

MEXICO

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Mexico be retained on the Watch List in 2011.¹

Executive Summary: In 2010, while hard copy piracy remained at about the same level as in 2009, Internet piracy continued to grow as broadband penetration increased across Mexico. Piracy in Mexico is now prevalent in hard copy and via the Internet, and is found in myriad venues: CD-R and DVD-R burning of music, audiovisual and videogame discs; unauthorized camcording in theaters; unlicensed use of software in corporate and government settings; unauthorized photocopying at universities; and widespread sale of all hard copy material in street markets. The Mexican authorities, notably the Attorney General's Office (the PGR – responsible for federal criminal enforcement), Mexican Institute of Industrial Property (IMPI – responsible for administrative actions under the Copyright Law) and INDAUTOR (the author's rights institute with enforcement responsibilities as well), have worked well with rights holders, including IIPA members, but these authorities need increased resources and training, and are hampered by a number of statutory deficiencies in dealing with the size and scope of the problem. One significant reform in 2010 was the long-sought enactment of an amendment to the Criminal Code to provide *ex officio* authority in copyright infringement cases (in force, June 28, 2010).

While cooperation with the federal authorities was good, state and municipal government anti-piracy efforts continue to be weak, with few of these local entities working at all on combating illegal trade and piracy. Thus, a key missing element is a high-level national anti-piracy plan that both enhances and coordinates federal, state and municipal enforcement activities. Some recent efforts have focused exclusively on Internet piracy. Three years ago, a coalition of rights holders started meetings with Internet service providers, under the auspices of the Mexican communications ministry, and tried to reach an agreement on cooperative efforts to address this problem. But those talks stalled due to opposition from the Communications Secretary and the Federal Commission of Telecommunications (COFETEL). In late 2009, 37 civil organizations representing copyright industries, other rights holders and collecting societies formally established the "Coalition for the Legal Access to Culture" (CALC), with the hope of improving Internet enforcement by offering various public and private sector solutions. In addition to the other challenges, the Mexican enforcement system is hampered by a lengthy list of legal deficiencies, including the need to fully implement the WIPO digital treaties.

Priority actions requested to be taken in 2011:

The copyright industries recommend the following enforcement and legal reform priority steps to the Government of Mexico:

Criminal Actions, Raids and Prosecutions

- Develop a national "ex officio" anti-piracy campaign to address well-known street markets and distribution centers responsible for the sale of vast quantities of pirated goods, including cooperation with municipal authorities to revoke operational licenses, and to focus on corporate end-users with unlicensed software and other materials.

¹For more details on Mexico's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/rbc/2011/2011SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA's 2011 global issues, see our cover letter at <http://www.iipa.com/pdf/2011SPEC301COVERLETTER.pdf>.



- Create a fully empowered IP Intergovernmental Committee with authority to coordinate the various enforcement bodies including police and prosecutors, and to implement a national plan, including coordination with the PGR's Organized Crime Division to act against major organized crime syndicates engaged in large-scale IP piracy operations.
- Address illegal photocopying by copyshops on or near major university campuses, and engage university administrations to encourage the use of legal materials by students and lecturers.
- Coordinate the various police agencies (the federal police (PFP), the fiscal police (SAT), and military police) to identify and target individuals responsible for the large-scale distribution and importation of pirated goods. Additionally, the government should set goals and augment the tax authorities' anti-piracy actions, including inspecting enterprises for software license compliance.
- Re-launch the inspection program (by Customs) and adopt a maximum quota on blank media importations used for the pirate market.
- Ensure that seized goods are destroyed in a timely manner to prevent the reentry of infringing product into the market. Relevant rights holders should be notified of the destruction of infringing goods.

Administrative Enforcement

- Provide IMPI with additional resources (including personnel) to conduct inspections, and allow IMPI's regional officers to become enforcement inspectors to conduct raids in their localities. Encourage IMPI to expeditiously issue its decisions (the motion picture and software industries reported progress in 2010).
- Provide INDAUTOR with more resources and facilities to increase its mediation capabilities, particularly by providing more mediators and mediation rooms, and requiring more expeditious notices to rights holders.
- Require the Secretary of Education to instruct INDAUTOR to expedite the publication of tariff rates for the public performance of sound recordings by TV and radio stations in Mexico (such rates are required in accordance with the Copyright Act and Mexico's international obligations).

