

# MEXICO

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Mexico be elevated to the Priority Watch List in 2009. Mexico has been on the Watch List since 1999.

**Executive Summary:** Notwithstanding the generally positive attitudes of Mexican officials responsible for copyright issues, the sheer dimension of the piracy problems in Mexican markets remains severe with no improvement in 2008. 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 last year. IIPA highlights, however, that the efforts of Mexican enforcement agencies have mostly been excellent, and there is a high level of cooperation between authorities and rights holder organizations. Both the criminal authorities (PGR) and administrative agencies (IMPI) worked well with certain rights holders and took significant actions last year, with the exceptions noted below with respect to game piracy. Despite the 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. Performance by the state governments remains unsatisfactory, with only a handful of state governments interested in combating illegal trade and piracy, and interest by municipal governments is lower. The work of the copyright office, INDAUTOR, was positive for the business software sector but has not fully addressed a key issue for the recording industry. We observe that the lack of results is not the result of lack of dedication on the part of key officials with IPR responsibility, but rather to the lack of adequate dedicated resources and the failure to implement a national anti-piracy plan that both enhances and coordinates federal and state activities. 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. 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 2009. Eager to find additional solutions to address the growing Internet piracy problem, a coalition of rights holders are meeting with Internet service providers to try to reach agreements on cooperative efforts to address infringing content on the Internet. The Mexican government should direct this discussion to ensure that a high level of cooperation is reached. In summary, the macro view of Mexico remains unchanged: despite commendable enforcement efforts, piracy remains high and there is no effective deterrence in curtailing this pervasive economic crime that harms both Mexican and U.S. creators.

**Priority actions requested to be taken in 2009:** The copyright industries recommend that the following actions be taken in the near term in Mexico in order to improve the protection and enforcement of copyrighted materials there which would in term contribution to commercial benefits to both the U.S. and the Mexican copyright sectors:

### 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 for consumer protection to stop piracy in street markets;
  - Insist that state and municipal governments take actions and be held accountable for fighting piracy at the street level.
- Work with copyright industries on Internet piracy-related investigations.
- Address illegal photocopying by copyshops on or near major university campuses, and involve universities in encouraging use of legal materials by students and lecturers.



- 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 which will lead to larger seizures, increased arrests, and greater deterrence.
- Augment the tax authorities (SAT) anti-piracy actions.
- Encourage prosecutors to act swiftly on complaints and recommend maximum sentences, including jail time, to the courts in order to improve deterrence.
- 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 and collect the fines.
- Provide INDAUTOR with more resources and facilities to increase its mediation capabilities (which has been useful in software cases), particularly by providing more mediators and mediation rooms.
- Require INDAUTOR to issue tariff rates for the public performance of sound recordings by TV and radio stations in Mexico, consistent with the Copyright Act and Mexico's international obligations.
- Issue deterrent sentences for criminal copyright infringement, including jail time.
- Encourage judges to act expeditiously on applications for search warrants in civil cases.
- Establish *ex parte* remedies (especially injunctive relief) for civil IPR infringement cases in order to fulfill its TRIPS obligations.
- Continue to provide, and expand on, IPR trainings for law enforcement officials, prosecutors and judges.
- Create specialized IP courts.
- Implement stricter Customs inspection of blank media in order to reduce the importations of blank optical media products aimed at the pirate market.
- Enact and enforce decrees to ensure the procurement and use of legal computer software in governmental agencies, especially at the state and municipal levels.
- Implement a framework of responsibility for Internet Service Providers (ISPs), with appropriate incentives for ISP and copyright industry cooperation.

### Legislation

- Support passage of bills which would amend the Criminal Code to: (a) give *ex officio* action in copyright infringement cases; (b) impose criminal sanctions for the unauthorized circumvention of technological protection measures; and (c) impose penalties for the unauthorized camcording of films in theaters.
- Support the passage of a bill to amend the Federal Copyright Act to provide technological protection measures for works and sound recordings (amendments here should track developments made on the criminal code, mentioned above).
- Request assistance from the World Intellectual Property Organization (WIPO) to conduct a review of the current copyright legislation in order to fully implement Mexico's WIPO Treaties' obligations. Any further review efforts also should include input from the copyright industries to address some longstanding inadequacies (including NAFTA deficiencies) in the current law.
- Implement legislative solutions to enhance administrative enforcement, such as: (1) end door closures, (2) establish a presumption of infringement in the event of door closures (this would codify the AOS Solutions case), (3) empower IMPI officers to allow officers to be able to amend inspection orders with respect to the address and other information identifying alleged infringer, at the time and site of the inspection, (4) eliminate the two witness requirement, (5) give public faith powers (this is similar to notary powers) to IMPI inspectors; (6) prosecute tax crimes associated with these

IP infringements, and (7) equalize the level of administrative sanctions between copyright infringement with trademark infringement (trademark currently is much higher)

- Support the removal of IP infringements from the Federal Law of Administrative Procedure in order to speed up processes.

