

MEXICO

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2010 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Mexico be elevated to the Priority Watch List in 2010. Mexico has been on the Watch List since 1999.¹

Executive Summary: The overall view of the Mexican landscape of copyright piracy remained unchanged in 2009. Intellectual property theft in all its many guises -- CD-R/DVD-R burning, Internet piracy, unauthorized camcording in theaters, widespread street piracy, counterfeit videogames, unlicensed use of software in corporate and government settings as well as unauthorized photocopying at universities -- continued to be a pervasive economic crime that harms both Mexican and U.S. creators, notwithstanding the commitment of PGR and IMPI. No matter how well-intentioned and cooperative, these agencies are simply overwhelmed by the scope of the problem, and greater resources, training, and legal reforms are required in order to have an impact on the pirate online and physical marketplaces.

IIPA and its members note that efforts of Mexican enforcement agencies were good in 2009 and there continues to be cooperation between Mexican authorities and right holder organizations. Criminal enforcement, led by the PGR, achieved some results even as new leadership took over. Customs authorities also got more involved in anti-piracy efforts, managing to seize over 800 tons of counterfeit products in 2009.

The administrative agencies, IMPI and INDAUTOR, worked well with certain rights holders last year. Despite some resource and legal limitations which hold back the potential for more effective enforcement, IMPI continued to perform well. In addition, the business software sector reports that the mediations done by the copyright office, INDAUTOR, continue to be effective. As requested by the recording industry INDAUTOR initiated the long awaited proceeding to set the tariff for broadcasting rights and but the results are still to be seen.

Nevertheless, some right holder organizations report that the cooperation they receive from Mexican authorities are limited to only selected units of PGR, particularly the Metropolitan Delegation, and Customs authorities. State governments' anti-piracy efforts continue to be poor, with only a few state governments interested in combating illegal trade and piracy. Although the recording and film industries reported a 10% increase in criminal prosecutions last year, the number of overall raids decreased by 17%. In addition, government-wide legalization of software needs significant improvement.

Still missing is a high-level national anti-piracy plan that both enhances and coordinates federal and state enforcement activities. It is imperative that Mexico deal with its Internet piracy problem. Two years ago, a coalition of rights holders started meetings with Internet service providers, under the auspices of the Mexican communications ministry, to try to reach agreement on cooperative efforts to address infringing content on the Internet, but those talks went nowhere mainly because of the lack of interest from Communications Secretary and The Federal Commission of Telecommunications (COFETEL). In late 2009, 37 civil organizations representing copyright industries, right holders and collecting societies formally established the "Coalition for the Legal Access to Culture", which is working to highlight the damage caused by Internet piracy and to offer concrete solutions to the government and private

¹ For information on Mexico under Special 301 review, see Appendix D at <http://www.iipa.com/pdf/2010SPEC301USTRHISTORY.pdf> and Appendix E at <http://www.iipa.com/pdf/2010SPEC301HISTORICALSUMMARY.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/2010SPEC301COVERLETTER.pdf>. The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in Appendix B of IIPA's 2010 Special 301 submission at www.iipa.com/pdf/2010spec301methodology.pdf.



sector involved. Finally, there remains a lengthy list of needed legislative reform, as no progress was made in 2009 on several critical bills.

Priority actions requested to be taken in 2010: The copyright industries recommend that the following actions be taken in the near term to improve the protection and enforcement of copyrighted materials which in turn will contribute to the commercial benefit of both the U.S. and the Mexican copyright sectors:

Enforcement

Criminal Actions, Raids and Prosecutions

- Develop a national campaign to address well-known street markets and distribution centers where vast quantities of pirated goods are sold in broad daylight, including cooperation with municipal authorities to revoke operational licenses.
- Continue to improve investigations and raids against pirates involved in commercial distribution and street piracy, including daytime raids.
- 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.
- Consideration should be given to the appointment of an IP Czar with authority to coordinate the various enforcement bodies and to implement the national plan.
- 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.
- 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.
- Require police officials to proactively identify and arrest individuals who are responsible for the large-scale distribution and importation of pirated goods.
- Augment the tax authorities (SAT) anti-piracy actions.
- Implement stricter Customs inspection of blank media in order to reduce the importations of blank optical media products aimed at the pirate market.

Administrative Enforcement

- 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.
- 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 expedite the publication of 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.

Prosecutions, Judges and Courts

- Encourage prosecutors to act swiftly on complaints and recommend maximum sentences, including jail time, to the courts in order to improve deterrence.
- Increase 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 for criminal matters.
- Provide sufficient resources for the new IP magistrates within the Tax Court.