Prosecutions, Judges and Courts

- Encourage prosecutors to take *ex officio* actions against all forms of piracy, to focus on prosecuting individuals arrested in such actions, and to seek deterrent sentences, including jail time. Also have the Supreme Court issue an advisory on this point to criminal judges nationwide. 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 Mexico's TRIPS obligations.
- Create specialized IP courts for criminal matters. Continue to provide, and expand on, IPR enforcement training for law enforcement officials, prosecutors and judges. Provide sufficient resources for the new IP magistrates within the Tax Court.
- Allow civil damages to be additionally awarded to plaintiffs in administrative and criminal cases.

Legal Reforms

- Support passage of legislation to impose criminal penalties for the unauthorized camcording of films in theaters.
- Develop legislation calling for ISPs' cooperation to address online piracy following the direction of the CALC initiative, and including notice and takedown procedures.
- Implement the WIPO digital treaties – in the Copyright, Industrial Property, Criminal and Criminal Procedural Codes.
- Amend the Criminal Code and the Copyright Law to facilitate the imposition of 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 (the recent internal software audit undertaken by IMPI is a positive example).
- Enact legislation, similar to the bill recently approved by the Mexican Senate (and consistent with administrative authority powers) to enhance the enforcement capabilities of IMPI by: (1) providing for increased penalties against enterprises that refuse entry to IMPI inspectors ("door closures"); and (2) establishing a presumption of infringement in such cases.
- Strengthen administrative enforcement by: (1) providing tax crime prosecution authority; (2) increasing administrative sanctions; (3) allowing electronic (photo and video) evidence taken during inspections.

COPYRIGHT PIRACY IN MEXICO

Here is a snapshot of the nature of piracy and ongoing enforcement problems in the past year:

Hard goods piracy: The most effective strategy against hard goods piracy is to focus enforcement efforts on the manufacturing and distribution networks, and on street and market sales. The main distribution centers for optical disc piracy – of music, film, entertainment and business software CDs and DVDs -- remain as follows: Tepito, Plaza Meave, Eje Central, Plaza de la Computación, Lomas Verdes, Bazar Pericoapa in Mexico City; La Cuchilla in Puebla; Las Pulgas in Monterrey; and San Juan de Dios in Guadalajara. Tepito and San Juan de Dios are the dominant sources for manufacturing and sale, along with growing problems at Plaza de la Computación and Plaza Meave. IIPA recommends focusing on these four locales, with a more systematic approach to identifying and prosecuting the criminal organizations operating in these (and the other) markets.

In 2006, the film and music industries combined their anti-piracy operations into the Association for the Protection of Film and Music (APCM). APCM reports that hard goods piracy for 2010 in the film and music industry was about 85%. Flea market piracy remained at a constant level, and is especially problematic in Mexico City, Guadalajara and Monterrey. 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 is like a video club with pirated products). Vendors also make available infringing copies of any catalog product or TV series, often with a 24-hour turnaround time.

Much of the pirated product in Mexican markets is locally manufactured, so controlling blank optical media imports is very important. Mexico imports much of its blank media from Taiwan; the main ports of entrance are

Manzanillo, Matamoros, Reynosa, and Laredo. The street markets have discrete distribution chains and often involve criminal syndicates.

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 found in most major markets (cited above), particularly Tepito and San Juan de Dios. 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 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.

The independent film and television segment of the motion picture industry (IFTA) reports that online and physical piracy remain a significant export constraint for independent producers and distributors, the majority of which are small to medium sized businesses. Independent producers partner with local authorized distributors to finance and distribute their films and programming. These authorized distributors find it almost impossible to compete with the pirates and report that piracy in Mexico has reached disastrous levels. Producers and distributors confirm that DVD sales have been particularly impacted since pirated digital copies are offered for free online and with the same quality viewing experience as a DVD. Unable to compete with free, legitimate distributors cannot commit to distribution agreements, or alternatively, they offer drastically lower license fees which are inadequate to assist in financing of independent productions. As a result, piracy is undermining and may permanently damage legitimate distribution networks essential to reaching the consumer and leaves little confidence for investment in intellectual property in Mexico.