MEXICO										
Estimated Trade Losses Due to Copyright Piracy										
<i>(in millions of U.S. dollars)</i>										
and Levels of Piracy: 2004-2008 <sup>1</sup>										
INDUSTRY	2008		2007		2006		2005		2004	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Sound Recordings & Musical Compositions <sup>2</sup>	419.7	80%	527.0	71%	486.6	67%	376.5	65%	326.0	60%
Entertainment Software <sup>3</sup>	NA	NA	273.0	88%	182.0	85%	137.7	75%	132.2	76%
Business Software <sup>4</sup>	497.0	60%	460.0	61%	374.0	63%	263.0	65%	222.0	65%
Motion Pictures <sup>5</sup>	NA	NA	NA	NA	NA	NA	483.0	62%	140.0	70%
Books	NA	NA	41.0	NA	41.0	NA	42.0	NA	42.0	NA
<b>TOTALS</b>	<b>916.7</b>		<b>1,301.0</b>		<b>1,083.6</b>		<b>1,302.2</b>		<b>862.2</b>	

## COPYRIGHT PIRACY IN MEXICO

Hard goods piracy (also known as physical piracy) of copyrighted materials remains firmly entrenched in Mexico. In recent years, Internet piracy has increased, and that has affected different sectors to different degrees. In order to reduce piracy in Mexico, it is essential to attack its manufacture, distribution, sale and importation.

**Hard goods piracy, street piracy, and organized crime:** Mexico has widespread, and well-entrenched, street piracy. The main distribution centers for optical disc piracy are well known to law enforcement authorities in the following cities: 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 increasingly becoming sources of pirated products. 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 at least 50,000 points of sale involved with distributing infringing copyrighted materials. In many street locations, consumers can "rent" or exchange previously purchased pirated product (for films, this would be something like a video club with pirated products). Consumers can also order any catalog product or TV series, often with a 24-hour turnaround time. Raids in Tepito and other large pirate markets are only conducted at night, as it is unsafe for law enforcement to run

<sup>1</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in Appendix B of IIPA's 2009 Special 301 submission at [www.iipa.com/pdf/2009spec301methodology.pdf](http://www.iipa.com/pdf/2009spec301methodology.pdf). For information on Mexico under Special 301 review, see Appendix D at <http://www.iipa.com/pdf/2009SPEC301USTRHISTORY.pdf> and Appendix E at <http://www.iipa.com/pdf/2009SPEC301HISTORICALSUMMARY.pdf> of this submission. For more on IIPA's global objectives, see our cover letter to this 301 submission at <http://www.iipa.com/pdf/2009SPEC301COVERLETTER.pdf>

<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. Those losses were 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."

<sup>4</sup> BSA's 2008 statistics are preliminary, represent the U.S. software publishers' share of software piracy losses in Mexico, and follow the methodology compiled in the Fifth Annual BSA and IDC Global Software Piracy Study (May 2008), available at [www.bsa.org](http://www.bsa.org). 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.

<sup>5</sup> MPAA's 2005 estimates used a methodology that analyzed both physical/"hard goods" and Internet piracy.

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. The street markets should be subject to better local control, both at the municipal and state levels. It is very important the Mexican government devise and implement a high intensity enforcement plan for Tepito to systematically identify and prosecute criminal organizations operating in that market.

Because much of the pirated product in the Mexican market is locally manufactured, controlling blank optical media imports becomes very important. Mexico imports much of its blank media: 1.06 billion blank media units in 2007 (699 million DVDs plus 362 million CD-Rs) which increased to 1.3 billion units (715 million DVDs plus 622 million CD-Rs) in 2008, according to customs data. Most of the product comes from Taiwan and the main ports of entrance are in Manzanillo, Matamoros, Reynosa, and Laredo.

Furthermore, it is well known that pirate vendors are connected to criminal groups (Zetas and Familia Michoacana) in popular pirate markets like La Cuchilla in Puebla and Las Vías in San Luis Potosí. The street markets are very well structured, with discrete distribution chains, indicating in many cases that organized criminal syndicates are involved. In 2008, the recording industry identified major criminal organizations operating vertically from the smuggling of blank media to the production and distribution of recorded music and movies CD-Rs and DVD-Rs in areas like Tepito in Mexico City. There has been some positive progress on this element in the past year. According to newspapers in Mexico City, the main importer of DVDs and CD-Rs to Mexico, Ara Agaronian, was apprehended and accused of contraband, tax evasion and fraud, and counterfeiting of documents; the case is pending and the accused has been in jail since his arrest. Also, U.S. enforcement officials led by Immigration and Customs Enforcement (ICE) officers apprehended Jesus Arandona, the main distributor of disks in Tepito, in San Antonio, Texas. As a result of these two apprehensions, the price of raw materials (blank media) doubled in the pirate markets.

A study recently released by the local American Chamber of Commerce (Amcham) showed that 76% of those interviewed admitted to having purchased pirated products. The segment between the age of 16 to 18 has the largest incidence (83%) of such purchases.

**Internet Piracy:** Internet downloading in Mexico is growing rapidly. There are an estimated 23.7 million Internet users in Mexico, representing about 21% of the population (according to [www.internetworldstats.com](http://www.internetworldstats.com)). The Internet poses two basic challenges in Mexico: (1) the sale of counterfeit/pirate hard goods and (2) the distribution of illicit new releases, subtitles, covers and dubbed versions of films, as well as music, software and books. Piracy exists in both the hosted environment and increasingly on peer-to-peer (P2P) filesharing programs, cyberlockers, and BitTorrent sites. Several pirate servers are suspected to be based in the city of Culiacan in the state of Sinaloa.

