

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2008 SPECIAL 301 REPORT

### MEXICO

**Special 301 Recommendation:** IIPA recommends that Mexico be elevated to the Priority Watch List in 2008.

## EXECUTIVE SUMMARY

The sheer dimension of the piracy problem in the Mexican market remains severe and unchanged in the past year. Piracy involving hard goods, CD/DVD burning, piracy on the Internet, unauthorized camcording in theaters, street piracy, and unauthorized photocopying at universities continued at high levels in 2007. Again, the efforts of various Mexican enforcement agencies differed greatly in terms of cooperation and results. Overall, the federal government performed strongly again last year. Both the criminal authorities (PGR) and administrative agencies (IMPI) worked well with rightsholders and took significant actions last year. However, performance by the state governments remains unsatisfactory, with only a handful of state governments interested in combating illegal trade and piracy; interest by municipal governments is even less. Despite serious piracy and many raids taken by police, prosecutions remain very few as prosecutors are reluctant to push cases through the system and judges are quick to dismiss cases.

The Mexican Government must not only increase the resources allocated to its enforcement agencies, but it must also significantly enhance its coordination with state and municipal authorities. Industry is working with several government agencies on public awareness programs regarding the nature and repercussions of rampant piracy, but more work led by the national government is needed. Judicial training must be intensified. Border measures need to be strengthened. There remains a long legislative agenda of which several critical bills (for example, amending the criminal code to grant *ex officio* authority) need to be addressed in 2008. In short, the macro view of Mexico remains unchanged: despite commendable enforcement efforts, piracy remains high, there is no deterrent effect in curtailing this pervasive economic crime.

## PRIORITY ACTIONS IN 2008

### Enforcement

- Develop a national campaign that addresses the well-known street markets (San Juan de Dios in Guadalajara) and distribution centers (such as Tepito and Plaza Meave 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.
- Work with copyright industries on Internet piracy-related investigations.
- Stop illegal photocopying by copyshops on or near major university campuses.
- Improve police coordination between federal, state and municipal enforcement authorities, as well as coordination among the various federal agencies tasked with intellectual property protection and enforcement.

- Require the PGR's Organized Crime Division to work closely with the copyright industry and carry out systematic and effective investigations and actions against major pirate organizations involved with organized crime and have strongholds in piracy havens such as Tepito, Plaza Meave, and San Juan de Dios. In addition, this same group should also develop an intense enforcement plan against the Tepito market.
- Require police officials to proactively identify and arrest individuals who are responsible for the large-scale distribution and importation of pirated goods.
- Encourage police officials to authorize and conduct daytime raids in retail areas with high piracy rates as doing so will lead to larger seizures, increased arrests, and greater deterrence.
- 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.
- Create specialized units to tackle online copyright infringements.
- 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 (i.e., refusals to admit inspectors during a governmental audit or raid), such as applying a presumption of IPR infringement; and (c) eliminate unnecessary formalities contained in the Law of Industrial Property (e.g. presence of two witnesses for a raid to be deemed valid). Provide IMPI with additional resources (including personnel) to conduct inspections, and allow IMPI's regional officers to conduct raids in their localities.
- Encourage IMPI to expeditiously issue its decisions.
- Encourage INDAUTOR (the Copyright Office) to circulate information on the copyright law and how collective management works.
- Provide INDAUTOR with more resources and facilities to increase its mediation capabilities, particularly by providing more mediators and mediation rooms.
- Issue mandatory sentencing guidelines, or at a minimum suggested guidelines, in the courts.
- Issue deterrent sentences for criminal copyright infringement, including jail time.
- Encourage judges to act expeditiously on applications for search warrants.
- Continue to provide, and expand on, IPR trainings for law enforcement officials, prosecutors and judges.
- Create specialized IP courts, and make intellectual property protection a priority.
- Urge Mexican customs to implement stricter inspection of blank media in order to reduce the importations of blank optical media products aimed at the pirate market. For example, over the past year, the PGR has been leading a working group where industries, along with Mexican, customs, tax and economy authorities work to develop strategies to fight the imports/smuggling of blank discs.
- Enact and enforce decrees to ensure the procurement and use of legal computer software in governmental agencies, especially at the state and municipal levels.
- Organize a campaign to combat copyright infringement on the Internet.
- Improve exchange of intelligence between Mexican and U.S. Customs on suspect shipments of blank optical media.

