

ECUADOR

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that USTR retain Ecuador on the Watch List in 2014.¹

Executive Summary: In December 2013, the National Assembly of Ecuador adopted amendments to the criminal code that decriminalize all intellectual property rights (IPR) violations, by eliminating Chapter III, “Offenses and Penalties” (Sections 319 to 331), of the Intellectual Property Law. With this drastic change, criminal enforcement will come to a stop, leaving only administrative enforcement and fines for the public enforcement of copyright. On the backdrop of a long history of piracy of copyrighted works, the development leaves little optimism that a reasonable legitimate market can reopen in the near future for the works of IIPA’s members. The United States Government should press the Government of Ecuador to repeal these amendments, which will cripple the country’s ability to tackle widespread street piracy and growing online piracy, and will bring Ecuador out of compliance with its important obligation as a member of the World Trade Organization (WTO) to provide adequate criminal procedures, including deterrent penalties, for the enforcement of IPR under Article 61 of the TRIPs Agreement.

PRIORITY ACTIONS REQUESTED IN 2014

- Re-establish criminal enforcement and penalties for IPR violations in the Intellectual Property Law.
- Provide the Ecuadorian Intellectual Property Institute (IEPI) with the necessary budget and support to conduct administrative actions in an organized and effective fashion.
- Immediately upon reinstating criminal enforcement in the law, 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.
- 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 2013, 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. The piracy problem in certain regions is so expansive that it has raised concerns of ties to organized criminal groups. The film industry also reports growing online piracy as Internet access expands across Ecuador, threatening legitimate theatrical and home entertainment markets. This situation will only worsen in 2014 in the absence of police enforcement.

BSA | The Software Alliance (BSA) reports that the software piracy rate in Ecuador was 68% in 2011, representing a commercial value of unlicensed software of US\$92 million.² 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.”³

¹For more details on Ecuador’s Special 301 history, see previous years’ reports at <http://www.iipa.com/countryreports.html>. For the history of Ecuador’s Special 301 placement, see <http://www.iipa.com/pdf/2014SPEC301HISTORICALCHART.pdf>. For a discussion of IIPA’s 2014 Key Initiatives and Challenges, see IIPA, *2014 Special 301 Submission*, at <http://www.iipa.com/pdf/2014SPEC301COVERLETTER.pdf>.

²Data on software piracy rates and commercial values are taken from the 2011 BSA Global Software Piracy Study at www.bsa.org/globalstudy. This study assesses piracy rates and the commercial value of unlicensed software installed on personal computers during 2011 in more than 100 markets. The study includes a detailed discussion of the methodology used. BSA plans to release an updated study in the second quarter of 2014.

³See http://portal.bsa.org/globalpiracy2011/downloads/opinionsurvey/survey_ecuador.pdf.



The dramatic changes in Ecuador's Intellectual Property Law could not come at a worse time for the U.S. movie industry, which continues to confront blatant piracy in the streets and online. Rights holders report that some pirate vendors are even using social media channels to advertise promotions such as three DVDs for US\$1. The absence of basic criminal provisions in the law will surely make it more difficult to address any public perception that the unauthorized distribution of copyrighted films is acceptable and will go unpunished.

The recording industry reports that the level of piracy in Ecuador has been steady in recent years, at approximately 90% of the physical and online market in 2012. In Quito and Guayaquil the availability on the streets of music CD-Rs was 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.

IPR Law and Enforcement in Ecuador: On December 17, 2013, the National Assembly of Ecuador approved a new criminal code, making sweeping changes to Ecuador's criminal laws and, importantly, eliminating all criminal enforcement and sanctions for IPR violations. The new code will enter into force after its publication in 2014. Specifically, the enacted law decriminalized all IPR violations by eliminating Chapter III, "Offenses and Penalties" (Sections 319 to 331) of the Ecuador Intellectual Property Law (as published Dec. 28, 2006). The change, unless amended, brings Ecuador in violation of its TRIPs Article 61 obligation to provide criminal copyright enforcement and deterrent remedies. It could also have detrimental effects on public awareness of the importance of copyright protection, and sets a terrible example in the region.

Upon entry into force, only administrative actions and fines will be available to deter piracy of copyrighted works. However, Ecuadorian President Correa's government published a decree (#1,322 dated Oct. 5th, 2012) that reduced the Ecuadorian Intellectual Property Institute (IEPI) to a small department inside the Secretary of Education, Science, Technology and Innovation (SENESCYT). 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. The action effectively eliminated administrative enforcement actions on copyright infringement cases, along with the resources to train officers and needed attention to the collective management of rights. Local record producers report that following the decree, 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.