The recording industry reports that Internet piracy of music dominates about 90% of the total music market in Mexico. According to a third party survey (IPSOS-BIMSA in 2008), more than 4.7 billion songs were downloaded in Mexico during 2008. This figure represents an increase of 80% from 2007, fuelled in part to a 50% increase in the number of broadband connections in the country. P2P networks are the most predominant form of music piracy, with Gnutella and Ares at the top of the preference for users in the country. Most recently hyperlinks posted on blogs, social networks and forum became a big part of the problem. Although APCM (the Association for the Protection of Film and Music) implemented new tools to remove those links faster, the magnitude of this problem makes it impossible for the private sector alone to combat it.

Reports suggest that the Mexican Internet service providers (ISPs) cooperate with rights holders on infringing content on hosted websites, but cooperation is lacking with respect to infringing activity occurring through P2P protocols. In 2008, the Mexican authorities, led by the Ministry of Communications and Transportation and at the request of several copyright associations, formed a working group with the ISP community. This objective of this working group is to generate a policy that responds to repeat infringers and, if the resulting policy is not accepted by the ISPs, then to prepare an initiative to be presented to the Congress.

**Audiovisual piracy:** The Motion Picture Association (MPA) reports Mexico has the most prolific camcording piracy problem in Latin America. Thirty-two (32) films of MPA member companies have been stolen from Mexican theaters in the past twelve months. This is a 167% increase over 2007 of illicit camcords sourced from Mexico. Many of these films, such as *Speed Racer*, *Indiana Jones and the Kingdom of the Crystal Skull*, *Horton Hears a Who!*, were stolen from Mexican theaters only one day after their local theatrical release. *The Dark Knight* was stolen from several different Mexican theaters the very same day it was released in Mexico. 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. Yet the main, most economically damaging piracy problem in Mexico for the film industry 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%. The most noticeable impact has occurred in the independent rental market where studies made by distributors show a huge drop in the number of stores -- from over 6,000 video stores in 2005 to less than 2,400 by June 2008. As noted above, Internet piracy is also a growing concern and notably at Internet cafés 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. In sum, MPA believes that the physical piracy remains its top issue but acknowledges that Internet piracy is growing faster in Mexico for its products.

**Piracy of sound recordings and musical compositions:** The recording industry reports a substantial growth in Internet piracy in Mexico in 2008. Such piracy is mainly committed through P2P networks, and is impeding the growth of an online music business. As sales of "physical" music products continued its decline in 2008 (a 25% decline in value through November 2008), digital piracy increased dramatically, as mentioned above. Burned CD-Rs and DVD-Rs continue to be the format of choice for almost all pirates in Mexico. Major cities represent most of the street piracy and mobile flea markets ("tianguis") like Mexico, Guadalajara and Monterrey. The legitimate music market continues to be heavily hurt by piracy. The estimated level of music piracy for 2008 rose to 80% (around 120 million units) of the total physical music market, with estimated losses to the recording industry placed at \$419.7 million.

**Business software piracy:** The Business Software Alliance (BSA) reports that physical software piracy is still the main problem in Mexico, but Internet software piracy is growing rapidly. Local software creators are facing a considerable difficulty in commercializing their products, as the illegal market is gaining market share and power. Tepito and San Juan de Dios, which serve as manufacturing (burning labs) and selling points for pirated software. Lowering software piracy levels would significantly contribute positively to the Mexican economy.<sup>6</sup> In addition, piracy from "white box" vendors (meaning small local assemblers or non-brand name vendors of computer hardware) continues to be a considerable source of software piracy (usually hard disk loading). BSA partnered with IMPI in 2007 to achieve a record number of inspections with wider geographical coverage, and similar results were obtained in 2008. In addition, BSA has worked with INDAUTOR on a high volume of conciliations (negotiated settlements), with good results, quantitatively and qualitatively. BSA believe that because of its continuing good public-private partnership with IMPI and INDAUTOR and continuing good intelligence work, software piracy is not worsening but remaining at a steady level. BSA reports that preliminary estimated trade losses due to business software piracy in Mexico were \$497 million in 2008, with an estimated piracy level of 60%.

**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. The most damaging form of piracy is hard-goods, as evidenced by the enormous quantities of burned optical discs and counterfeit cartridges. Many of the well known markets, such as Tepito and Plaza Meave in Mexico City, are notorious production points and wholesale distribution centers of pirated games and circumvention devices. 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

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<sup>6</sup> 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 government. See The Economic Benefits of Reducing PC Software Piracy, released January 22, 2008, and available online at <http://www.bsa.org/idcstudy>.

companies. Local CD-burning is common for console and PC games. In addition, the sale of memory sticks containing hundreds of pirated copied of games downloaded from the Internet is on the rise. These memory sticks are used with handheld gaming platforms, which are very popular in Mexico. Further, counterfeit cartridges continue to be imported from Asia, often in component pieces which are then assembled in Mexico. In 2008, Mexican Customs seized over 21,000 counterfeit cartridges. In addition, Customs seized over 46,000 falsely labeled pirated optical discs originating from China, as well as a number of R4 circumvention devices that permit pirated games to be played on the Nintendo DS. Despite these significant seizures, it has 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. Circumvention activity continues to be a significant problem, and occurs openly in many markets. Circumvention is accomplished by the installation of "modification chips" in consoles, which bypass the technological protections embedded in the hardware and enable the play of pirated games, or modifying the game platform's operating system to "trick" the system into allowing the play of pirated games (so-called "soft modding"). 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.