### 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 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 removal of IP infringements from the Federal Law of Administrative Procedure in order to speed up processes.
- Work with the copyright industries in 2008 on developing copyright legislation which would fully implement Mexico's WIPO Treaties' obligations as well as correct some longstanding inadequacies in the current law.

- Improve legislative and regulatory schemes to fill gaps in administrative enforcement measures and to equalize treatment of copyrights with trademarks.
- Implement legislation that raises penalties, establishes minimum penalties for specific actions like door-closing and evidence-concealment, sets parameters or guidelines for imposing sanctions, sets guidelines or procedures for expeditious criminal investigations, and grants robust powers to federal inspectors.
- Pass amendments to the Film Law to prevent parallel imports of films.

<b>MEXICO</b> <b>Estimated Trade Losses Due to Copyright Piracy</b> <b>(in millions of U.S. dollars)</b> <b>and Levels of Piracy: 2003-2007<sup>1</sup></b>										
INDUSTRY	2007		2006		2005		2004		2003	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Sound Recordings & Musical Compositions <sup>2</sup>	527.0	71%	486.6	67%	376.5	65%	326.0	60%	360.0	61%
Entertainment Software <sup>3</sup>	273.0	88%	182.0	85%	137.7	75%	132.2	76%	136.9	66%
Business Software <sup>4</sup>	425.0	61%	374.0	63%	263.0	65%	222.0	65%	220.0	63%
Motion Pictures <sup>5</sup>	NA	NA	NA	NA	483.0	62%	140.0	70%	50.0	45%
Books	41.0	NA	41.0	NA	42.0	NA	42.0	NA	40.0	NA
<b>TOTALS</b>	<b>1,266.0</b>		<b>1,083.6</b>		<b>1,302.2</b>		<b>862.2</b>		<b>806.9</b>	

### Other Trade Initiatives

**Security and Partnership for Prosperity in North America (SPP):** The copyright industries appreciate the attention the Mexican government has given to this trilateral initiative between the U.S., Mexico and Canada. Since the March 2005 launch of the SPP, various working groups on various issues have been established. An IPR “action strategy” was compiled and presented at the April 2007 SPP Summit in Mexico.<sup>6</sup> Three broad action items were identified: (1) detecting and deterring trade in pirated and counterfeit goods; (2) undertaking public awareness and outreach to the business communities, and (3) measuring piracy and counterfeiting.

**Anti-Counterfeiting Trade Agreement (ACTA):** Mexico has been a supporter of another multilateral IPR initiative. On October 23, 2007, the United States and some of its key trading partners, including Mexico,

<sup>1</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2008 Special 301 submission at [www.iipa.com/pdf/2008spec301methodology.pdf](http://www.iipa.com/pdf/2008spec301methodology.pdf). For information on the history of Mexico under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2008SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2008SPEC301HISTORICALSUMMARY.pdf>) of this submission.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> BSA’s 2007 statistics are preliminary. They represent the U.S. software publishers’ share of software piracy losses in Mexico, and follow the methodology compiled in the Fourth Annual BSA and IDC Global Software Piracy Study (May 2007), available at <http://w3.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 2006 piracy statistics were preliminary at the time of IIPA’s February 12, 2007 Special 301 filing and were finalized in June 2007 (see <http://www.iipa.com/statistics.html>), as reflected above.

<sup>5</sup> MPAA’s trade losses and piracy levels for 2006 and 2007 are not available. MPAA did provide 2005 estimates for a select group of countries, using a new methodology that analyzed both physical/“hard goods” and Internet piracy. Details regarding MPAA’s methodology for 2005 and prior years are found in Appendix B of this IIPA submission.

<sup>6</sup> SPP IPR Action Strategy, April 2007, posted at [http://www.spp.gov/pdf/spp\\_ip\\_strat\\_final.pdf](http://www.spp.gov/pdf/spp_ip_strat_final.pdf). For more information on the SPP generally, visit the SPP website at <http://www.spp.gov/>.

announced that they will seek to negotiate an Anti-Counterfeiting Trade Agreement (ACTA).<sup>7</sup> This effort will not involve any changes to the TRIPS Agreement. Instead, the objective is to set a higher benchmark for enforcement. Countries can join such an agreement on a voluntary basis.