Internet piracy: Internet piracy is growing, as Internet use grows in Mexico: there are now an estimated 30.6 million Internet users in Mexico, representing 27.2 % of the population; in 2000, only 2.7% of the population had Internet access (according to www.Internetworldstats.com).

The most prevalent platforms for unauthorized downloads are peer-to-peer (P2P) filesharing, sites dedicated to providing links to infringing hosted content, cyberlockers, forums, BitTorrent index sites and blogs. Among other places, pirate servers have been specifically identified as 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.

With the migration of customers from hard copy to downloading and mobile phone usage, peer-to-peer is the most prevalent source of music piracy, with ARES, Gnutella and BitTorrent dominating, as well as "linked" piracy on blogs and forum sites. "Blogspot," a Google service, has been widely used, but Google Mexico has recently started reacting positively, blocking links in response to takedown notices sent by APCM. The Motion Picture Association (MPA) notes that a recent IPSOS survey found a 400% increase in Internet piracy with 96 million illegal movie downloads in 2010 compared with 24 million in 2009. Internet piracy is also directly related to "source" piracy – the camcording of films that are then uploaded onto the Internet and available by all of these means. The same study accounts for 5.7 billion illegal music files downloaded in Mexico during 2010 by over 15 million Internet users; this is a 13% increase from 2009. Independent film producers (IFTA members) are especially concerned about Internet piracy because of its harm to legitimate online distribution platforms and services – harming consumers and rights holders alike. Revenue from these platforms and services, which are licensed country-by-country, is critical to financing the development of new creative works worldwide, since piracy in one territory harms other markets instantly. The independent film production sector cannot shift easily to new business practices that might otherwise limit piracy. For example, worldwide same day release (referred to as "day and date" release) may prove an effective method to curb or delay piracy for the major studio producers, which control their own worldwide distribution; but for independents, whose national distributors release on their own schedule, this technique is impossible.

End-user piracy: The Business Software Alliance (BSA) reports that its primary concern in Mexico remains the unlicensed use of software by enterprises (end-user piracy). The PC software piracy rate in Mexico was 60% in 2010, with the estimated commercial value of unlicensed software for U.S. vendors at \$594 million.² Illegal software is available at street markets (by “carpeteros”), and at on-line auction sites, specialized download sites and file-sharing sites.

In addition, “white box” vendors (small local assemblers or non-brand name vendors of computer hardware) continue to be a considerable source of software piracy (usually hard disk loading). BSA partners with IMPI to conduct a large number of inspections (cifras).

Circumvention activity continues to be a significant problem for the Entertainment Software Association (ESA), 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”). ESA members have not sought 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. Increasingly, consumers in Mexico source their circumvention devices from online auction sites. The widespread availability of circumvention devices underpins the growing problem of online piracy of entertainment software in Mexico. In 2010, ESA vendors detected more than one million connections by peers participating in unauthorized file sharing of select member titles on peer-to-peer networks through ISPs located in Mexico, placing Mexico in the top 25 countries in overall detections.³ Breakdowns by ISP show that subscribers to Uninet S.A. de C.V. account for approximately 76% of this activity in Mexico.

Camcord piracy: The illegal recording of films in Mexican theaters continues to cause significant harm to the U.S. motion picture industry. In 2010, 33 films were stolen from Mexican theaters; 31 of these were video captures. In 2010, three professional camcorders were apprehended in Mexico; it is estimated that they are responsible for approximately 40% of the material identified from Mexico. This underscores the organized and profit-driven nature of this crime. As major blockbuster theatrical release dates in Mexico and the U.S. begin to coincide, Mexico has become a source of Spanish-dubbed camcords which are then made available online. The enforcement challenge in Mexico remains the same: the police cannot arrest an individual camcording unless there is also evidence of a distribution. To sustain a successful prosecution under the current law requiring proof of intent to distribute, investigators have 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 film to be widely distributed; by that time, grievous harm has resulted. This is a terribly inefficient use of government resources, has little deterrent effect, and is causing grave economic damage.