**Book and journal piracy:** Illegal photocopying of academic materials remained a significant problem for the book and journal publishing industry in 2008. 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, and lecturers are known to facilitate and request copying of course compilations consisting of unlicensed content in significant measure from a variety of publishers. 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 not a reliable source of revenue for legitimate companies, though some publishers report that payments have improved a bit. Recent years have seen some enforcement action, and a campaign by the Camara Nacional de la Industria Editorial Mexicana (CANIEM), along with CEMPRO, has been directed to raise awareness of the importance of copyright in these published products. These efforts should continue in 2009, supported by government partnership and action.

## COPYRIGHT ENFORCEMENT IN MEXICO

Several federal agencies have been taking actions and working positively with rights holders on investigations and raids. Industries' cooperation with both the PGR (prosecutors, the Attorney General's Office) and IMPI (the industrial property office) is generally good, though the experience varies among industry sectors. For example, the game industry reported that it was not able to conduct raids against key pirate markets in Mexico City for most of the year, including during the critical holiday season. The relevant authorities were unresponsive to ESA's repeated requests for raids, despite evidence of ongoing pirate activity at these markets. INDAUTOR (the copyright office) has, in some limited circumstances, used its administrative authority to resolve some of its cases. All copyright industry sectors confront continued difficulties in achieving results in the Mexican courts. Only recently have the industries started to see some willingness by the federal courts to receive IPR training.

At the national level, copyright rights holders work with various Mexican agencies to support the National Anti-Piracy Agreement, an initiative that focuses on actions and includes public-private collaboration. To centralize efforts, in March 2006, members of several copyright-based industries announced the formation of a new coalition dedicated to fight piracy. The Institute for the Protection of Intellectual Property and Legitimate Commerce (IPIIC) lists its members as: APCM (the film and recording industries), BSA (the Business Software Alliance), MPA (Motion Picture Association), CNIV

(The National Chamber of the Garment Industry), and PRONAPHON (the National Producers of Phonograms). This association gave legal status to the group that was meeting with PGR and other government agencies. Under the aegis of the National Anti-Piracy plan, regular monthly meetings of the private sector and government officials are held to discuss priority actions, and the agenda now includes Internet piracy.

Mexican States also have a role to play in anti-piracy efforts. Anti-piracy actions taken by the States continued to be weak in 2008 which are also encumbered by the lack of *ex officio* authority (discussed further, below). Unfortunately, many of these local governments deflect their responsibility entirely, insisting that enforcement should be done only by the PGR. 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. Even with regulations in place and inspectors to enforce them, local anti-piracy actions have not been taken. There also remains an unfortunate lack of effective communication between the municipal, state, and federal governments on these kind of enforcement matters.

## **CRIMINAL ENFORCEMENT**

**Conducting raids and working with the police and prosecutors:** A continuing major structural impediment to enforcement is that piracy is still a “private” offense and a complaint (*querrela*) must be prepared by the rights holders and filed with the PGR before the PGR will consider conducting a raid. This is because Mexican law does not provide for *ex officio* action which forces copyright owners to incur high legal costs in pursuing any piracy case. For over five years, the industries have advocated amendments to the criminal code which would permit *ex officio* actions and eliminate the costs and delays associated with filing formal complaints, but this bill still has not been passed.<sup>7</sup>

Several problems remain with Mexico’s approach to hard goods 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. There are 27,000 points of sale for music and video in Mexico City alone. The copyright industry does appreciate the many coordinated actions and raids taken against the embedded street piracy problem, yet the goal should be deterrence and permanently shutting down these street operations.

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. It is believed that results are poor because the state PGR cannot oversee municipal action (yet the industries would be interested in seeing any official data on this initiative).

Another PGR unit, PGR-SEIDF (the “Subprocuraduría” Specialized in Investigation of Federal Crimes), which includes the Specialized Piracy Unit, has worked with industries and achieved significant results in 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 organized crime networks, 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

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<sup>7</sup> For example, the burdens of filing complaints are particularly onerous on recording companies since there are numerous sound recordings usually found on a burned disc. Criminal complaints are long and complicated documents accompanied by certified copies of powers of attorney. One power of attorney for every record company affected is required by prosecutors and judges. On top of this, the industry has to produce copies of registration certificates of many sound recordings as evidence of ownership. Finally, our attorneys must show detailed evidence of the location, means and people involved in every case to have better chance of obtaining the search warrant order from the criminal judge. In sum, every successful raid comes after hard work and a lot of paperwork. All of this could improve if the *ex officio* action is adopted in Mexican legislation.

coordination with the private sector. This division has excellent 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 specialized "subprocuraduria" for Federal Crimes continued its good level of cooperation with recording industry during 2008. Although no conclusive results were obtained in particular cases, the long term investigations followed positive paths. The fact that this group kept their attention on these cases given the challenging situation faced by the Calderon Administration' fight against the drug cartels offers some hope.