## **COPYRIGHT PIRACY IN MEXICO**

There was continued good cooperation between industry and the police as well as with the IMPI in 2007. This cooperation, however, did not result in effective anti-piracy results in the criminal sphere. Piracy remains entrenched, with 2007 reflecting, yet again, no significant improvement. To bring down Mexico's piracy levels, it is essential to attack manufacture, distribution, sale and importation. Notwithstanding the immense piracy problem and despite many, many raids taken by police, prosecutions remained very few.

**Street piracy:** A major problem throughout Mexico involves widespread, and well-entrenched, street piracy. 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. Although Tepito and San Juan de Dios remain dominant sources for the manufacture and commercialization for different types of illegal products, Plaza de la Computación and Plaza Meave are growing. There remain at least 80 very large, very well-known, "black markets" in Mexico, many of which are well organized and continue to be politically protected. By some estimates, there are an estimated 50,000 points of sale involved with distributing infringing copyrighted materials. 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. Such raids are largely ineffective as the same shops reopen and simply continue their business. While the safety of law enforcement personnel is extremely important, there must be a fundamental shift in the manner in which these raids are conducted. Otherwise, it will remain an unending cycle of raids and seizures with no real impact on the prevalence of piracy in the market. There must be a counterweight to the unimpeded growth of these markets. The street markets should be subject to better local control, both at the municipal and state levels. It is very important for the Mexican government to design a high intensity enforcement plan for Tepito to systematically identify and prosecute criminal organizations operating in that market.

**Optical media exports:** Mexico imports much of its blank media from Southeast Asia (China, Taiwan). It is estimated that Mexico imported approximately 800 million blank media units in 2006, most of which are used to create pirated product. Industry does not yet have final 2007 statistics, but it is estimated that approximately 1 billion units of blank CD-Rs and DVD-Rs were imported by Mexico. Most of the product comes from Taiwan and the main ports of entrance are in Manzanillo, Matamoros, Reynosa, and Laredo. Interestingly, much of this media enters Mexico via the US to benefit from the NAFTA and to avoid taxes. In addition, Mexico is an exporter of pirated products to some Central American countries, especially Guatemala.

**Organized Crime:** The street markets (above) are very well structured, with discrete distribution chains, indicating in many cases that organized criminal syndicates are involved. The recording industry, led by AMPROFON (IFPI's national group) has devoted a lot of its resources to research the organized mafia behind the importation, distributions and recording of burned CD-Rs. One major case has been delivered to the Attorney General. The case involves a complex investigation initiated against a network of companies and individuals responsible for the importation of about 80% of the CD-Rs/DVD-Rs in the Mexican market.

**Internet Piracy:** The number of Internet users in Mexico increased by 17.5% in 2007, from 20.2 million in 2006 up to 23.7 million in 2007.<sup>8</sup> The recording industry estimates that some 2.6 billion songs were illegally downloaded in Mexico last year. Approximately 20% of those songs were downloaded and burned in cybercafes. The industry is working with IMPI and PGR to reduce this activity which led to a number of raids against infringing cybercafés. In addition, the local industry group (Amprofon) launched a posters campaign to raise awareness of the problem among cybercafes' owners and customers in the hope it will lead to less piracy.

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<sup>7</sup> USTR, "Ambassador Schwab Announces U.S. Will Seek New Trade Agreement to Fight Fakes," October 23, 2007, at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2007/October/Ambassador\\_Schwab\\_Announces\\_US\\_Will\\_Seek\\_New\\_Trade\\_Agreement\\_to\\_Fight\\_Fakes.html?ht=](http://www.ustr.gov/Document_Library/Press_Releases/2007/October/Ambassador_Schwab_Announces_US_Will_Seek_New_Trade_Agreement_to_Fight_Fakes.html?ht=)

<sup>8</sup> Source: Mexican Internet Association/Asociación Mexicana de Internet (AMIPCI) at [www.amipci.org.mx](http://www.amipci.org.mx)

Internet downloading in Mexico is not yet a big problem due to the low broadband penetration, but it is growing rapidly. Nevertheless, Internet poses two major challenges: (1) the sales of counterfeit hard goods and (2) the use of Internet for distribution of new releases, subtitles, covers and dubbed versions.