Book and journal piracy: Unauthorized photocopying of academic materials at copy shops in and around university campuses continues to be problematic. Though unauthorized copying is well-known on campus, university administrators have done almost nothing to address the problem. The production of unauthorized compilations or course packs consisting of unlicensed content from a variety of publishers is also commonplace. In some cases, materials taken from U.S. books are posted on the institution’s intranet for faculty and student 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

²BSA’s 2010 statistics are preliminary, representing U.S. software publishers’ share of commercial value of pirated software in Mexico. They follow the methodology compiled in the Seventh Annual BSA and IDC Global Software Piracy Study (May 2010), <http://portal.bsa.org/globalpiracy2009/index.html>. These figures cover packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA’s 2011 Special 301 submission at www.iipa.com/rbc/2011/2011SPEC301METHODOLOGY.pdf. BSA’s final piracy figures will be released in mid-May, and the updated US software publishers’ share of commercial value of pirated software will be available at www.iipa.com.

³These figures do not account for downloads that occur directly from hosted content, such as games found on “one-click” hosting sites, which appear to account each year for progressively greater volumes of infringing downloads.

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. The local reprographic rights organization, 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 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 Camara 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.

COPYRIGHT ENFORCEMENT IN MEXICO

Criminal Enforcement

Structural reforms and jurisdictional issues: There are several "structural" reforms or agency actions that could improve criminal enforcement. First, effective coordination and communication among the municipal, state, and federal governments could greatly improve criminal enforcement. Only four of Mexico's 32 state governments cooperate on IPR enforcement -- 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; but even with such regulations, few local anti-piracy actions have been taken. Priority states to focus on coordinated federal-"local" efforts include: the Federal District, Nuevo Leon, Jalisco, Mexico State, Puebla, Morelos, Baja California Norte, Veracruz and Michoacán.

A second goal is further improving the activities of the PGR (the Attorney General's) criminal actions. Most notably, legislation was enacted in 2010 giving PGR the authority to take *ex officio* actions against copyright infringement. We commend this development and urge PGR to use this new authority aggressively against all forms of copyright infringement. The copyright industries are also applying the "Ley Federal de Extinción de Dominio" (Federal Law for Property Forfeiture) to piracy cases. The PGR anti-piracy coordinating committees are proving effective in several states, including Nuevo Leon, Morelos and Puebla. Another matter is the experience IIPA members are facing with organized crime cases. The PGR has a special piracy unit, the "Subprocuraduría" Specialized in Investigation of Federal Crimes (SEIDF), which has worked effectively with industries and achieved significant results in some key markets. However, this unit is under-resourced to effectively dismantle the organized crime networks. There is also a PGR Organized Crime Investigative Division (PGR-SIEDO,) with excellent investigators and attorneys and resources that the other divisions do not have -- including paid informants, wire-tapping authority and witness-protection programs. We recommend better coordination between PGR-SIEDO and PGR-SEIDF. Criminal prosecutions are a major concern for APCM Mexico. Criminal sentences are rare given the number of raids and cases commenced; additionally, more resources and training is needed.

The Mexican Tax Administration (SAT) can use its inspection power to review companies for their use of legal software, which should be encouraged and can serve as a powerful deterrent to unlicensed software use by business enterprises. Also, the Scientific Police of the Secretaria de Seguridad Publica are assisting rights holders by providing information on illegal software websites. Regarding Customs Office enforcement, the recording industry and others report that much of the pirate material is produced locally, but that the raw materials are imported -- blank CD-Rs, blank DVD-Rs, jewel boxes and burners. Although these importations are not considered a crime, there have been coordinated administrative actions by the PGR, SAT and APCM resulting in significant seizures of illegal imported raw material.

Another enforcement mechanism is to have the Federal Bureau of Consumer Interests (PROFECO) use its *ex officio* powers for consumer protection to stop street market piracy. Unfortunately, PROFECO lacks the human and financial resources to properly conduct raids, and needs police assistance to protect its personnel during raids. There have been training programs undertaken by industry, and we recommend the PROFECO be properly resourced to undertake action against street markets.