Two years ago the recording and film industries combined their anti-piracy operations into the Association for the Protection of Film and Music (APCM). In 2008, and there was a good level of cooperation with PGR with APCM cooperating with law enforcement on 3,170 raids, which included street actions, labs, warehouses and border operations. This was at a comparable level to 2007 results. The resulting seizures included 7.3 million music CD-Rs, 7.4 million film DVD-Rs, and 23.6 million blank media (CD-R/DVD-R) used in infringing operations, and law enforcement arrested 120 people. Several major actions have taken place. For example, last fall, the PGR received and pursued complaints regarding the unauthorized reproduction of sound recordings in disco clubs in Mexico City and conducted some raids resulting in the seizure of pirate CD-Rs. On July 4, 2008, 300 law enforcement officers (the PGR, the Federal Preventative Police (PFP) and the Investigation Agency (AFIS) plus local and state police) raided, for the third time that year, the infamous pirate market known as "La Cuchilla." Some 100 commercial establishments and 2 laboratories involved in music and film piracy were closed down, and large amounts of equipment and infringing products were seized.

In 2008, APCM collaborated with the PGR to arrest six individuals caught camcording in theaters. While MPA is pleased with these actions and appreciates PGR's cooperation, it is notable that in each of these cases, MPA had to prove commercial intent, which is exceptionally burdensome. Moreover, while the six arrests are an improvement over previous years, the number of illegal camcording incidents in Mexico has more than tripled since 2007. It is clear that if Mexico is to successfully combat illicit camcording, it must pass a law that criminalizes camcording in theaters, which would eliminate the need to prove commercial intent. Although piracy is not yet an *ex officio* crime, PGR has carried out several raids in 2007 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. 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 2008 but also experienced (and continues to face) significant difficulties in obtaining raids against two key game piracy havens in Mexico City. ESA conducted two raids in Guadalajara (San Juan de Dios and La Fayuca), which has the largest piracy markets in Mexico, and one at Bazar Lomas Verdes, a significant retail piracy center in Mexico City. The raids yielded over 138,000 pirated games across multiple platforms and over 800,000 pieces of packaging material, as well as 117 burners and 9 PCs. Eleven burning labs were dismantled, including a total of 10 in Tepito in March 2008 and early January 2009. During the March 2008 Tepito raid, PGR seized approximately 290 DVD/CD burners, nearly 29,000 illegal copies of video games and more than 900,000 video game cover inserts. Two significant aspects of the Lomas Verdes raid were that five booths were judicially closed for the duration of the proceedings and the action took place during the daytime, for which PGR is to be commended. Despite these successes, ESA faced great difficulties in raiding two specific game piracy centers in Mexico City. One is a popular retail center that has housed pirate vendors for years and the other is both a significant retail and distribution center. Despite clear evidence of substantial game piracy activity in both areas and ESA's pending criminal complaints (one was filed several months ago and another was filed in early December 2008), PGR for months has refused to raid either area. The lack of raids against these piracy havens has permitted rampant game piracy to flourish, which was particularly damaging this last holiday season as game pirates openly distributed pirated games, profiting from their illegal activities without any fear that they would be shut down by criminal authorities. This situation is untenable and it is imperative that PGR raid these game piracy havens, thereby enforcing Mexico's criminal laws against all game pirates equally, without selectively picking which targets it will raid and which ones it will not.

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. BSA did not obtain criminal convictions in 2008, but supported 45 street sweeps and 140 channel 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. 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. Unfortunately, the industries report that it has been extremely difficult to gain PROFECO's attention to IPR cases; they lack the necessary resources to do a good job.

**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 compelling reason for SHCP to get more involved.

## JUDICIAL ISSUES

Unfortunately, the Mexican judiciary continues to view criminal copyright infringement as a minor offense, and issues very few deterrent sentences. Problems also remain with civil litigation. The litany of problems below remain familiar:

First, there remains the challenge for PGR prosecutors to effectively prepare the criminal cases, issue the indictments and fully prosecute the cases before the courts. The number of cases is still far below what is needed to have any significant effect on the marketplace. From the industries' perspective, the glaring problem remains the scarcity of full prosecutions.

APCM reports that there were 120 arrests made in 2008, and there were 7 convictions last year. There was, however, an unprecedented case that had terrific results. APCM reported that in May 2008, a 26-year old defendant who sold music, films and TV series throughout Mexico and abroad through his website was sentenced by a court in Cuernavaca to serve a prison term of 6 ½ years and pay a fine of 9,000 days minimum salary (about 424,400 pesos, or US\$29,500). BSA did not obtain any criminal convictions during 2008, and obtained only one (3 years in prison) in 2007.

Second, Mexico should consider adoption of mandatory sentencing regulations for criminal copyright cases, or the Supreme Court itself should set out recommended guidelines. Sentencing guidelines could greatly assist judges in deciding to impose higher sentences under current law.