**Audiovisual piracy:** The Motion Picture Association (MPA) reports that the main piracy problem in Mexico for its members remains the huge hard goods distribution in the black markets and street vendors, and their association with organized crime; that piracy rate is estimated around 90%. Despite such severe piracy, the home entertainment and theatrical markets were stable in 2007, but at levels far below their real potential rates. Mexico has the most prolific camcord piracy problem in Latin America. Since 2005, 26 of MPA members' films have been stolen from Mexican theaters. Copies of these films are quickly distributed on the Internet and reproduced into illegal DVDs for worldwide consumption. Due to its proximity to the U.S. and the importance of Mexico's theatrical market (which is the fifth largest worldwide), the major blockbuster release dates are approaching those in the U.S. Therefore, Mexico has become a potential primary source of Spanish-dubbed or subtitled copies for other Spanish-speaking countries. Internet piracy is also a growing concern and notably at Internet cafes where many proprietors are aware of illegal activity and encourage it by offering blank discs to users to burn copies of motion pictures and television programs.

**Piracy of sound recordings and musical compositions:** The recording industry reports that burned CD-Rs and DVD-Rs continue to be the format of choice for almost all pirates in Mexico. Recording and music piracy in Mexico represents \$527 million in losses, with an overall piracy rate of 71%. 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. Physical piracy is estimated at 71% of the market, which represents an increase of four percentage points compared to previous year. Approximately 120 million copies of pirate CD-Rs are sold every year, mainly via street piracy. Internet piracy has become a pressing problem, too. A recent survey conducted by IPSOS-BIMSA concluded that 2.6 billion songs were illegally downloaded in Mexico between October 2006 and October 2007. Recording industry estimates the increase of Internet piracy in 2007 at 67% compared to the previous year. P2P piracy is dominant in this sector, with ARES and LIMEWIRE as the preferred choice of file-sharing software. Another form of digital piracy involves cyber lockers where "Rapidshare" and "Megaupload" are the dominant players. The combined effect of physical and Internet piracy has caused another major decrease in the market. Sales in local currency dropped by 23% and 22% in units. In the last two years, piracy caused the market to shrink by 33% in value and 41% in units.

**Business software piracy:** The Business Software Alliance (BSA) reports that its legitimate market for business software applications in Mexico has been affected by under-licensing, street markets, illegal resellers and Internet piracy. Local software creators are facing a considerable difficulty in commercializing their products, as the illegal market is gaining market share and power. Additionally, local resellers find it difficult to reach their business goals, since a majority of the consumers are buying and using illegal copies. This industry also reports problems with Tepito and San Juan de Dios, which serve as manufacturing (burning labs) and selling points for pirated software. According to a 2008 report issued by BSA-IDC, the information technology sector's contribution to the Mexican economy could be even bigger if Mexico's PC software piracy rate were lowered by 10 percentage points over the next four years. This would create an additional 3,500 jobs, \$1.5 billion in local industry revenues and \$159 million in additional tax revenues for federal, regional, and local governments.<sup>9</sup> Last year, BSA partnered with IMPI, achieving unprecedented results, a record number of inspections and wider geographical coverage. Teaming up with INDAUTOR has produced a high volume of conciliations, with good results, quantitatively and qualitatively. Additional staffing in both governmental agencies is necessary (particularly inspectors and, at INDAUTOR, mediators and mediation rooms). Government officers need to be more empowered to conduct investigations and raids, to issue resolutions and impose sanctions whenever applicable. BSA reports that preliminary estimated trade losses due to business software piracy in Mexico were to \$425 million in 2007, with an estimated piracy level of 61%. BSA believes that its active anti-piracy operations and good cooperation with Mexican administrative authorities has helped keep business software piracy in-check in this market.

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<sup>9</sup> The Economic Benefits of Reducing PC Software Piracy, commissioned by BSA and conducted independently by International Data Corporation (IDC), released January 22, 2008, looks at the bottom-line economic benefits of reducing piracy in 42 countries that together account for more than 90 percent of global IT spending in 2007. It is available online at <http://www.bsa.org/idcstudy>.