Summary of some criminal actions in 2010: In 2010, APCM reported a good ongoing level of cooperation with PGR on film and music actions. There were 2,667 criminal actions conducted across Mexico against physical piracy, directed at 147 laboratories, 880 warehouses, 373 street and 1,011 cyber-cafes; online, there were 702,119 takedowns and other removal of content by administrative or criminal action; and there were 3 border actions. As a result of these actions, there were 196 arrests, 41 indictments, 24 sentences and 32 individuals that are currently in prison for IPR violations. IMPI carried out 90 inspection visits; 24 defendants received sentences of over 4 years. A total of 6.1 million recorded CD-Rs and over 7.67 million DVD-Rs (motion pictures) were seized during police raids.

The ESA's anti-piracy enforcement program had several noteworthy actions in 2010 and was able to overcome previous 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 2010; the Specialized IP Unit seized over 90,000 pirated games and 2.9 million counterfeit game covers. ESA also procured PGR's help in conducting three raids in Tepito, which yielded over 154,000 pirated games across multiple platforms. More importantly, the multiple raids on Tepito resulted in dismantling burner labs and storage facilities capable of producing millions of pirated products (roughly 565 burners were seized). While ESA regards the 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. The two specific game piracy centers raided in Mexico City (by PGR) included: Pericoapa (August), a popular retail center that has housed pirate vendors for years; and Plaza Meave (April), a significant retail and distribution center. The raids resulted in seizing more than 6,000 illegal game copies. ESA looks forward to sustained PGR efforts in 2011, especially to keep these markets from returning to former piracy levels. However, without follow-up investigations on the supply chains and criminal prosecutions, recidivism rates remain extremely high. There was an overall increase in the number of criminal convictions in 2010 (26 compared to just 3 in 2009), but the prosecutorial and conviction rates remain very low. Last, the effectiveness of raids is further undermined by PGR seized goods finding their way back into the black market because they are not expeditiously destroyed; PGR should adopt a policy to expeditiously destroy infringing goods.

Judicial issues: One continuing weak spot in Mexican IPR enforcement is the judiciary – the absence of IPR expertise by judges (re-enforcing the need for special IP judges and courts), the non-deterrent sentencing in many or most cases, and persistent problems with civil litigation.

While cooperation between rights holders and the PGR is very solid, IPR prosecution is being hampered by a lack of proper resources, training (despite many programs), and a shortage of deterrent sentences. The number of cases is still far below what is needed to have any significant effect on the marketplace (as APCM reported in 2010, only 24 sentences were handed down). IIPA recommends that Mexico consider the adoption of mandatory sentencing regulations for criminal copyright cases, and/or that the Supreme Court issue its own recommended guidelines to assist judges with the imposition of deterrent sentences.

Mexico's three-tiered civil procedure system, involving actions in the first and second instance, and the Amparo hearing makes civil litigation more complicated, time consuming, and costly for rights holders. Another concern is the delays in resolving cases. There have been some recent improvements: for example, Mexican law now grants full validity to electronic documents and discovery, although, some judges are not yet familiar with these rules. Of serious concern is the fact that Mexican civil enforcement lacks *ex parte* measures on civil procedures to stop serious infringements and avoid the destruction of evidence. In this way, Mexico is not in compliance with the TRIPS agreement (effective measures). Additionally, there are no injunctions granted by civil courts to halt infringements, seize allegedly infringing merchandise or to gather evidence (and avoid its destruction). The other

major impediment is that damages can only be collected after an infringement decision has become *res judicata*. This can mean an eight to ten year process of litigation in IMPI, the Tax Court and the Circuit Courts, with an additional two years to claim damages after *res judicata*, in a civil court. This *res judicata* prerequisite for copyright infringement damages was set by the Supreme Court in 2008.

Administrative Enforcement

There are two administrative agencies that work on copyright matters in Mexico: IMPI and INDAUTOR; both are also very actively engaged in public awareness campaigns.