Third, Mexico's three-tiered civil procedure system, involving actions in the first instance, the second instance and the Amparo hearing makes civil litigation more complicated, more time consuming, and more costly for the right owners. A related issue is the very long time it takes to resolve cases. For example, BSA notes that cases brought under the current law of industrial property progress excessively slowly, with some cases taking up to ten years. BSA believes there has been some improvement as some federal judges are exhibiting more interest in IPR cases; for example, Mexican law does award full validity to electronic documents and discovery, but some judges are still not familiarized with it.

Fourth, Mexican civil enforcement lacks *ex parte* measures on civil procedures to stop serious infringements and avoid the destruction of evidence. Mexico fails to comply with the TRIPS agreement on providing effective measures for IPR violation cases. There are no injunctions granted by civil courts to stop infringements, to seize allegedly infringing merchandise or to gather evidence/avoid the destruction thereof. In view of this problem, BSA stopped bringing civil suits regarding copyright infringement several years ago. The other major problem is that damages can only be collected after the infringement decision has become *res judicata*. This means that a rights holder must litigate in IMPI, the Tax Court and Circuit Courts, and after approximately eight to ten years of litigation, the rights holder is entitled to claim damages in a civil

court. This could take an additional two to four years. The *res judicata* prerequisite for damages related to copyright infringement was confirmed by the Supreme Court in 2008.

Fifth, there remains a need to create specialized IPR courts in Mexico to streamline efficiencies. Notably, in the last quarter of 2008 Internet-accessed courts were established to curb corruption in the search warrant request process. Through this new process, documentation and evidence for search warrants are submitted to the court via the Internet. The judges remain unknown to the parties, thus sheltering them from bribes and external influence. The Tax Court created a specialized Intellectual Property Court in 2008. Three Magistrates were appointed recently. Federal Circuit Magistrates are advancing the concept of a Federal IP Court, at the Circuit level.

## **ADMINISTRATIVE ENFORCEMENT**

The two administrative agencies that work on copyright matters are IMPI and INDAUTOR. The copyright sectors have different experiences with these two agencies.

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

**Business software sector:** BSA reports that 2008 reflected 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. BSA reports that in 2008, there were approximately 1,300 IMPI actions taken (about 1,100 *ex officio* and 200 *ex parte*, also known as "full raids"). IMPI is conducting more than 200 *ex officio* visits monthly on software matters. BSA notes that IMPI strengthened its administrative enforcement efforts last year by not allowing oppositions to the inspection visits, after the inspection has started. Over the past two years, IMPI has been improving its work against door closures (cases where the targeted suspect simply closes the door to the IMPI inspectors who can take no further action other than issuing a fine). In 2005, 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 soon implemented that criterion in-practice. IMPI also has begun to impose fines on door closers, shortly after the raid, and the amount of the fines is also increasing considerably. The imposition of immediate, exemplary fines on door closers is a positive development.

BSA believe the following legislative solutions could further help administrative copyright enforcement: (1) end door closures, (2) establish a presumption of infringement in the event of door closures (this would codify the AOS Solutions case), (3) give more powers to IMPI officers so that they can amend the address and other identification information of the alleged infringer, at the time and site of the inspection, (4) eliminate the two witness requirement, (5) give public faith powers (this is similar to notary powers) to IMPI inspectors; and (6) prosecute tax crimes associated with these IP infringements.

**Sound recording sector:** For the second year in a row, IMPI continued its actions against cyber cafes offering access to P2P networks in Mexico City, Guadalajara and other important locations. In 2007, AMPROFON and IMPI signed an agreement to conduct 80 administrative procedures every month against the illegal downloading on cyber-cafes, mainly in the capital city area. This program worked out extremely well during 2008. IMPI continued its 80 administrative actions per month, mainly in capital city area. These actions helped to reduce the amount of illegal music file exchange in the Internet cafes in Mexico. IMPI deserves credit for its consistency in its actions. In fact, many of the raided Internet cafes have now posted information in its premises warning their customers about the legal consequences of the illegal downloading of sound recordings and movies; this is an educational element in this campaign that needs to be recognized.

**Motion picture sector:** During 2008, MPA worked with IMPI on educational efforts, including collaboration on an anti-camcording campaign, which would benefit both Mexican and U.S. filmmakers, as well as Mexican theater owners. In 2008, MPA and IMPI developed new signage for theaters warning that camcording is a crime. MPA has also been working with IMPI, the RTC (Radio, Television, and Cinematografía), and home video retailers on an agreement that would address Mexico's serious parallel import problem.

**Entertainment software sector:** ESA continues to have a positive level of cooperation with IMPI, though given the nature of the videogame industry's piracy problem in the country, much of the action in 2008 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.

**Industries' views and experiences with INDAUTOR are mixed:** 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 continue to issue general information to the public about the importance of copyright in the local culture and economy.

**INDAUTOR--conciliations in software end user cases:** During 2008, BSA worked with INDAUTOR and held approximately 130 conciliation meetings (*Juntas de Avenencias*) with end users, a slight decline from the 192 actions in 2007. 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 two possibilities: (1) creating a new Center to handle arbitrations, mediations and negotiations, both physically and electronically, and (2) adding more conciliation rooms (*salas de avenencia*) and more mediators.