**Entertainment software piracy:** Entertainment software piracy on all platforms remains at a very high level, remaining unchanged from previous years, despite the industry undertaking increased enforcement efforts in the country. Many of the well known markets, such as Tepito and Plaza Meave in Mexico City, are also notorious production points and wholesale distribution centers of pirated games. 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 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 vast network of retailers through a variety of means, including Mexican courier companies. Local CD-burning is common for console and PC games. Counterfeit cartridges continue to be imported from Asia, often in components which are then assembled in Mexico. In 2007, there were multiple customs seizures in the U.S. and Belgium of counterfeit Nintendo components intended for shipment into the country. 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. It has also been difficult to take action against Mexican importers as the shipped goods are typically accompanied by fraudulent documents, containing false information. Customs brokers appear to be involved in suspect shipments, shielding pirates from detection by law enforcement authorities. Such brokers should be held accountable for their role in facilitating the shipment of suspect goods. 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. The Entertainment Software Association (ESA) estimates that the value of pirated videogame product in the Mexican marketplace was \$273 million in 2007, with an 88% piracy rate.

**Book and journal piracy:** Illegal photocopying of academic materials remained a significant problem for the book and journal publishing industry in 2007. On-campus photocopy facilities, both commercial and noncommercial, are regularly used to make photocopies far exceeding permissible levels even under the deficient provisions of the copyright law. Copy shops in and around most major universities routinely undercut the market for legitimate texts. Universities too 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 reliable source of revenue for legitimate companies, though some publishers report that payments have improved a bit. IIPA estimates that book piracy losses in Mexico were \$41 million in 2007.

## **COPYRIGHT ENFORCEMENT IN MEXICO**

The copyright industries believe it is very important to acknowledge those Mexican agencies which have been performing well on the anti-piracy front. The federal agencies, with some exceptions, have been taking actions and working with rightsholders. Work done by the PGR and IMPI is improving. However, the same accolades cannot be shared with the courts; a very serious problem at the federal level remains civil and criminal judges' lack of knowledge about copyright. Mexico is overdue on establishing a real training program for its judges and other judicial system officials.

Furthermore, anti-piracy actions taken by the States continued to be weak in 2007. Only four of the 32 State governments appear to be interested in combating illegal trade and piracy: the State of Mexico, the Federal District, Jalisco and Puebla. Enforcement at the municipal government level is even worse. 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. Unfortunately, many of these local governments deflect their responsibility entirely, insisting that enforcement should be done only by the PGR.

The National Anti-Piracy Agreement focuses on specific actions and results, and includes a public-private collaboration. 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 gave a legal status to the group that was meeting with PGR and other government agencies.

**Criminal enforcement and work 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. Mexican law does not provide for *ex officio* action which forces copyright owners to incur high legal costs in pursuing any piracy case. For years, the industries have been supporting amendments to the criminal code which would permit *ex officio* actions.

The industries all continue to report generally good cooperation with federal police in various jurisdictions around Mexico. The PGR interacts directly with 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.

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. In 2004, the PGR empowered its Organized Crime Investigative Division, PGR-SIEDO, to investigate piracy and develop systematic coordination with the private sector. This 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.

The recording industry reports some positive news. During 2007 the Mexican authorities responded to more requests for raids, increasing their work on these matters by 15%, up to about 3,300 operations. However, the amount of seized product decreased slightly by 20% from 43 million units in 2006 to 34 million units in 2007. The number of convictions in recording piracy cases also dropped sharply last year, from 23 people in 2006 to just 5 in 2007. With respect to Internet enforcement, in early January 2008, a judge in Cuernavaca placed under arrest an alleged pirate who was posting infringing music, movies, television programs and software. Seizures in this operation included over 3,000 recorded CD-Rs, 400 blank CD-Rs, 153 DVD reproducers plus other equipment.

