

MEXICO

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

Special 301 Recommendation: IIPA recommends that Mexico be retained on the Watch List in 2014.¹

Executive Summary: In 2013, the Mexican federal authorities continued to engage in copyright enforcement efforts in good cooperation with rights holders, but with mixed results. 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. Most of the government's enforcement activities remain focused on hard copy piracy, and not on the priority for the copyright industries, namely, Internet piracy, where much more needs to be done to address a serious and growing problem.

The Government of Mexico has been very slow to promote cooperation between rights holders and Internet Service Providers (ISPs) to combat online copyright infringement, and has instead recommended very weak "notice and notice" provisions. Revision of the Copyright Law is necessary for effective enforcement against digital piracy, including the full implementation of the WIPO Internet treaties, with proper protection for technological protection measures (an imperative for many copyright industries). Internet-related legislative reforms (such as clarifying the making available right), as well as efforts to raise penalties to deterrent levels and to create a warning system for online users, all stalled again in 2013. However, the Copyright Law was amended to allow rights holders to collect damages even absent a final infringement judgment, which is a positive change.

Hard copy piracy in Mexico persists and takes many forms, including CD-R and DVD-R burning of music, audiovisual and videogame discs (widely available in numerous street markets); unauthorized camcording of films in theaters; unlicensed use of software by enterprises, and unauthorized photocopying of books at universities.

The copyright industries recommend several enforcement measures (criminal, administrative and prosecutorial) as well as several legal reforms for the Government of Mexico in order to improve its IPR regime, led by the development and enactment of a high-level national anti-piracy plan to adopt a broad strategy against major targets, and to coordinate federal, state and municipal enforcement activities.

PRIORITY ACTIONS REQUESTED IN 2014

The copyright industries recommend that the Government of Mexico take the following priority enforcement and legal reform measures:

Criminal Actions, Raids and Prosecutions

- Implement a national *ex officio* anti-piracy campaign with a consistent year-round focus on major targets (e.g., suppliers and distribution chains), a stress on coordination of the available police and prosecutorial resources, and a strategic approach (with a prominent role by the Specialized Unit on Investigation of Crimes Committed Against Industrial Property and Copyright, UEIDDAPI) within the Attorney General's Office (PGR)).

¹For more details on Mexico's Special 301 history, see previous years' reports at <http://www.iipa.com/countryreports.html>. For the history of Mexico'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>.



- Set national goals and augment the tax authorities' (the Mexican Tax Administration, SAT's) anti-piracy actions, including inspecting enterprises for software license compliance.
- Provide Customs with adequate resources and *ex officio* authority to independently make seizures of infringing goods and components.
- Ensure timely destruction of goods seized in criminal and administrative actions to prevent their reentry into the market.

Administrative Enforcement

- Provide the Institute of Industrial Property (IMPI) with additional resources, encourage it to issue decisions more expeditiously, and allow IMPI regional officers to conduct local raids.
- Provide INDAUTOR (the author's rights institute) with more resources and facilities to increase and strengthen its mediation capabilities.

Prosecutions, Judges and Courts

- Encourage prosecutors to take *ex officio* actions against piracy (especially online piracy), to focus on prosecuting individuals arrested in such actions, and to seek deterrent sentences, including jail time; in addition increase IPR case training for prosecutors.
- Adopt mandatory sentencing regulations or guidelines to promote deterrent sentencing in piracy cases, and increase IPR judicial training, with an emphasis on technology.
- Implement *ex parte* remedies, especially injunctive relief, for civil IPR infringement cases in order to fulfill Mexico's WTO TRIPS Agreement obligations.

Legal Reforms

- Fully implement the WIPO Internet treaties – in the Copyright, Industrial Property, Criminal and Criminal Procedure Codes.
- Enact legislation to create incentives for ISPs to cooperate with right holders to combat infringement taking place over their networks or platforms (following the Coalition for the Legal Access to Culture (CALC) initiative).
- Enact legislation to impose criminal penalties for large-scale infringements without requiring proof of a profit motive, and for unauthorized camcording of films in theaters.
- Amend the Criminal Code and the Copyright Law to authorize criminal sanctions for the distribution and importation of devices used for the unauthorized circumvention of technological protection measures (TPMs).
- Amend the Civil Code to allow civil damages to be an additional award to plaintiffs in administrative and criminal cases, without awaiting a *res judicata* ruling in the other proceedings.