Legislation

- Support passage of the bill which would amend the Criminal Code to give *ex officio* action in copyright infringement cases.
- Support passage of the bill which would impose penalties for the unauthorized camcording of films in theaters.
- Develop legislation that calls for ISPs' cooperation to address rampant online piracy.
- Support development of legislation that would amend the Criminal Code and the Copyright Law to impose criminal sanctions for the distribution and importation of devices used for the unauthorized circumvention of technological protection measures (TPMs).
- Enact and enforce decrees to ensure the procurement and use of legal computer software in governmental agencies, especially at the state and municipal levels.
- Enact legislation to enhance the capabilities of IMPI, including provisions to (1) establish a presumption of infringement in the event of door closures (*i.e.*, codify the AOS Solutions case), (2) 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, (3) eliminate the two witness requirement, (4) give public faith powers (this is similar to notary powers) to IMPI inspectors.
- Implement other legislative solutions to enhance administrative enforcement, such as: (1) prosecute tax crimes associated with these IP infringements, (2) equalize the level of minimum administrative sanctions between copyright infringement with trademark infringement (trademark currently is much higher), and (3) expressly allow for photographs, video recordings and electronic evidence to be gathered during inspection visits and submitted in administrative procedures.

COPYRIGHT PIRACY IN MEXICO

There are a number of factors that keep copyright piracy levels high in Mexico, such as: challenging economic conditions (such as unemployment and underemployment), missing enforcement tools and inadequate legal remedies, other economic crimes competing for government focus -- all contribute to this longstanding problem. Hard goods 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 the manufacture, distribution, sale and importation of pirated goods.

Hard goods piracy, street piracy, and organized crime: Mexico has widespread, and well-entrenched, street piracy. It is very important the Mexican government devise and implement a high intensity enforcement plan for Tepito and Plaza Meave to systematically identify and prosecute criminal organizations operating in that market.

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, Bazar Pericoapa 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. Last year the PGR took a series of actions both in the Tepito area (236 actions) and San Juan de Dios in Guadalajara (26 actions).

APCM (representing the film and sound recording industry sector) reports that hard goods piracy for 2009 in the film and music industry was about 82%. Street piracy remained at a constant level. The most problematic cities are Mexico City, Guadalajara, Monterrey, Cuernavaca, Querétaro, Tijuana, Veracruz and Morelia. 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. 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 actions during the day. Such raids are largely ineffective as the same shops reopen and simply continue their business.

Because much of the pirated product in Mexican markets 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. In 2009, importation of blank media (CD-Rs and DVD-Rs) declined to 834,336,695 units, according to customs data. This figure represents a slight decrease in comparison with previous years which is probably due to the migration of customers to other media types such as USB devices, MP3 players and cellular phones. Most of the product comes from Taiwan and the main ports of entrance are Manzanillo, Matamoros, Reynosa, and Laredo.

The street markets are very well structured, with discrete distribution chains, indicating in many cases that organized criminal syndicates are involved. Pirate vendors are connected to criminal groups (Zetas and Familia Michoacana) in popular pirate markets like La Cuchilla in Puebla and Las Vias in San Luis Potosí. During 2009, several police actions were conducted to achieve the localization and neutralization of criminal organizations involved in criminal activities in these street markets. Unfortunately, however, these actions have not been adequate since the recently enacted "Ley Federal de Extinción de Dominio" – a law for the property forfeiture, has not yet totally been applied by the authorities. This special law empowers criminal judges to confiscate real estate properties used for criminal activities (i.e. a warehouse used for storage of pirated goods) and maybe is one of the most deterrent tools available in Mexico against piracy.

Internet Piracy: Illicit Internet downloading in Mexico is growing rapidly. There are an estimated 27.6 million Internet users in Mexico, representing 24.8 % of the population; this is a growth of 917% in users between 2000 and 2009 (according to www.Internetworldstats.com).

Internet piracy has grown due to the reduction in the cost of Internet access, and to the growth of broadband. The most prevalent platforms for unauthorized downloads are illegal sites, peer-to-peer (P2P) filesharing programs, hyperlinks, cyberlockers, forums, BitTorrent sites and blogs. 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. Several pirate servers are suspected to be based in the city of Culiacan in the state of Sinaloa. Other servers, hosted mainly in the U.S. and Europe but administered in Mexico, have been identified.

The recording industry reports that Internet piracy of music dominates about 90% of the total music market in Mexico. According to the most recent third party survey (IPSOS-BIMSA in 2009), more than 5 billion songs were downloaded in Mexico during 2009. This figure represents an increase of 15% from 2008, fuelled in part to a constant increase in the number of broadband connections in the country. P2P networks are the most predominant form of music piracy, with Gnutella and Ares the most popular in Mexico. Most recently hyperlinks posted on blogs, social networks and forum became a big part of the problem.

The Motion Picture Association (MPA) notes that a recent IPSOS survey found that 700,000 people illegally downloaded movies in Mexico and that 24 million illicit copies of movies were downloaded in 2009. IPSOS also found that 300,000 people downloaded TV series illegally with 16 million copies of TV series illegally downloaded.

