IMPOSED	NA			15		
RATIO OF CONVICTIONS/ FINES TO NUMBER OF CRIMINAL RAIDS CONDUCTED	NA					N/A
INFRINGING COPIES SEIZED	NA		8,356 (DOES NOT INCLUDE SEIZURES THROUGH SEPARATE MEMBER COMPANY ACTIONS)	16.5 MILLION UNITS OF RECORDED DISCS		<i>AT LEAST 19.6 MILLION COPIES</i>
OTHER MATERIALS RELATED TO INFRINGING ACTIVITIES WHICH WERE SEIZED (ITEMIZED)	NA			25.4 MILLION UNITS OF BLANK DISCS		(SEE LEFT)

NA = Not available

Few Deterrent Penalties: Even in 2006, the copyright industries continue to report that the Mexican judiciary continues to view copyright infringement as a minor offense, and issues very few deterrent sentences. The one measure under the revised penal code that has shown some positive traction is that the possibility of bail has been removed for those indicted for criminal copyright infringement. Mexico should consider adoption of mandatory sentencing regulations, or the Supreme Court itself should set out recommended guidelines.

The recording industry reports that only 15 sentences were issued in 2006 for incarceration of up to 3 years but most of them were suspended because judges felt the crimes were not serious enough to jail the pirates.

However, there was a positive shift in late 2006. On December 17, 2006, a Mexican Circuit Judge in Guadalajara sentenced a music and film piracy defendant to a prison sentence of three years and nine months in jail plus a fine of \$100,000 Mexican pesos (US\$9,100) for IPR infringement. The recording industry reports that this is the first prison sentence in the "Mexico Plus" operation and dates back to a raid conducted in January 2006 when two laboratories owned by the defendant were raided in full operation. The authorities seized 60 burners, 10,000 recorded music CD-Rs, 2 industrial silk-screening machines, 6 industrial printers and 800,000 covers. Initially five subjects were arrested, but only two were formally charged. One co-defendant received a similar sentence but is currently a fugitive. This particular organization was one of the major suppliers of pirate film and music product to the major markets of San Juan de Dios and Parian in Guadalajara.

In 2006, BSA member companies brought more than 60 criminal actions, including street sweeps, system builder channel actions, warehouses and labs.

Positive administrative copyright enforcement by IMPI and INDAUTOR: BSA reports that 2006 was marked by cooperation and partnership with the Mexican Industrial Property Institute (IMPI) and the Mexican Copyright Office (INDAUTOR), which yielded an intensive campaign that expanded into more Mexican states. The software industries appreciate the coordination and assistance of the administrative enforcement authorities (IMPI) that resulted in an unprecedented volume and quality of cases, and hope to continue to expand on positive results in 2007.

As for administrative anti-piracy actions, BSA and IMPI collaboration continued to work very well: 141 IMPI administrative infringement actions and 676 *ex officio* IMPI visits. The SPP Initiative is a major opportunity in Mexico, and BSA is working with IMPI on SPP-related developments. Additional inspectors at IMPI will be needed in order to meet its ambitious 2007 goals.

BSA reports that IMPI continued to experience the problem of "door closures" during its administrative inspections. Fortunately, there has been a favorable resolution from the courts to strengthen IMPI's enforcement ability. In the case of AOS SOLUTIONS, the court held that the authorities can presume an infringement in the event that the defendant closes its door and does not allow said authorities to conduct an inspection. IMPI has implemented this criterion in 2006; BSA hopes that this will improve IMPI's ability to enter target premises in future actions.

MPA reports that IMPI was also its major enforcement means to ensure that licensed establishments continued to remain legitimate. Unfortunately, IMPI does not have enforcement authority to crack down on street vendors. It is hoped that IMPI will soon be able to become more useful in the street piracy fight, given the signing of the AECF (State Agreements Against Piracy).

Conciliations and mediations by INDAUTOR: Last year, BSA also worked with INDAUTOR, the copyright office, to implement a system of institutional mediations (*juntas de avenencia*). BSA and INDAUTOR held 276 conciliation meetings with end users. INDAUTOR completed 217 mediations in 2006, a huge increase from the 28 actions in 2005. These actions are an alternative to litigation. Parties are given the opportunity to talk about a specific infringement situation and reach an amicable solution. The campaign entitled PIÉNSALO BIEN or "Think about it" was more robust, encompassing both software system builders and end users. It intensified its operations within the Mexico City metropolitan area, and it reached out considerably to states like Nuevo León, Guadalajara, Veracruz, Puebla and Quintana Roo. The mediation model offered by INDAUTOR has become a very useful tool in legalizing software licenses.

Border efforts to track blank optical grade media: Given the growth of optical disc (OD) piracy in Mexico, it is important to track imports of blank ODs. The recording industry negotiated an agreement in 2002 with the Mexican finance ministry (which includes Customs) to address the problem of pirate CD-Rs. This agreement called for reducing the number of ports of entry for CD-R and CD burners, to 15 (down from 52) as well as providing training and assistance to Customs authorities. The recording industry reports that this agreement, along with additional support from IMPI actions with Mexican Customs, have contributed very positively to the seizures of large shipments of blank CD-R products (IMPI coordinates actions with Customs under the Industrial Property Law, and Customs conducts the actual confiscations). Most of the seizures are due to fraudulent invoices or undervalued product.