COPYRIGHT PIRACY IN MEXICO

Internet piracy: As of June 2013, there were an estimated 46 million Internet users in Mexico, representing 36.5% of the population, up from 2.7% in 2000 (according to www.internetworldstats.com). As Internet use grows rapidly in Mexico, so does Internet piracy. For unauthorized downloads, the most prevalent digital platforms are P2P file sharing services, as well as sites dedicated to providing links to infringing hosted content, illegal distribution hubs (also known as cyberlockers), forums and social networks, BitTorrent index sites and blogs. Many sites are hosted in

the U.S. and Europe, but administered in Mexico. In 2012, the Government of Mexico took down one such site (the BitTorrent tracker demonoid.me); during its operation, it was a major source of pirated material worldwide. The criminal investigation of the operators of that system is a work in progress.

The most widespread source of music piracy is peer-to-peer (P2P) activity with ARES, Gnutella and BitTorrent dominating, as well as “linked” piracy on blogs and forum sites. Blogspot, a Google service, has been widely used to provide these links. Studies in 2011 and 2012 of illegal downloading activity in Mexico by the Coalition for Legal Access to Culture (CLAC), conducted by IPSOS, found that Internet piracy rates for audiovisual content were very high, and rising. Independent film producers (IFTA members) are especially concerned about Internet piracy because of its harm to legitimate online distribution platforms and services that provide the revenue for financing the development of new creative works worldwide. BSA | The Software Alliance (BSA) reports that downloading software via illegal websites, P2P platforms and online auction sites is growing, with a rise in the market for illegal passwords, codes and key generators. The Entertainment Software Association (ESA) reports that in 2013, Mexico ranked 14th in the world for a second consecutive year in terms of the number of connections by peers participating in unauthorized file-sharing of select ESA-member titles on public P2P networks. Notably, Mexico ranked 28th in 2011.

Hard goods piracy: Although there has been a significant decline in the sale of legitimate hard goods in recent years, hard goods piracy persists both in the manufacturing and distribution networks, and on the street and at markets. The U.S. Government named three Mexican markets to its 2012 “Notorious Markets” list: (1) Pulga Rio (Las Pulgas) in Monterrey, calling it a “major hub for counterfeit and pirated goods” in the state of Nuevo Leon, operating despite law enforcement activities to decrease the number of vendors; (2) San Juan de Dios in Guadalajara, describing it as an “indoor flea market” with over 300 vendors selling pirated first-run movies, music, videogames, software and other items; and (3) Tepito in Mexico City, “reportedly the main warehousing and distribution center for pirated and counterfeit products” sold throughout Mexico. Other major distribution centers for optical disc piracy (CDs and DVDs) of music, film, entertainment and business software include: Lomas Verdes, Pericoapa, Salto del Agua, Plaza Meave, and (to a growing extent) Plaza de la Computación in Mexico City; La Cuchilla and La Fayuca in Puebla; and El Parián in Guadalajara. The street markets have discrete distribution chains and often involve organized criminal syndicates. It is also troubling that many of these markets reside on public land, increasing the need for attention and awareness by municipal and state authorities. IIPA continues to recommend focusing enforcement on these locales, with a more systematic approach to identifying and prosecuting the criminal organizations operating in these markets. Such efforts should make use of the new forfeiture law, under which landlords aware of criminal activity on property they own must either stop the activity, notify the authorities, or face liability. Even though it was raided at least once by the PGR enforcement officials, piracy levels at Tepito remained “unchanged” in 2013; other key markets in Guadalajara, Puebla and Monterrey were also raided by the PGR authorities.

The Association for the Protection of Film and Music (APCM) reports that hard goods piracy for 2013 in the film industry remained at the same rate as in 2012 (so, at about 85%, and at about 75% for music). There remain at least 80 large, very well-known, “black markets” in Mexico, many of which are well organized and continue to be politically protected (and some are on state or local government property). In some street locations, consumers can exchange previously purchased pirated product. Vendors also make available infringing copies of any catalog product or TV series, often with a 24-hour turnaround time. APCM reported the following PGR statistics on raids and seizures in 2013: there were 180 arrests; 26 charges were filed with seven convictions. There were over 2.2 million CDs seized, and over 3.8 million DVDs seized, plus over 84,000 blank CDs and 17,000 blank DVDs seized. There were 547 street raids, 27 factory or lab raids, and 277 warehouse raids.