Business software piracy: The Business Software Alliance (BSA) reports that its primary concern in Mexico is the unlicensed use of software by enterprises. Overall software piracy levels in Mexico have remained steady. However, the global economic crisis may adversely affect software consumption and thus increase the use of pirated and unlicensed software. Local software creators continue to have difficulties in commercializing their legal products. Mexico City, Guadalajara and Monterrey are still the cities with highest degrees of piracy. A study conducted by the American Chamber of Commerce Mexico reveals that Puebla is a problematic city as well. Tepito and San Juan de Dios serve as manufacturing (burning labs) and selling points for pirated software. According to the

same AmCham study, digital piracy has become a widespread custom in Mexico. Software products are sold over the net for the equivalent of a few dollars, and sometimes distributed for free. Illegal software is available in auction sites, specialized download sites and "file-sharing" sites.

Lowering software piracy levels would significantly benefit the Mexican economy.² 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 partners with IMPI to conduct a large number of inspections (*cifras*). BSA believes that because of its continuing good public-private partnership with IMPI and INDAUTOR and continuing good intelligence work, software piracy has modestly improved over the past several years. BSA reports that preliminary estimated trade losses due to business software piracy in Mexico were \$497 million in 2009, with an estimated piracy level of 59%.³

Piracy of music and sound recordings: The legitimate music market continues to be heavily hurt by piracy, both in the physical and online environments. 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. Physical sales of music in Mexico continued to decrease (-8% compared to 2008), and this is mainly due to Internet piracy. The level of physical piracy is similar to 2008 at over 100 million units; this means that the estimated piracy level for physical copies of music is approximately 82%.

Internet piracy of music has been growing due to the lack of investigation and prosecution of criminal cases. The most prevalent forms are hosted sites, P2P, hyperlinks, cyberlockers, forums and blogs. Based on a third party survey (Ipsos) Internet piracy reached 99% in 2009. At the present, the recording industry has reached several agreements with digital stores for distributing legal product on the Internet. Among those stores are: Mix Up Digital, Nokia, American Express, Ideas Telcel and iTunes,. However, it is difficult to be commercially viable due to increasing Internet piracy, which in 2009 reached over 5 billion illegal downloads. According to IFPI official statistics, in the last five years the legal market for music in Mexico has decreased by 46% resulting in the disappearance of hundreds of points of sale. Estimated losses due to physical music piracy are US\$436.4 million dollars; we have not been able to estimate Internet losses because it there is no real established market yet.

Camcording and audiovisual piracy: MPA reports that Mexico has the most prolific camcording piracy problem in Latin America. Thirty-two (32) MPA member companies' films have been stolen from Mexican theaters in the past twelve months. This is a 167% increase over 2007 of illicit camcords sourced from Mexico and a 700% increase since 2005. Many of these films, such as *Tinkerbell*, *Public Enemies*, *The Fast and the Furious*, *Harry Potter*, *Coraline*, *G.I. Joe*, *UP*, and *Ice Age*, were stolen from Mexican theaters only one day after their local theatrical release. 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. The rental market declined a further 2% in 2009. As noted above, Internet piracy is also a

² 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>.

³ BSA's 2009 statistics are preliminary, represent the U.S. software publishers' share of software piracy losses in Mexico, and follow the methodology compiled in the Sixth Annual BSA and IDC Global Software Piracy Study (May 2009), available at 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. BSA's final 2009 data will be available later in 2010.

growing concern, particularly P2P, cyberlockers, and streaming. 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.

Entertainment software piracy: Unfortunately, little has changed with respect to the nature and scope of entertainment software piracy in Mexico since last year's Special 301 Report. Hard goods piracy remains the most damaging form of piracy for the entertainment software industry, as evidenced by the enormous quantities of burned optical discs and counterfeit cartridges. In 2009, ESA conducted a number of raids, resulting in the seizure of over 160,000 pirated games, numerous burner labs with the capacity to produce millions of additional games, and over 5 million pieces of packaging materials used to sell counterfeit products. Despite substantial enforcement efforts by the industry, piracy on all platforms remains rampant. Pirated entertainment software is widely available in markets throughout Mexico City as well as other urban centers, such as Guadalajara and Monterrey. In Mexico City, many of the well known markets, such as Tepito, Pericoapa, Bazar Lomas Verdes, and Plaza Meave remain active venues for the retail sale of pirated games. In Guadalajara, the San Juan de Dios market is the principal area where pirated games can be found. Most of the pirated games available for purchase in Mexico are burned domestically, either burned on demand or sourced from local production points and wholesale distribution centers. Industry enforcement efforts have uncovered multiple burning labs in the Tepito and Plaza Meave capable of producing hundreds of thousands of pirated games. In addition, the sale of memory sticks containing hundreds of pirated copies 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.

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. The widespread availability of circumvention devices underpins the growing problem of online piracy of entertainment software in Mexico. ESA estimates there to have been approximately 67,061 infringing copies⁴ made of ESA members' computer and video games through P2P file sharing by ISP subscribers in Mexico during December, 2009. Breakdowns by ISP show that subscribers of Uninet were responsible for approximately 74% of this activity occurring in Mexico -- more than 49,000 downloads during the one-month period. These figures do not account for downloads that occur directly from hosted content, such as games found on "cyberlockers" or "one-click" hosting sites which continue to account each year for progressively greater volumes of infringing downloads.