IMPI: In 2010, IMPI undertook 1,213 actions against enterprises infringing software licenses (994 *ex officio* actions and 219 *ex parte* raids, also known as “full raids”). BSA reports that in 2011 it will launch a new campaign to audit major federal agencies and private companies in Mexico with IMPI's cooperation. While BSA and other right holder groups enjoy significant cooperation and coordination with IMPI on enforcement actions, IMPI's efforts could be enhanced with new statutory authority providing for increased penalties and the establishment of a presumption of infringement in cases where enterprises refuse entry to IMPI inspectors (so-called “door closures”). Additionally, investigations should be conducted more rapidly, and evidence preserved immediately upon discovery of a presumptive infringement (including evidence discovered by the authorities during inspections, even if that evidence is not listed on the inspection order).

The music industry reports that for the second year in a row, IMPI continued its actions against cyber cafés offering access to peer-to-peer 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.

In 2010, the Motion Picture Association (MPA) launched the third phase of an anti-piracy campaign with CANACINE, with the support of both IMPI and PGR (and PGR created a 1-800 number for anonymous tips to report piracy). The industries continue to work with enforcement authorities on training programs to improve overall enforcement.

INDAUTOR: The IIPA members continue to recommend additional training for its staff on key copyright matters, and that public awareness initiatives should continue to issue general information about the importance of copyright to the local culture and economy.

INDAUTOR also is responsible for supervising the collecting societies in Mexico. This includes the authority to issue tariff rates for the broadcasting of sound recordings in TV and radio stations; rates were due by the end of 2009, but have not yet been issued. A tariff proposal was under consideration two years ago by the Federal Market Commission (COFEMER) responsible to evaluate the impact of the future rates on the Mexican economy, with additional steps necessary before publication of the official tariff. The recording industry continues to work closely with INDAUTOR on this matter and is hopeful for a quick and favorable resolution. INDAUTOR needs to take steps to complete the procedure, and publish the rate, within a reasonable timeframe.

Online Enforcement

Legal reforms: There are several legal deficiencies hampering effective online enforcement: first, 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. Second, specific provisions in the Telecommunications Law prohibit ISPs from disclosing customer's personal information to rights holders seeking civil recourse against alleged infringers. The absence of clear law results in a lack of certainty for ISPs on how to react to Internet piracy and to notice and takedown notifications from the copyright industries. Some IIPA members report cooperation with hosted content take downs, but most said there was “no cooperation” or “very little”

cooperation. Because ISPs are not allowed to provide information on alleged infringers, rights holders must bring a criminal action to the PGR to obtain those details. Additionally, ISPs have been reluctant to include clauses in their subscriber agreements to permit terminations if subscribers infringe intellectual property rights.

Generally, file-sharing committed through P2P networks is not considered a serious legal violation by the civil courts. 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. APCM reports very few Internet piracy cases filed last year mainly due to the lack of adequate criminal provisions as described above. Two noteworthy cases include: the arrest of a member of a dominant Tijuana camcording gang which operated through scenelatina.org and an FTP server; and, the arrest of the administrator of two FTP services out of the State of Mexico

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. Some of the key sites taken down include: "Imperialatino.net" with over 600 thousand music tracks; viciowarez.com which had attracted over 150,000 users (over 300,000 tracks); and, DARK-VILLE offering over 200,000 music and movie links. APCM reports that it issued 934 cease and desist letters for music and movies content; it worked to take down 13 hosted web pages; 109,149 blog post permalinks; over 8 million peer-to-peer links; 1.6 million cyberlocker links; 203,016 forum posts; and 4,235 pre-release music files.

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. In November 2009, the CALC was formed with 37 founding members to promote and defend copyrights and related rights threatened by physical and online piracy, working with different government entities and federal authorities. The CALC has also focused on legislative reforms, including: addressing private copy issues and promoting cooperation between right holders and ISPs to address piracy in the online environment. New legislation is expected to be introduced in 2011. IMPI has also been working with ISPs and rights holders to develop "cooperative models" for fast and efficient disabling of infringing websites.