Improve border enforcement generally: Formal requirements to initiate actions are onerous. 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 to expedite the procedures by which Customs may make immediate seizures of clearly infringing products.

The recording industry reports several border actions last year. In one November 2006 action, Mexican Customs officials as part on that industry's ongoing border program seized an unauthorized shipment of 4.6 million blank CD-Rs and 900,000 blank DVD-Rs that intelligence indicated was destined to a major pirate distributors in Tepito. Total seizures for 2006 were more than 25 million units of blank optical discs.

MPA believes that it is imperative that U.S. and Mexican customs start to work together not only to prevent Mexican exports of pirate movies to the U.S. Latin Market, but also to put a control of blank media exports from Southeast Asia that passes through the U.S. to avoid tax burdens. In addition, there has been increased cooperation between certain copyright holder groups and Mexican Customs, but this conclusion does not apply across-the-board

Civil copyright infringement cases: BSA continued exploring civil actions in 2006, by following up on the 12 actions filed in 2005. Most of these actions were terminated during this year.

COPYRIGHT AND RELATED LAWS IN MEXICO

Current Legislation

Federal Law on Copyright (1996, as amended) and its regulations: Amendments to Mexico's 1996 copyright law entered into force on July 24, 2003. The copyright industries worked diligently to shape some of the more troubling parts of this legislation. Two bright notes in those 2003 amendments included the extension of the terms of protection for works and objects of related rights, and the deletion of a deleterious private copying levy. Regulations to implement the 2003 amendments were issued two years later, in September 2005. In addition, Mexico acceded to both the WIPO Treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty) in 2002 (note, however, that the WIPO Treaties' Agreed Statements still need to be published in the Official Gazette).

The 2003 copyright law amendments failed, however, 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 and the WTO TRIPS Agreement. Mexican government officials have indicated that it is possible that they might consider initiating a long-term process to revise the Mexican Federal Copyright Law. Any reform should include ISP liability and create notice and takedown procedures, a comprehensive making available right, and civil and criminal sanctions on the circumvention of technological protection measures and removal or alteration of electronic rights management information. The copyright industries request that any such initiative involve public comments and that the process be as transparent as possible.

Organized crime law: On December 3, 2002, the Mexican Chamber of Deputies approved legislation to amend the Mexican organized crime legislation to include copyright piracy. The law (which appears in Article 424*bis* of the Federal Penal Code) was finally signed on April 4, 2004, entering into effect on May 12, 2004. This means more power and local resources to fight copyright piracy. 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 are 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 gave 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 knowing the witness's identity). Due to the complex investigative procedures established in this law, the Organized Crime Division of the PGR has not undertaken concrete actions against piracy. An amendment to this law may be considered to simplify the procedures. To our knowledge, no recent copyright actions have been based on the organized crime law.

Pending Legislation / Legislation Needed

Bill to amend the criminal code to provide for *ex officio* copyright actions: An Anti-Piracy Bill to amend the criminal code to increase criminal penalties for copyright infringement and to give *ex officio* authority to the police to pursue copyright infringement actions was presented to the Mexican House in 2004. In 2005, the bill was passed by the House of Deputies, and since then it has been pending before the Senate. On January 26, 2007, the bill was at the Commission of Justice at the Senate, waiting to be voted in the very near term. A vote on a joint session at the Senate is expected before the end of April. This bill is extremely necessary for the copyright because rightsholders will not have to file criminal complaints for every case of infringement. Such authority will also have the benefit of expanding anti-piracy nationwide.

Stop the objectionable copyright bill affecting music and sound recordings (Bill Article 26 Ter): In 2006, legislation opposed by both the recording industry (AMPROFON) and the music publishing industry (EMMAC) was presented to the House of Deputies. This bill was pressed by SACM, the Mexican music collecting society, in a blatant effort to deprive music publishers of the right to collect the author's share of the musical works they already control (or will control in the future) which is generated by the mechanical reproduction rights from the record labels, as well as all other rights. This bill would create a right of remuneration to authors for the reproduction, distribution, publishing and transmission of their musical works. The right to receive this remuneration could not be waived, but could be exercised directly by the author or through a collection society. This bill would also have a single collecting society (SACM) serve as the only entity which could set certain fees and rate conditions in Mexico, all without possibility of negotiation by the rightsholders (both music publishers and producers). The bill was approved by the Chamber of Deputies in 2006, then rejected by the Senate; it has since been sent back to the lower chamber. This bill should not move forward in 2007.

Bill to remove the private copy levy and the "*lucro*" (for profit) requirement in the copyright law: In 2006, an amendment to the Copyright Law was presented before the House of

Deputies which would remove Article 40 (which establishes a private copy levy) as well as the onerous “*lucro*” (for profit) requirement (a high standard required in order to bring an infringement action) from the current law. This initiative, supported by the copyright industries, is still pending before the Education Commission of the House of Deputies.