Book and journal piracy: Illegal photocopying of academic materials at copy shops in and around university campuses remains the primary problem for the book and journal publishing industry. 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. Enforcement officials and education/university officials should take a more active role in addressing the problem of unauthorized reproduction, especially activity occurring on campus or using campus facilities. Universities should implement policies that discourage infringing behavior and promote the use of legitimate materials, particularly at institutions of higher learning, and appropriate sanctions should be meted out to those found engaging in infringing behavior, contrary to university policy. The local reprographic rights organization (RRO), CEMPRO (*Centro Mexicano de Protección y Fomento a los Derechos de Autor*), established in mid-1998, has "licensing" agreements with a number of university libraries and a few legitimate copy shops (such as

⁴ This figure is representative only of the number of downloads of a small selection of game titles. Consequently, this figure is under-representative of the overall number of infringing downloads of entertainment software made during the period.

Office Max and Office Depot). However, the royalties collected are largely symbolic, and are not a significant source of revenue for legitimate companies. The efforts of the Cámara Nacional de la Industria Editorial Mexicana (CANIEM) and CEMPRO have raised public and law enforcement awareness regarding book piracy issues and the importance of copyright protection for books and journals. However, much remains to be done particularly with respect to the manner in which law enforcement agencies and the relevant ministries of the government of Mexico address the country's book piracy problems. Though local industry representatives have made industry concerns known to the relevant agencies, efforts to date have been limited.

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. BSA reports that IMPI conducted a record volume of *ex officio* actions in Mexico City, Monterrey, Guadalajara, Querétaro, Puebla and other cities. The number of full raids conducted by IMPI also increased considerably. However, the videogame industry reported that it was again unable to conduct raids against key pirate markets in Mexico City for the second consecutive 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.

CRIMINAL ENFORCEMENT

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.

Improve national-state-local actions: There remains an unfortunate lack of effective communication between the municipal, state, and federal governments on these kind of enforcement matters, and this problem did not improve in 2009. 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. 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. In the context of the National Anti-Piracy Agreement signed by the Fox Administration in 2004, federal authorities must conduct joint operations with state and municipal governments. Industry colleagues have observed, during 2009, there were acceptable coordination levels with federal authorities. However, this coordination has been poor with the local and municipal authorities. Just a few states conducted raids. Municipal governments are reluctant to conduct anti-piracy operations arguing their lack of jurisdiction on federal crimes like copyright piracy. Priority states to continue efforts in this regards are the Federal District, Nuevo Leon, Jalisco, Mexico State, Puebla, Morelos, Baja California Norte, Veracruz and Michoacán.

PGR: Due to a change in PGR leadership in 2009, there was a lack of continuity in the anti-piracy campaign. The copyright industries hope that recent changes in the Assistant Attorney General Specialized Federal Crimes office will reinvigorate local enforcement and will allow the implementation of new strategies for dismantling organized crime-related piracy. The copyright industries will also seek to apply the "Ley Federal de Extinción de Dominio" (Federal Law for Property Forfeiture) to piracy cases. Furthermore, an aggressive campaign targeted at major markets with consistent raids will have a deterrent effect. As discussed further below, some industry sectors continue to experience difficulties in working with the PGR on certain anti-piracy actions.

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 to communicate with PGR. 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.

Organized crime enforcement: Although piracy is considered an organized crime offense, for many years no copyright cases were initiated under this law. Over the last two years the recording industry submitted four organized crime cases to PGR but only one reached the judicial system ("Operation King Pin"). This should remain as a priority for 2010.

Another PGR unit, the PGR-SEIDF (the "Subprocuraduría" Specialized in Investigation of Federal Crimes), which includes the Specialized Piracy Unit, has worked effectively 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. The PGR also empowered its Organized Crime Investigative Division, PGR-SIEDO, to investigate piracy and develop systematic coordination with the private sector back in 2004. 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. 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. More coordination between PGR-SIEDO and PGR-SEIDF is needed.

The tax authorities (SAT): Recently the Mexican Tax Administration (SAT) has shown signs of interest to effectively support the fight against software piracy through a consistent and permanent exercise of its inspection powers on IP compliance by companies. SAT might start enforcing currently existing laws, so that Mexican taxpayers report their IPR compliance with respect to software. In times of economic crisis reducing software piracy can be a strategic tool for creating jobs, increasing tax revenues, expanding business opportunities, and fueling economic growth.

Customs: The recording industry notes that much of the pirate material is produced locally and the following supplies are imported: blank CD-Rs, blank DVD-Rs, jewel boxes and burners, but such importations are not considered a crime. As a consequence of coordinated actions with SAT and PGR, APCM reports that there were significant seizures of illegal imported raw material, mainly CD-Rs, DVD-Rs and jewel boxes. However, the SAT and PGR's goodwill did not prevent a drop in blank media seizures of 64% for the first 11 months of 2009.