Border Enforcement

There remain formal, onerous requirements to initiate border actions in Mexico. For example, Customs authorities will 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; this is because Customs does not have authority to detain a shipment for more than a few hours. We recommend greater cooperation between these two agencies to improve border enforcement, and to expedite the procedures by which Customs may make immediate seizures of clearly infringing products. Additionally, the Customs Code needs to be amended to grant customs officers *ex officio* powers.

In 2007, the PGR established a task force with Customs, the Ministry of the Economy and private sector representatives (music and film), to monitor and develop intelligence on blank media imports. IIPA continues to recommend cooperation between U.S. and Mexican customs authorities 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 Mexico (to avoid Mexican taxes). As a result of training programs with Customs, the U.S. Embassy and industry, blank optical media importations have decreased, but they still persist (with over 500 million units of blank media still crossing the border annually, with much of it going, ultimately to the markets in Tepito, La Cuchilla, Las Pulgas, and San Juan de Dios).

In 2008, Customs began an anti-piracy initiative to: (1) conduct regular trainings of Mexican officials at various ports on intellectual property enforcement issues and the identification of various types of pirated product; and (2) hold monthly meetings with industry members to review the results of the trainings and to make

improvements in border enforcement. ESA reports a positive impact from its ongoing training efforts with Mexican Customs officials, resulting in a good number of detention notifications and seizures of pirated game product from diverse ports, including in particular Guadalajara and Monterrey. Increased training opportunities with Customs should help continue this positive trend in 2011. ESA is likewise pleased by an improvement in the level of support from Customs in dealing with shipments of circumvention devices. The BSA reports Customs authorities have undertaken effective seizures in 2010 of imported illegal software and of computers containing illegal software.

COPYRIGHT AND RELATED LAWS IN MEXICO

Federal Law on Copyright (1996, as amended): Amendments to Mexico's 1996 Copyright Law entered into force on July 24, 2003; regulations to implement these amendments were issued in September 2005. Mexico acceded to both the WIPO Treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty) in 2002, but has yet to publish the WCT and WPPT Agreed Statements. There are many remaining deficiencies in the Copyright Law (including long-standing NAFTA and WTO TRIPs obligations); and the digital treaties have not been implemented. IIPA has detailed our list of recommended amendments in prior filings. It is available at: <http://www.iipa.com/rbc/2010/2010SPEC301MEXICO.pdf>.

Pending Legislation: As we have noted, there are a number of important legal reforms needed for effective enforcement in addition to Copyright Law amendments. These include:

- A bill to amend the Criminal Code to punish – with a prison term (3 to 10 years) and fines – the unauthorized camcording of films in theaters. The legislation needs to eliminate any required proof of commercial intent;
- A bill (in the Copyright Law or Criminal Code) to establish criminal sanctions for the distribution or trafficking in devices used for the circumvention of technological protection measures (TPMs). The bill should include “acts” as well as devices, components and services;
- A bill to adopt CALC proposals to promote cooperation between right holders and ISPs;
- Amendments to the Law of Industrial Property to provide IMPI with enhanced enforcement capabilities, including increased penalties and a presumption of infringement in cases where enterprises refuse entry to IMPI inspectors (“door closures”).

IPR Training and Public Awareness: The IIPA member associations and individual companies continue to conduct training and information seminars for Mexican enforcement officials, and remain ready to continue to do so. In addition to the Customs training programs already described above, and the other training programs for IP enforcement officials, some of the IIPA member associations have been working on programs to improve public awareness and appreciation for intellectual property among Mexican consumers, particularly for younger age groups. For example, in 2010, ESA, MPA and others, worked with the Ministry of Education in sponsoring an IP education campaign entitled, “Mexico Gana con el Original” (“Mexico Wins with the Original”) aimed at school children in grades 3-6 in schools throughout Mexico City. The support of the Ministry was critical to promoting the visibility and access of this campaign, which involved in an essay-writing contest that culminated in a televised awards ceremony where the winners in each grade group were featured on the broadcast of the “Ninos Once” program. IIPA members see these education efforts as an important complement to enforcement efforts and look forward to continued support from the Ministry for the 2011 version of the campaign.