This industry calls attention to three key problems with Mexico’s approach to anti-piracy: (1) the police and PGR have insufficient resources to conduct operations; (2) there are no organized anti-piracy campaigns by state and municipal governments; and (3) nothing long-lasting and effective has been done to eliminate the 50,000 points of sale offering illegal music. The industry does appreciate the many coordinated actions and raids taken against the embedded street piracy problem, yet the goal should be deterrence and shutting down these street operations. One recent action took place on February 1-5, 2008; as part of a coordinated multi-task force operation, Mexican authorities executed several major raids in two of Mexico City’s most contentious pirate markets, namely the “Bazar Pericoapa” and “Bazar Lomas Verdes.” These raids were significant in that aside from a voluminous amount of seized pirate movies and music seized, 29 commercial establishments were judicially closed by the PGR, and will remain closed for the entire length of the judicial process. With assistance from our local anti-piracy group, a total of 175 law-enforcement personnel participated in these raids that included elements from the PGR, the Investigation Agency (AFIS), the Federal Preventive Police (PFP), as well as local and state police. One person was arrested during this operation.

The motion picture industry also reports that its relationship with the PGR is excellent. Although piracy is not yet an *ex officio* crime, PGR has carried out several raids on movie piracy without a formal complaint filed by MPA, which was later done with powers of attorneys from the local distributor Distrimax. Some very impressive raids were conducted in Tepito and La Cuchilla, the largest pirate markets. PGR seized more than 7,500 burners. Another interesting initiative carried out by the Municipality of Mexico City is the "expropriation" of downtown venues used by pirates; this effort aims to transform the old pirate markets into legal product distribution centers. Due to administrative changes at MPA's Mexico program, formal statistics on its raids in 2007 are not available. The PGR has developed an anti-piracy advertising spot, which provides a toll free number for anonymous tips.

The ESA's anti-piracy enforcement program had several noteworthy actions in 2007 and early 2008. In May and October 2007, the PGR and ESA's local representative raided Bazaar Pericoapa, seizing close to 17,000 pirated burned game discs, and several hundred pieces of piracy paraphernalia (such as burners, blank CDs, video game catalogues, TV sets, computer screens, consoles, and blank CD-Rs). Two raids were conducted in November 2007 in the Plaze Meave area, one at the market and the second at warehouses in the vicinity. The first raid was cut short as vendors, hearing word of the raid, descended on the site and became violent. The two raids resulted in the seizure of almost 140,000 pirated games. PGR has also been undertaking a series of street raids for a number of industries, including entertainment software. Two such street raids in Mexico City, near Metro La Raza, resulted in the seizure of large quantities of pirated and counterfeit products (between 26,000-32,000, half of which were video games). Earlier this year, PGR, with the assistance of ESA's local representative, again Bazaar Pericoapa, seizing about 4,000 items including pirated PC and console games, two computers/DVD burners used to manufacture pirated games, catalogs and blank discs. The PGR initiative against street vendors resulted in a raid on Lazaro Cardena Avenue (in early January 2008), and the more immediate estimates available put the seizure total for pirated and counterfeit video games at about 13,750 (among the 55,000 pieces of other counterfeit and pirated products seized). In addition, PGR seized nearly 3,000 burned Xbox games in two separate shipments to the same individual at a Mexico courier service's distribution center in Manzanillo. The shipping information suggests that an organized crime syndicate in Mexico is using courier services to distribute pirated games within the country.

BSA has achieved a closer collaboration with the State Authorities, especially in Jalisco. There are plans to expand these campaigns to Nuevo León and the State of Mexico. BSA, however, is not taking criminal actions at the municipal level. In 2007, BSA member companies brought more than 75 criminal actions, including street sweeps, system builder channel actions, warehouses and labs.

**SHCP and Customs:** Historically these entities have not been involved in domestic actions. Cracking down on tax evasion is a motivation in fighting street vendors, and that would suggest a motivation for SHCP to get more involved. In early January 2008, Customs authorities at the Mexico City International Airport detained hundreds of individually shipped boxes suspected of containing pirated and counterfeit game software and hardware that was sent through a courier company. The shipments do not appear to be related as the boxes had different shippers and importers. Upon inspection, it was determined that the boxes contained pirated and counterfeit Xbox 360 and GBA titles. The seized products remain with the Customs authorities, though the industry has requested exemplars and shipment documentation for further analysis to determine whether they will yield investigative leads with respect to the consignee, the shipper and perhaps the manufacturers.

**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. 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 will to adopt effective measures against piracy.