PROFECO: IIPA and its members have recommended over the years that PROFECO should use its *ex officio* powers for consumer protection to stop street market piracy. But PROFECO lacks human and financial resources to conduct raids on a consistent basis and needs police assistance to protect personnel during raids. Last year it made some inroads on the public education messaging. Recently, a training on identification of genuine software and the risks associated with counterfeit products was provided by industry to the "trainers of trainers" in PROFECO. Each of these trainers is responsible for approximately 130 consumer organizations which add up to more than 500 entities in the Federal District. This development is the opening for better work with PROFECO on the education of consumers so that they drive demand of genuine products.

The complaint requirement and additional problems with hard goods enforcement: 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. As a consequence, copyright owners incur high legal costs in pursuing any piracy case. For over six 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 is still pending in Congress.⁵

Results in criminal actions in 2009: Criminal anti-piracy actions in Mexico are taken by the film, music and entertainment software sectors.

Three years ago the film and music industries combined their anti-piracy operations into the Association for the Protection of Film and Music (APCM). In 2009, APCM reported continuing good level of cooperation with PGR on film and music actions. There were 2,715 criminal actions conducted across Mexico (physical), 1,284 Internet actions (642 for music and 642 for movies), 960 administrative actions (Internet), 30 civil cases (Internet), seizure of 5,800, 283 DVD units, and 15 actions with Customs. While seizures have been significant, the piracy percentage index has not been reduced. Although the number of overall raids taken by PGR decreased by 17% in 2009, there was an increase in daytime raids with focused actions in strategic areas by police forces, under the direction of PGR, resulting in significant seizures. Unfortunately, there were only few arrests.

In mid-January 2009, the PGR arrested six leaders of a hard goods operation in Tepito that paid people to go to theaters and camcord films that they then turned into pirated DVDs. They will hopefully be prosecuted for the offenses they committed, including camcording. However, these are for films that were successfully camcorded and subsequently distributed on a massive scale. That means that in order to sustain a successful prosecution under existing law, investigators had to watch the thieves actually camcord the movie, walk out of the theater, hand it over to the people who hired them, and then wait for the films to be widely distributed, thereby inflicting grievous harm on the rightsholder. Notably, the people who were hired and who actually did the camcording were not arrested because the authorities believed there was insufficient evidence under existing law to prosecute them. A new anti-camcord law without the existing loopholes is desperately needed, so that camcord thieves can be arrested and charged without having to let them walk out of the theater with a stolen film and waiting for them to distribute it (thereby bringing great harm to our members). There were 1,560 pirated discs, 13,400 blank DVD-Rs, two camcorders, and 160 disc burners seized in this raid. In September 2009, local authorities supported by APCM searched two residences associated with the leaders of the online piracy release group "SceneLatina." It is suspected that this group was directing local camcord activities. Multiple pirated movies were found on the individual computers, FTP server and on pirated discs and arrest orders have been issued. Although piracy is not yet an *ex officio* crime, the Mexican army and the navy initiated several raids that were then taken over by PGR in 2009.

The ESA's anti-piracy enforcement program had several noteworthy actions in 2009 but also experienced (and continues to face) significant difficulties in obtaining raids against two key game piracy havens in Mexico City. ESA was again able to secure a raid of San Juan Del Dios in 2009, resulting in the Specialized IP Unit seizing over 55,000 pirated games and 365,000 items of manufacturing materials. In conjunction with the Metropolitan Delegation, ESA conducted five raids in Tepito, which yielded over 100,000 pirated games across multiple platforms, and over 3.5 million counterfeit game covers. More importantly, the multiple raids on Tepito resulted in the dismantling of 12 burner labs and storage facilities capable of producing millions of more pirated products. While ESA regards the five Tepito raids as a success, this figure also underscores the fact that failure to follow up raids with prosecutions and source investigations undermines any hope for deterrence.

Despite the above successes, ESA has 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

⁵ 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.

retail and distribution center. Despite clear evidence of substantial game piracy activity in both areas, PGR has for almost two years refused to raid either area. Specifically, the PGR's Specialized IP Unit has failed to act on certain complaints filed by the game industry for almost two years. Although the ESA commends PGR's Metropolitan Delegation for leading multiple raids against targets in Tepito in 2009, the Specialized IP Unit on the other hand has failed for two years to conduct raids for the game industry in Plaza Meave and Pericoapa, the former one of the most notorious sources of pirated games and the latter one of the most popular retail centers for pirated games. These markets are filled with and openly sell pirated games on a daily basis and yet PGR's Specialized IP Unit refuses to exercise its enforcement powers to shut down these sources of game piracy. The consequence is that the pirates have been and continue to enjoy tax-free profits from the sale of pirated games, while the game industry suffers from the massive piracy that exists at these two venues. 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. ESA hopes that administration changes at PGR in recent months will have a positive impact on ESA's ability to secure raids of Pericoapa and Plaza Meave in the near term. However, optimism may already be dwindling, as the new PGR administration that was installed in the fall of 2009 already broke its promise to raid the piracy havens before the end of the year.

