

ECUADOR

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2013 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that USTR retain Ecuador on the Watch List in 2013.

Executive Summary: Ecuador has a long history of piracy of copyrighted works, and the problem has not abated in recent years. While the most commonly reported problems occur in the form of street piracy, rights holders have growing concerns that, as the country's consumers become more online-savvy,¹ the widespread perception that piracy goes unpunished will move to the Internet where illicit activity could grow exponentially. Ecuador needs to take steps to improve its ineffective record on enforcement and reduce piracy levels. Generally, members of the copyright sectors have been unable to maintain a permanent anti-piracy presence in the Ecuador market, let alone active commercial distribution channels, due to the extreme difficulty in obtaining effective criminal and civil enforcement.

PRIORITY RECOMMENDED ACTIONS FOR ECUADOR IN 2013

- Step up enforcement actions by police and customs officials in shopping malls, where pirate points of sale are established (for example in El Bosque, Espiral, and Naciones Unidas in Quito), including against landlords who turn a blind eye to illegal activity.
- Provide the Ecuadorian Intellectual Property Institute (IEPI) with the necessary budget and police support to conduct raids in a more organized and effective fashion.
- Support an amendment to the Intellectual Property Law to provide enforcement tools to combat Internet piracy.

Piracy: The level of piracy in Ecuador worsened in 2012, and pirate music products are being massively sold in shopping malls without any control from police or local authorities. Rights holders have reported that the expansive Bahia Market in Guayaquil, Ecuador sells a wide selection of pirated DVDs, CDs, and software. According to press reports, the piracy problem in the port city of Guayaquil is so expansive that it raises concerns that the burgeoning industry could be funding organized criminal groups.²

The recording industry reports that the level of piracy in Ecuador remains steady in 2012 as in previous years, at approximately 90% of the physical and digital market. As a result of the actions developed by the Internal revenue authorities most of the street vendors of pirate products were forced to moved out of the streets. In Quito and Guayaquil the availability on the streets of music CD-Rs has been reduced considerably because many illegal points of sale have been fined and removed by tax authorities. However, many of those vendors simply moved their businesses to permanent locations inside shopping malls where they now are openly competing with the legal offer. Examples of this situation are found at the shopping malls "El Bosque," "Naciones Unidas" and "Espiral" in the capital city area. Although the IEPI agents have tried to control the new trend by conducting raids in some of these malls, most of them continue operating with licenses provided by the municipality and knowledge of the landlord.

The Ecuadorian legal physical music market decreased by 28% in 2012 compared to 2011. In turn, digital sales increased by 5%, which is well below the average increase of approximately 50% in the region for the same period.

¹According to www.internetworldstats.com, as of June 2012, 43.8% of Ecuador's population is online.

² See, e.g., Patrick Corcoran, [In Sight Crime](http://www.insightcrime.org/news-analysis/ecuador-port-sees-piracy-boom), "Ecuador Port Sees Piracy Boom," (June 21, 2011), available at <http://www.insightcrime.org/news-analysis/ecuador-port-sees-piracy-boom>.



BSA | The Software Alliance (BSA) reports that the software piracy rate in Ecuador was 68% in 2011 (well above the average rate of 61% across Latin America), representing a commercial value of unlicensed software of US\$92 million.³ In an online survey of 411 computer users in Ecuador conducted between February and March 2012, nearly three-fourths of those surveyed admitted to acquiring pirated software or software that is not fully licensed to some degree, and 44% admitted to committing these forms of software piracy at least “occasionally.”⁴

IPR Enforcement: Ecuador has established special IPR units that conduct investigations and execute seizures of pirated and counterfeit products. But the regime for IPR enforcement, in general, faces great challenges. A few problematic obstacles stand out in Ecuador to date.

Ecuadorian President Correa’s government recently published a decree (#1,322 dated Oct. 5th, 2012) that reduced the IEPI to a small department inside the Secretary of Education, Science, Technology and Innovation (SENESCYT). This means no more administrative enforcement actions on copyright infringement cases, no resources to train officers and no proper attention to collective management of rights matters. Local record producers report that the IEPI completely stopped its anti-piracy actions due to lack of resources, and no longer has the ability to organize raids in Quito and Guayaquil.

Ecuador’s Intellectual Property Act establishes authority with IEPI to initiate actions *ex officio* in cases of intellectual property infringement. However, due to the high costs involved, as well as the lack of resources in the form of personnel, infrastructure and adequate technology, the IEPI cannot take adequate measures to combat piracy effectively in Ecuador. Since the IEPI gained this authority, it has been reported that the office has initiated actions against a number of stores dedicated to the unauthorized sale of CDs and DVDs, issuing hefty fines subject to criminal action for non-payment. Since those actions began, however, the Ecuadorian Association of Audiovisual Product Traders has brought a constitutional claim against the IEPI on the grounds that the initiation of such processes against informal traders violates Article 325 of the Constitution. Part of the argument being made on behalf of the pirate optical disk shops appears to be that the activity supports local well-being in areas of extreme economic hardship. In response to the claim, Andrés Ycaza, IEPI president, has said that actions will be limited to formal stores in Quito and Guayaquil, where piracy is “not a necessity” but simply a way to make money. While the IEPI’s resolve is appreciated, it is worrying to consider that, in a country plagued by organized crime, the lack of economic opportunities could serve to legitimize the harmful business of piracy.

³BSA | The Software Alliance’s 2012 Global Software Piracy Study, conducted with two leading independent research firms, IDC and Ipsos Public Affairs, measured the rate and commercial value of unlicensed PC software installed in 2011 in more than 100 markets. These statistics follow the methodology compiled in the Ninth Annual BSA and IDC Global Software Piracy Study (May 2012), <http://portal.bsa.org/globalpiracy2011/index.html>. The BSA study covers piracy of all software run on PCs, including desktops, laptops, and ultra-portables, including netbooks. It includes operating systems, systems software such as databases and security packages, business applications, and consumer applications such as games, personal finance, and reference software. It also takes into account free software, open source software, and software as a service if it is paid for. It does not cover software that runs on servers or mainframes and routine device drivers, free downloadable utilities such as screen savers, and software loaded onto tablets or smartphones. The methodology used to calculate this and other piracy numbers are described in IIPA’s 2013 Special 301 submission at <http://www.iipa.com/pdf/2013spec301methodology.pdf>.

⁴See http://portal.bsa.org/globalpiracy2011/downloads/opinionsurvey/survey_ecuador.pdf.