**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.

**Few prosecutions and fewer convictions:** 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.

As the recording industry reported (above), the number of convictions in their cases dropped sharply, from 20 people in 2006 to just 4 in 2007. BSA only obtained one conviction (3 years in prison). Several years ago, the one measure under the revised penal code that represented some positive traction was that the possibility of bail has been removed for those indicted for criminal copyright infringement. Unfortunately, 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. Mexico should consider adoption of mandatory sentencing regulations, or the Supreme Court itself should set out recommended guidelines.

**Positive administrative copyright enforcement by IMPI:** The business software, entertainment software and film industry use IMPI for certain administrative enforcement efforts as well as coordinate with IMPI (and INDAUTOR) in public awareness campaigns.

**Business software sector:** BSA reports that 2007 continued to reflect excellent cooperation with IMPI. The business software industry appreciate the coordination and assistance of IMPI that resulted in an unprecedented volume and quality of cases. The volume of actions increased dramatically in 2007. BSA reports that for 2007, IMPI took approximately 1,095 *ex officio* raids and another 119 full raids. IMPI is conducting more than 200 *ex officio* visits monthly on software matters.

Another area of enforcement improvement involved fewer door closures in 2007. Over two years ago, there was a favorable court case that enhanced 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 subsequently implemented this criterion, and in 2007, BSA noted tangible results in IMPI's ability to enter target premises. IMPI has begun to impose fines on door closers, shortly after the raid. The amount of the fines is also increasing considerably. The imposition of immediate, exemplary fines on door closers is a positive development. In fact, codifying the AOS Solutions ruling (the presumption of validity of complainant's accusations in the event of door closing) in the law would be of great assistance. In addition, BSA would like to see legislative amendments made so that IMPI officers are able to amend the address and other identification information of the alleged infringer, at the time and site of the inspection. The two witness requirement should also be eliminated.

BSA also worked with IMPI on diverse anti-piracy campaigns, including the audit of the software used by the Government of Jalisco. The title of this campaign was "The example begins at home." During this campaign, 3,750 of a total of 6,000 computers were audited. Additionally, IMPI conducted its own independent audit and the results were delivered to the Governor of Jalisco during a press conference in December 2007. BSA also has been working with IMPI and the American Chamber of Commerce in creating a National Survey regarding consumer piracy. IMPI and BSA have implemented diverse anti-piracy campaigns for youth of ages 15 to 25 years (Digital Animation Campaign: It All Starts With An Idea, And It Could Be Yours), as well as for kids between 6 and 12 years old (IMPI's IP kid inspectors campaign).

**Sound recording sector:** The recording industry reports that the level of cooperation from IMPI is excellent, especially in the area of "cyber-cafes" offering illegal downloads via P2P networks. AMPROFON and IMPI recently signed an agreement to conduct 80 administrative procedures every month against the illegal downloading on cyber-cafes, mainly in the capital city area.

**Entertainment software sector:** ESA continues to have a positive level of cooperation with IMPI, though given the nature of the industry's piracy problem in the country, much of the action in 2007 was focused on efforts through PGR. The ESA participated in IMPI's IP inspectors campaign and supported the Digital Animation Campaign: It all Starts With An Idea, And It Could Be Yours, which also involved BSA and IMPI.

**Motion picture sector:** Due to administrative changes within the MPA program in Mexico, there have not yet been any significant joint efforts with IMPI or INDAUTOR. However, in 2007, IMPI conducted some educational pilot projects with the full engagement of MPA representatives in Mexico. Also, MPA is working with IMPI to bring punitive administrative actions against businesses that import Zone 1 DVDs from the U.S. and sell them in Mexico before their established release dates. This practice is damaging to the local distributors of member company product. Moreover, MPA would welcome the opportunity to collaborate with the Government of Mexico on an anti-camcording campaign, which would benefit both Mexican and U.S. filmmakers, as well as Mexican theater owners. Finally, MPA plans to work closer with IMPI during 2008, not only on administrative actions, but with educational efforts, including possible anti-camcording initiatives.

**INDAUTOR--conciliations in software end user cases:** During 2007, BSA worked with INDAUTOR and held approximately 192 conciliation meetings (*Juntas de Avenencias*) with end users. These actions are an alternative to litigation, and parties are given the opportunity to talk about a specific infringement situation and reach an amicable solution. With respect to improving its activities in this realm, INDAUTOR should consider:

- Creating a new Center to handle arbitrations, mediations and negotiations, both physically and electronically.
- INDAUTOR needs more conciliation rooms (*salas de avenencia*), and more mediators.