Bill to amend the criminal code to establish sanctions for anti-circumvention: A bill to amend the Mexican criminal code to establish criminal sanctions for the circumvention of technological protection measures (TPMs) was introduced in 2004, approved in the Lower House in 2005, and is still pending in the Senate. Further work was needed on this bill to better reflect the scope of what the industries view as an effective anti-circumvention bill. Additional amendments were then proposed to better capture the kinds of acts which could circumvent TPMs, including devices, components and services. (The current Mexican copyright law does provide some civil anti-circumvention measures but these are only applicable to computer software, not other copyrightable subject matter; this is why further amendments to the criminal code as well as to the copyright law are required for full WIPO Treaties’ implementation.)

Bill to amend the criminal code to provide protection against unauthorized camcording in theaters: MPA is sponsoring a bill presented by Congressman Javier Orozco, which amends the Criminal Code to punish with a prison term from 3 to 10 years and fines the unauthorized cam-cording of films in theaters; the respective legal action would be *ex officio*. The bill was approved by the House of Deputies and is currently before the Senate.

Proposed copyright law amendment regarding technological protection measures (TPMs): Recently approved in the House of Deputies, a bill has been proposed to amend the copyright law to grant the right to authors, performers and record producers the ability to apply technological protection measures to their works, performances and sound recordings. However, much more work is needed on this bill to better reflect the scope of what the industries view as an effective anti-circumvention bill, including sanctions against the circumvention of TPMs, and removal and alteration of electronic rights management information. This bill should be treated simultaneously with the initiative to establish criminal sanctions for circumvention activities (discussed above).

Bill to amend the Film Law to prevent the parallel imports of films: In 2004, a bill was presented in the Lower House which would prevent the parallel imports of films by determining and imposing administrative sanctions on those who commercialize films without the previous authorization and rating granted by the Radio, Television and Film Secretariat. The bill was approved in the Lower House and is pending approval in the Senate. MPA supports this initiative.

Free television piracy bill and amendment to the Television and Radio Federal Law: In 2004, an amendment to the criminal code was presented in the Lower House which would sanction with a prison-term of four to eight years for anyone who illegally uses, exploits and operates public communication networks. This bill should also be modified to sanction the unauthorized use and retransmission of pay-TV signals. MPA supports its modification and approval. In addition, the Lower House just approved an amendment to the Television and Radio Federal Law to regulate the grant of licenses to pay TV operators, establish a must-carry obligation, limit the market share of individual broadcasters, reduce the validity period of licenses, etc. MPA understands that this initiative should be modified to include a provision to protect digital audiovisual content.

Bill to amend the Law of Industrial Property: BSA is working on a bill to raise penalties, establish guidelines, minimum penalties and standards for issuing administrative fines. Special fines should be imposed on individuals and establishment who deny entry (close their doors) and conceal evidence during administrative inspections. IMPI inspectors should have more robust powers to

conduct raids, actions, issue decisions and impose higher fines. BSA hopes to join efforts with local associations to introduce this bill into Congress.

Related issues

Digital TV: In 2006, Mexico chose the ATSC standard for the Mexican digital terrestrial TV system. However, Mexico has not yet announced which system will adopt to protect digital TV content. MPAA calls the attention to the need to select a method of protection against unauthorized redistribution of digital broadcast signals over the Internet, as critical to guaranteeing the future viability of this sector.

Software legalization decree in government ministries: The Mexican federal government is among the most “legal” in all of Latin America with respect to its software licensing efforts. However, Mexico has never issued a government legalization decree. Mexican states and municipalities should make further progress on legal software use and a federal decree could serve as a model for the States. INDAUTOR, the Education Ministry of Jalisco and the Municipality of Zapopan have agreed to self-audit and publicly set the example for legal software. BSA reports that the efforts in Jalisco are moving forward.

IPR TRAINING AND PUBLIC AWARENESS

Copyright industry associations and companies regularly conduct training and informational seminars for Mexican enforcement authorities. BSA offered specialized training seminars for IMPI and INDAUTOR officers regarding technical and legal aspects of software programs, servers, licensing models, and new developments in the software area. BSA has created the Mexican Software Consortium, in association with the Ministry of Economy, IMPI, INDAUTOR, the Mexican Internet Association (AMPICI) and several public and private universities. MPA organizes training sessions frequently, from occasional large general sessions (discussing general issues such as the political and economic context issues, cyber crime and optical disc tendencies, etc.) to frequent small, practical training sessions for identification of pirate product for seizure purposes. MPA both offers and receives requests for training. The recording industry carried out seminars for judges, trade officials and personnel from IMPI, the Consumer Defense Bureau, customs and inspectors of some State Governments. The recording industry held the following training events during 2006: (a) on June 21, 22 and 23, a Seminar on IPR for 43 Customs officers in Mexico City; (b) on August 3, a seminar on IPR to 40 administrators and police officers in Puebla (local authorities); and (c) on October 27, a training session for 30 officers from the State of Jalisco.