**INDAUTOR—regrettable failure to issue public performance tariffs:** INDAUTOR is responsible for supervising the collecting societies in Mexico. INDAUTOR has unfortunately not fully addressed the issues for which it has jurisdiction during 2008. For example, INDAUTOR has not yet issued rates for the broadcasting of sound recordings in TV and radio stations. The recording industry acknowledges that the initial attempt by INDAUTOR to set rates were questioned by competition authorities. However, the project was allowed to completely stall and has not moved from that point, leaving producers and performers uncompensated for the commercial use of their recordings, in violation of Mexican law. Subsequently, the industry held several meetings with INDAUTOR, requesting that the agency re-start the proceedings to publish the public performance rates (tariffs). Despite investing more than 3 years in discussions, INDAUTOR strongly suggested that the industry should continue negotiations with broadcasters and hotel chains but with no dateline. This agency's inaction has contributed to confusion in the marketplace. The needed action is simple: INDAUTOR should, consistent with the provisions in the Copyright Law, issue the tariff rates that follow international standards for the performance of sound recordings by TV and radio stations in Mexico

## **DISCUSSIONS / COOPERATION REGARDING THE INTERNET**

**Actions in the Internet space:** With respect to Internet piracy, APCM has worked with IMPI on administrative enforcement measures with most cases followed with sanctions. APCM reports that it issued 162 cease and desist letters, and worked to take down 140 hosted web pages, 215 permalinks, 38 auctions sites, plus 833 P2Ps links and 50,238 cyberlocker links.

The film and music industries report that they have received a decent level of cooperation from major Mexican ISPs involving hosted content, such as the removal of illegal music files posted on WebPages and forums. However, in the case of P2P filesharing, ISPs (especially Telmex, which has about 70% of the domestic broadband connections in Mexico) have to-date been reluctant to take any actions.

**Legal concerns:** There is no specific Mexican legislation establishing responsibility for ISPs in piracy cases. It is assumed that ISPs are subject to the general liability principles contained in the Civil and Criminal Codes. Obtaining IP (Internet protocol) addresses, usage patterns, and subscriber contact information is complicated and slow. Depending on the ISP, it is difficult to obtain full identity information of alleged infringers in a civil case. Furthermore, specific provisions in the Telecommunications Law prohibit ISPs to disclose personal information on customers except by competent authorities during the investigations of criminal activities. As a result, some groups (such as the recording industry and MPA, via APCM) turn to pursuing criminal actions with the police in order to get the required information and move forward against the Internet targets.

File sharing committed through P2P networks is not considered a serious legal violation on civil courts mainly because there are no precedents supporting rights holders' actions. On the criminal side, Article 424*bis* of the Criminal Code requires a profit motive as a prerequisite for criminal infringement and that is why, for right now, nobody can be effectively prosecuted in Mexico on P2P cases. Even if the case (say, in the hosted environment) goes forward on a criminal basis, the historical concern about the ability of police and prosecutors to investigate the case swiftly and prepare it fully come into play. Fortunately, APCM did obtain a significant criminal conviction in the hosted environment last year. The lack of specific Mexican laws results in a lack of certainty for ISPs on how to react to Internet piracy and notice and takedown notifications from the copyright industries.

**Meetings between some copyright sectors and the ISPs:** In order to address this uncertainty which is contributing to Internet piracy, a coalition of rights holders that includes the authors' society (SACM), the motion picture industry (MPA), the recording industry (AMPROFON), the music publishers (EMMAC) and book publishers (CEMPRO), in 2008 submitted a petition to the Communications Secretary to launch a negotiation roundtable with ISPs to find ways to reduce the availability of unauthorized content online and to govern ISP responsibility. A working group (the Commission for Internet Piracy Mitigation) has been formed between the coalition and the Ministry of Communications and Transportation, to find solutions to online piracy. Entertainment software publishers are also participating in the working group discussions.

As of mid-January 2009, three meetings have been held under the auspices of the Ministry of Communications and Transportation, with the parties exchanging proposals to be embodied in an agreement, the elements of which thus far include: (1) a notification procedure, (2) a stepped approach to subscriber termination, and (3) deterrent sanctions against serious or repeat offenders. IIPA urges the Government to remain involved in this exercise and to ensure that an outcome is reached that greatly enhances the cooperation between rights holders and ISPs in addressing infringement over information networks, and that provides much needed security and accountability in the online space.

## **BORDER ENFORCEMENT**

**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. APCM seized about 24 million units in 2008.

To address these concerns, PGR established a task force in 2007 consisting of Customs, the Ministry of the Economy and private sector representatives (music and film), to monitor and develop intelligence on blank media imports. The task force works on individual projects as needed. 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 control blank media exports from Southeast Asia that pass through the U.S. to avoid tax burdens.

**Customs Anti-Piracy Initiative:** In 2008, Customs began an anti-piracy initiative through which it (1) conducts regular trainings of Mexican officials at various ports on intellectual property enforcement issues and the identification of various types of pirated product; and 2) holds monthly meetings with industry members to review the results of the trainings and any improvements that could be made to border enforcement. The game industry has reported positive results from this initiative, including an increase in the number of Customs seizures of pirated games at various ports. In 2008, Customs seized 78,408 pirated games and numerous R4 circumvention devices.