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 2009, but supported 45 street sweeps and 157 channel actions.

JUDICIAL ISSUES

Enforcement of intellectual property rights by Mexican judges unfortunately continues to be inadequate overall despite Mexican government efforts to organize seminars and academic events for criminal judges. Given the depth of the piracy problem, there are few sentences issued, and most of them are lenient. Over the past two years, there has been a slight increase in deterrent sentences issued. Problems also remain with civil litigation.

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. APCM reports that there have been some major convictions that kept individuals in prison (from 2 to 7 years). Presently, 57 individuals are serving time for music and movie piracy. However, these have not been sufficient compared to the number of actions conducted in Mexico. Convictions account for only 9.8% of the total of indictments. BSA did not obtain any criminal convictions in 2008 or 2009, and obtained only one (3 years in prison) in 2007. As a general matter BSA does not initiate criminal cases in Mexico.

The glaring problem remains the low number of full prosecutions, especially given the extent of copyright piracy in Mexico. Mexico should consider the 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.

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. While there have been some improvements, for example, Mexican law does award full validity to electronic documents and discovery, some judges are still not familiarized with it.

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. 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.

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.

A positive recent development has been the appointment of magistrates in the Tax Court to specialize on IP cases. The Tax Court Magistrates (now constituting a Specialized IP Court) have attracted most IP cases being litigated before said court (some IPR-related cases are being attracted by the Superior Court of the Tax Court, when these cases should be adjudicated to the IP Specialized Court), and the copyright industries remain hopeful this will lead to more expeditious adjudication of IP cases. Nevertheless, it is still advisable for Mexico to create a separate IP court within the regular Federal courts.

ADMINISTRATIVE ENFORCEMENT

The two administrative agencies that work on copyright matters in Mexico are IMPI (the industrial property office) and INDAUTOR (the copyright office), both on administrative enforcement efforts as well as public awareness campaigns.

IMPI: BSA reports that its excellent cooperation with IMPI continued last year. In 2009, there were approximately 1,493 IMPI actions taken (about 1,106 *ex officio* and 387 *ex parte*, also known as “full raids”). IMPI remains hampered in its enforcement efforts by a lack of statutory authority to sufficiently deter door closures (cases where targets close their door to IMPI inspectors), including authority to impose higher fines and a presumption of infringement in cases involving door closures.⁶ Investigative authorities and judges need to become more familiarized with electronic crimes and electronic evidence. Investigations need to be conducted in a faster manner, and evidence needs to be preserved immediately upon the discovery of a crime.

The music industry reports that for the second year in a row, IMPI continued its actions against cyber cafés 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 cafés, mainly in the capital city area. This program worked out extremely well during 2009; IMPI continued its 80 administrative actions per month in 2009, 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 cafés 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. These inspections are conducted *ex officio*, and IMPI imposes a fine when conducting inspection visits and the owners and/or administrators regularly oppose them. So far, these fines have been collected without setbacks.

During 2009, MPA collaborated with IMPI to develop a preventative campaign for cyber cafés and theaters. MPA also launched with CANACINE the 3D phase of the anti-piracy campaign which included five new spots. In 2008, MPA worked with IMPI, the RTC (Radio, Television and Cinematografía) and the home video retailers on an

⁶ In 2005, there was a favorable court case (AOS SOLUTIONS) where 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. This ruling needs to be codified so it can be implemented in all cases.

agreement to address Mexico's serious parallel import problem. This agreement is now being signed by the retailers and studios. More details on IMPI's work in the Internet space is discussed in the next section.

BSA believes the following legislative solutions could enhance IMPI's capabilities and significantly improve administrative copyright enforcement: (1) end door closures for good by incorporating case law into the statute, (2) issue higher fines and impose them sooner, (3) establish a presumption of infringement in the event of door closures (this would codify the AOS Solutions case), (4) 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, (5) eliminate the two witness requirement, (6) give public faith powers (this is similar to notary powers) to IMPI inspectors, (7) prosecute tax crimes associated with these IP infringements, (8) equalize the level of minimum administrative sanctions between copyright infringement with trademark infringement (trademark currently is much higher), and (9) expressly allow for photographs, video recordings and electronic evidence to be gathered during inspection visits and submitted in administrative procedures. These solutions are being introduced in Congress by local rights holders associations.

INDAUTOR: It is important that INDAUTOR continue to train, and receive training for, its staff on key copyright matters. With respect to public awareness initiatives, INDAUTOR should continue to issue general information to the public about the importance of copyright in the local culture and economy.