**INDAUTOR other operations:** It is important that INDAUTOR continue to train, and receive training for, its staff on key copyright matters. With respect to public awareness initiatives, it should consider the following:

- Conduct seminars to clarify copyright legislation to civil and criminal judges.
- Issue general information to the public about copyright and collective management of rights.

INDAUTOR is also responsible for supervising the collecting societies in Mexico. In this regard, INDAUTOR continues to be a source of concern for the recording industry. For example, INDAUTOR has not yet issued rates for the exploitation of sound recordings in TV and radio stations, and this overdue action has contributed to confusion in the market. INDAUTOR should be encouraged to:

- Issue the tariff rates for the performance of sound recordings by TV and radio stations in Mexico, rates requested a long time ago by SOMEXFON, the society representing record producers.
- Provide information to companies and individuals currently exploiting sound recordings in Mexico without a license.

**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, undervalued product and/or NAFTA violations. (Prior to 2006, NAFTA was being used by blank optical media importers to avoid import duties claiming that the optical disc shipments entered Mexico as an unfinished product which needed assembly. The alleged assembly consisted of placing the blank optical disc in a clear plastic jewel boxes with a label. A portion of these products were re-exported back the U.S., but some worked its way to the pirate markets.)

PGR is leading a task force consisting of Customs, the Ministry of the Economy and private sector representatives (music and film), to monitor and develop intelligence on blank media imports. Also, it is important 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.

**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.

## **COPYRIGHT AND RELATED LAWS IN MEXICO**

Mexico still has not implemented the obligations of the WIPO Treaties (which it has ratified) into its domestic legislation. In addition, many bills that would strengthen enforcement have been pending in legislative dockets for years, and deserve action in early 2008.

### **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 proposed private copying levy. Regulations to implement the 2003 amendments were issued two years later, in September 2005. Mexico acceded to both the WIPO Treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty) in 2002.

Mexican government officials have indicated that that it is possible that they might consider initiating a long-term process to revise the Mexican Federal Copyright Law. 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. 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 (amended in 2004):** 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).

### **Pending Legislation**

**Bill to amend the criminal code to provide for *ex officio* copyright actions:** A 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. 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. Since its introduction, it has finally received approval by the House of Deputies, and after that, was sent to the Senate where further changes were made. The bill was returned to the House and is presently at the Commission of Justice in the House.

**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 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 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 has stalled in Chamber's Justice Committee.

**Bill to amend the copyright law regarding technological protection measures (TPMs):** Already approved by the Chamber 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 exempting IP matters from the Federal Law of Administrative Procedure:** A bill that would exempt IP matters from the Federal Law of Administrative Proceeding has been approved by one Chamber. Removing IP from the scope of this law would reduce the time required to prosecute IP infringements. Reportedly IMPI also supports this bill.

**ISP liability initiative:** It is important to clarify the liability of ISPs when they have actual knowledge of specific infringements and they refuse to respond appropriately to stop the illicit activities. There is an initiative (a project, not yet a formal bill) that is ongoing before the Communications Commission in the Senate that will be evaluating this issue.

**Bill to amend the Law of Industrial Property:** The current Law of Industrial Property does not expressly allow complainants to be present during raids, requires two witnesses in order for the raid to be valid, and is complex when it comes to amending the address and other identification information of the alleged infringers. 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.

**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. At last report, this initiative, supported by the copyright industries, is still pending before the Education Commission of the House of Deputies, but does not seem to have any momentum. .

**The objectionable copyright bill affecting music and sound recordings:** 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. The bill continues to be discussed in the House.

**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, following the example of the Government of Jalisco. Self audits, which organizations can perform with Software Asset Management (SAM) tools, not only help governments operate more efficiently, but set an example for the public and private sectors.

## **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. MPA organizes training sessions frequently, from occasional large general sessions to frequent small, practical training sessions for identification of pirate product for seizure purposes; MPA trained about 100 people last year. The recording industry also carried out seminars for judges, trade officials and personnel from IMPI, the PGR and PROFECO. The entertainment software industry conducted numerous training sessions for Customs and PGR on the various forms of game piracy and methods of detecting pirated games and circumvention devices.