**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 a 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 Mexico has ratified) into its domestic legislation. In addition, many bills that would strengthen enforcement were not acted on in 2008 and have been pending for years.

### **Current Legislation**

**Federal Law on Copyright (1996, as amended):** Amendments to Mexico's 1996 copyright law entered into force on July 24, 2003. Regulations to implement the 2003 amendments were issued two years later, in September 2005. The copyright industries worked diligently to shape some of the more troubling parts of this legislation and regulations. Mexico acceded to both the WIPO Treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty) in 2002, but still has yet to publish the WCT and WPPT Agreed Statements.

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, 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. The major corrections needed in the current law would include, for example:

- Adding definitions and provisions on technological protection measures (TPMs);
- Adding definitions and provisions on rights management information (RMI);
- Clarifying the definition/scope/drafting of exclusive rights, especially regarding the rights of making available and communication to the public;
- Strengthen rights of performers and producers of phonograms to ensure they have exclusive communication to the public rights as well the ability to establish enforceable broadcasting and public performance tariffs;
- Narrowing several Berne- / TRIPS- / NAFTA- overbroad limitations and exceptions to protection;
- Proposing amendments to free-up strictures on contractual rights and transfers;
- Removing the onerous "for profit" (*lucro*) standard necessary in order to bring a criminal infringement action; and
- Addressing issues related to ISP liability and creating create notice and takedown procedures

Some of the above issues have been proposed, in a piecemeal way, by separate legislation or ongoing initiatives (as discussed throughout this report).

Given the extensive reform needed to properly and comprehensively upgrade the statutory provisions of the Mexican copyright law, IIPA recommends that Mexico request assistance from WIPO to conduct a full study and recommend reforms.

**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). IIPA members have no recent news to report on whether any copyright prosecutions have been initiated under this law.

## Pending Legislation

Many of the bills listed below have been pending for several years. IIPA members note, with appreciation, that IMPI has been supportive of the bills aimed at strengthening the copyright law and the criminal code. IMPI has also been supportive of the ISP liability initiative as well (discussed above).

**Criminal code: Bill 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 important for the copyright sector because rights holders will not have to file criminal complaints for every case of infringement. Such authority will also have the benefit of expanding anti-piracy enforcement nationwide, including at the state level. This original bill, as sent to the Senate, had constitutionality concerns. As a result, a new bill was introduced in the lower house and passed in 2008. It has been sent to the Senate where it awaits Justice Committee action. The copyright industries strongly encourage prompt action on this important piece of legislation.

**Criminal code: Bill 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.) Unfortunately the 2008 session ended without Senate action on this bill.

**Criminal code: Bill to provide protection against unauthorized camcording in theaters:** An anti-camcording bill was introduced in the lower house several years ago but no action were taken by the appropriate committees. Thus, MPA decided to promote, with the support of the local theater association, a new bill. This bill would amend the Criminal Code to punish, with a prison term from 3 to 10 years and fines, the unauthorized camcording of films in theaters and would eliminate the need to prove commercial intent. The bill will be introduced in the Senate in the first session of 2009, and the Mexican government should give its full support to this bill.

**Copyright law: Bill to protect technological protection measures:** 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). As for its current legislative status, we understand that it needs to be reintroduced in order to start with more political support.

**Copyright law: Bill to remove the private copy levy and the "*lucro*" (for profit) requirement:** 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. Unfortunately, this bill was stuck in the Education Commission of the House of Deputies, lost its momentum, and needs to be reintroduced.

**Copyright law: Bill adversely 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 rights holders (both music publishers and producers). The bill was approved by the Chamber of Deputies in 2006, but has since been defeated in Congress by the publishers and fortunately was off the congressional agenda in 2008.

**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 intellectual property from the scope of this law and thereby allowing direct appeals to the federal district and/or circuit courts would reduce the time required to prosecute IP infringements. Reportedly IMPI also supports this bill. The bill is still in Congress, but is not moving forward at this point.

**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 advocating legislation that would establish sentencing guidelines for IMPI fines, eliminate the two witness requirement, grant notarial ("public faith") powers to IMPI inspectors, and impose fines and apply a presumption of truth to allegations of infringement in cases ("door closures") where inspectors are denied entry or evidence is concealed during administrative inspections.

**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. BSA plans to audit Nuevo León in 2009, as well as Federal Agencies and Jalisco again.

**Customs:** The customs law needs to be amended to grant customs officers *ex officio* powers, and customs reform would be welcomed by the copyright industries.

## **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 also conducted customs trainings in association with AmCham. BSA intensified its joint efforts with IMPI, in particular during the campaign "Piénsalo bien," which resulted in a massive wave of awareness building and legalization. Other campaigns are: "El Ejemplo Empieza en Casa" with Nuevo León; "Escuela Legal", a partnership with AmCham and the Association of Editors ("Cempro"); the Digital Animation Contest, which was co-launched by BSA and the Ministry of Economy, under the auspice of INDAUTOR and in close collaboration with IMPI, and IMPI's children campaign. The film and recording industries frequently organize training sessions for law enforcement officials, including IMPI, PGR and Customs. The entertainment software industry also conducted numerous training sessions for Customs and PGR on the various forms of game piracy and methods of detecting pirated games and circumvention devices.