BSA reports that its relationship and work with INDAUTOR went smoothly in 2009. During 2009 BSA worked with INDAUTOR and held approximately 95 conciliation meetings (*Juntas de Avenencias*) with end-users, a decline from the 130 actions in 2008. 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 also is responsible for supervising the collecting societies in Mexico. Part of that responsibility is for INDAUTOR to issue rates for the broadcasting of sound recordings in TV and radio stations. INDAUTOR reinitiated a process that had been presented by the music industry collecting society to establish the rates at the end of 2009. The proposal is currently been considered at the Federal Market Commission (COFEMER) responsible to evaluate the impact of the future rates in the Mexican economy. Additional bureaucratic steps should be taken before publication of the official tariff. The recording industry is working closely with INDAUTOR on this matter.

ONLINE ENFORCEMENT

Legal concerns: There is no specific Mexican legislation establishing liability principles for ISP's in piracy cases. It is assumed that ISPs are subject only to the general liability principles contained in the Civil and Criminal Codes. Furthermore, specific provisions in the Telecommunications Law prohibit ISPs from disclosing personal information on customers to rights holders seeking civil recourse against alleged infringers. 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. Because ISPs are not allowed to provide information on alleged infringers, rights holders must bring a criminal action to PGR in order to obtain those details. ISPs also have been reluctant to include a clause in their contracts with users that would permit termination of the subscribers contract if the subscriber infringed intellectual property rights.

File-sharing committed through P2P networks is not considered a serious legal violation in 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 as a result effective prosecutions in P2P cases are unavailable. Just a few Internet piracy cases were filed last year by APCM mainly due to the lack of adequate criminal provisions described above.

The film and music industries report that they have received a decent level of cooperation from some Mexican ISPs involving hosted content, such as the removal of illegal music files posted on webpages and forums. For example, in November 2009, APCM shut down a major music forum site named "mexicowarez" which had more than 246,000 posts and 35,171 topics mainly decided to music and other illegal copyrighted materials for distribution to its users. The forum contained more than 40,000 full albums with 520,000 illegal music tracks. 82% of the users were from Mexico and 12% from the U.S., and the forum had more than 1.2 million unique visitors each month. APCM notified the ISP of the massive copyright infringement taking place on this forum site and the ISP shut down the site.

APCM has worked with IMPI on administrative enforcement measures with most cases followed with sanctions. APCM reports that it issued 997 cease and desist letters (823 for music and 174 for movies), and worked to take down 16 hosted web pages, 128,382 permalinks, plus 32,534 P2Ps links and 1,238,733 cyberlocker links.

However, in the case of P2P file-sharing, ISPs (especially Telmex, which has about 70% of the domestic broadband connections in Mexico) have to-date been reluctant to take any actions. It is this inaction on P2P piracy which has prompted heightened concern by the content community.

Voluntary discussions by interested parties: A coalition of rights holders that includes the authors' society (SACM), the motion picture association (MPA), the recording industry (AMPROFON), the music publishers (EMMAC) and book publishers (CEMPRO), in 2008 submitted a petition to the Ministry of Communications and Transportation to launch a negotiation roundtable with ISPs to identify ways to reduce the availability of unauthorized content online and to govern ISP responsibility particularly with regard to repeat infringers. A working group (the Commission for Internet Piracy Mitigation) was formed between the coalition and the Ministry of Communications and Transportation, to find solutions to online piracy. Entertainment software publishers also participated in the working group discussions. This working group aimed to generate a policy to respond to repeat infringers. Several meetings were held in late 2008-early 2009 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. Discussions continued through the summer of 2009 but no progress was made and P2P piracy continues unabated on ISP networks.

In November 2009, the "Coalition for the Legal Access to Culture" (CALC) was formed with 37 founding members.⁷ The CALC aims to promote and defend copyrights and related rights threatened by physical and online piracy, working with different government entities and federal authorities on cultural issues. The CALC also focuses on legislative reforms, including: affording *ex officio* authority to law enforcement, addressing private copy issues, and developing legislation to promote better ISP accountability to address piracy in the online environment.

BORDER ENFORCEMENT

IMPI order still required for border action: There remain formal, onerous requirements to initiate border actions. For example, 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. There has not been any significant IMPI-Customs improvement during 2009. More broadly, the customs law needs to be amended to grant customs officers *ex officio* powers.

⁷ The Coalition presently has 37 organizations including IFPI, the Society of Authors and Composers (SACM), the National Association of Performers (ANDI), the Mexican Society of Phonograms, Video and Multimedia Producers (SOMEXFON), the National Chamber of the Publishing Industry (CANIEM), the Mexican Association of Record Producers (AMPROFON), the Motion Picture Association (MPA) and other members of the creative community.

Border efforts to track blank optical grade media: 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. 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. Trainings promoted by Customs, Industry and the U.S. Embassy have resulted in a decrease in illegal importations of blank optical media. Notwithstanding this success, over 800 million units of blank media come across the border and much of this product will end up as pirate product in Tepito and San Juan de Dios.

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. ESA reports a positive impact from its training efforts with Mexican Customs officials, resulting in an increase of detention notifications and seizures of pirated game product from diverse ports, including Alamira, Ensenada, Guadalajara, Monterrey, Pantaco, and Toluca.

COPYRIGHT AND RELATED LAWS IN MEXICO

Mexico still has not fully implemented its WIPO Treaties' obligations. In addition, many bills that would strengthen enforcement were not acted on in 2009 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 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 to the current law would include:

- Adding definitions and provisions on technological protection measures (TPMs), including criminal penalties for trafficking in circumvention devices;⁸
- 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;

⁸ The current criminal prohibitions on manufacture of circumvention devices do not afford meaningful criminal enforcement opportunities because, in the vast majority of instances affecting the video game industry, circumvention devices are manufactured elsewhere and imported for sale in Mexico.

- 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 and ongoing initiatives. It is clear that a more comprehensive upgrade the statutory provisions of the Mexican copyright law is needed to bring this law more fully up to bilateral and international standards.

Pending Legislation

Bill to provide for *ex officio* copyright actions: This legislation would allow the police to act without rights holders having to file a criminal complaint for every case of infringement. Several attempts have been made to pass such legislation. There is currently a bill approved at the Senate and pending before the House Justice Commission.

Bill to provide protection against unauthorized camcording in theaters: 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 was introduced to the Senate in 2009, and was promoted to the House, where it is still pending. MPA is pressing for passage of the legislation as passed by the Senate.

Bill to establish sanctions for anti-circumvention: In recent years, there have been several bills aimed at establishing criminal sanctions for the distribution or trafficking in devices used for the circumvention of technological protection measures (TPMs). One bill would have amended the criminal code and the other would have amended the copyright law, but both lost their legislative momentum. Effective TPMs are especially important to the videogame industry, as current law provides only criminal remedies for the manufacture of circumvention devices, but not for the import or distribution. Current law could also benefit from amendments to better capture the kinds of acts which could circumvent TPMs, including devices, components and services.

Bill on ISP cooperation: The Coalition for Legal Access to Culture is considering legislation aimed at improving ISP accountability and deterring online piracy.

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 is continuing to work with federal and state governments on software audit programs.

Bill to change jurisdiction of copyright infringement cases: A bill has been introduced recently in the Chamber of Representatives, suggesting that copyright infringement cases be handled by District Courts and INDAUTOR. Currently, IMPI is handling such cases because it has the technical, human and legal resources for doing so. IIPA members have serious reservations about this bill. IMPI has built a strong enforcement system throughout over a decade, and the current system has proven to be a good tool for fighting copyright piracy. An important body of case law and administrative practice has been built around the current enforcement system led by IMPI. The capacities built by IMPI and around it are very valuable. This system that is producing results today should be preserved. Moreover, the bill is poorly drafted and would create confusion and uncertainty. The bill does not provide a complete model on how the proposed new regime would work in detail, and is not clear about powers and attributions of the different agencies dealing with IPR enforcement. Instead, IIPA members support legislative efforts to strengthen IMPI’s enforcement capabilities (as noted throughout this report).

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 supports legislation advocated by local IPR associations 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.

IPR TRAINING AND PUBLIC AWARENESS

Copyright industry associations and companies regularly conduct training and informational seminars for Mexican enforcement authorities.

BSA offers continuous training sessions and seminars for government officers, regarding IPR law, criminal law, administrative procedure and software piracy, including the technical and legal aspects of software programs, servers, licensing models, and new developments in the software area. They also participate in the yearly summit regarding IP and the Judiciary. This year, BSA will work more closely with customs Authorities, some local law enforcement groups, SAT, the Federal Telecommunications Commission (CoFeTel) and Profeco. 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. In 2009, ESA elevated its commitment of resources to IP education initiatives. In addition to launching its own educational program aimed at school-age children in Mexico City, ESA, in conjunction with the BSA, again participated in IMPI’s Poster Campaign Contest “For the respect of ideas . . . The Children against Piracy.” ESA also participated in a U.S. Embassy training on IPR and product identification attended by representatives of Mexican and U.S. Customs, PGR, IMPI, and the Mexican Attorney General’s office.

During 2009, APCM Mexico organized two training seminars with Customs (SAT) where a hundred officials received updated information on smuggling activities and border IPR crimes related to the importation of blank media destined to music and movie piracy. Additionally, one seminar for 60 PGR experts was held in cooperation with APCM on identification of illicit music products. The film and recording industries via APCM frequently organize and participate in training sessions for law enforcement officials, including IMPI, PGR prosecutors, judges, customs officials and other experts. For example, in coordination with IMPI, a training course has been developed via APCM for 25 inspectors so that they can act legally via inspection visits to cyber cafes, jukebox reproduction centers and discotheques, where music is played and movies or series are downloaded without the authorization from the rights holders. The recording industry participated on five seminars on copyright with PGR, SAT and judges.