Almost all of the pirated disc 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 and China; the main ports of entrance are Manzanillo, Lazaro Cardenas, Matamoros, Reynosa, and Laredo.

Hard goods piracy remains very damaging for the entertainment software industry, as evidenced by the enormous quantities of burned optical discs and counterfeit cartridges (and memory sticks) found in the major markets (cited above), particularly Tepito, Pericoapa and San Juan de Dios. Industry enforcement efforts have uncovered multiple burning labs in Tepito capable of producing hundreds of thousands of pirated games. The widespread availability of circumvention devices and technologies in many markets, and, increasingly, from online auction and e-commerce sites, underpins and facilitates the growing problem of online piracy of entertainment software in Mexico. 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 by modifying the game platform’s operating system to facilitate the play of pirated games (so-called “soft modding”). Circumvention devices are typically manufactured overseas and shipped in component pieces which are then assembled in Mexico. Vendors sell circumvention devices for approximately 350 to 500 Pesos (US\$26 to \$38), often with memory cards containing up to 400 unauthorized copies of games as part of the sale. Enforcement against distributors of circumvention devices is unavailable, because Mexican criminal law prohibits only the domestic manufacture of such devices, but not their distribution or sale.

Enterprise end-user software piracy: The primary concern for the business software industry remains the unlicensed use of software by enterprises (end-user piracy). BSA’s most recent software piracy study found that the PC software piracy rate in Mexico was 57% in 2011 with an estimated commercial value of unlicensed software of US\$1.25 billion.² As noted in last year’s report, one commendable step forward was the certification in November 2012 of the Mexican Ministry of Economy and several affiliated agencies as meeting software asset management best practices under BSA’s certification program for standards-based software asset management (SAM), the Verafirm program.³ It is hoped that other government ministries and the private sector will follow this example. Illegal software is also commonly available at street markets (from “carpeteros”), and by downloads from online 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.

Camcord piracy: While incidents of illegal recording of films in Mexican theaters have decreased in recent years, camcord piracy continues to threaten both the U.S. and Mexican motion picture industries and the high burden for enforcement of such cases continues to pose challenges. In 2013, only two films were detected as stolen from Mexican theaters, but one of these was the highly successful Mexican film “Nostros Los Nobles.” This is down from 38 incidents in both 2010 and 2011, likely due to convictions in several highly-publicized cases where prosecutors were able to prove not only camcording, but an array of other crimes. In Mexico, successful enforcement against camcord piracy requires evidence of intent to distribute, that is, proof of a profit motive, which is very difficult to obtain. In order to do this, investigators have to watch the thieves actually camcord the movie, walk out of the theater, hand a copy to the people who hired them, and then wait for the film to be widely distributed; by that time, grievous harm has resulted. By comparison, in the U.S. or Canada, the laws recognize the act of unauthorized camcording in a cinema as a crime by itself. Even though there has been a decrease in camcording incidents in the last two years, Mexico’s anti-camcording law needs to be strengthened to allow for enforcement without proof of a profit motive, to prevent further harm to the Mexican box office, as well to the other distribution channels for films in Mexico.

Book piracy: For book publishers, the unauthorized photocopying of academic materials remains a concern. Universities should promote respect for copyright with the adoption of appropriate use and copyright policies, and by encouraging professors and teaching staff to promote the use of legitimate textbooks and materials to address this infringing behavior.

²Data on software piracy rates and commercial values are taken from the BSA 2011 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’s data is planned for release in the second quarter of 2014.

³For more information about the Verafirm program, see www.verafirm.org.

COPYRIGHT ENFORCEMENT IN MEXICO

Three federal agencies take the lead in copyright enforcement in Mexico. The Attorney General's Office (the PGR) is responsible for federal criminal enforcement. The Mexican Institute of Industrial Property (IMPI) takes administrative actions under the Industrial Property and Copyright Law. INDAUTOR (the author's rights institute) is responsible for registering copyrights, as well as enforcement. The Scientific Police of the Secretaria de Seguridad Publica have also assisted rights holders by providing information on illegal software websites, although following recent changes in leadership, the quantity of collaboration has somewhat declined.

Criminal Enforcement

While cooperation between rights holders and the PGR is very solid, IPR prosecution is being hampered by a lack of proper resources, training to new agents (despite many programs), and the lack of deterrent sentences. The number of cases is still far below what is needed to have any significant effect on the marketplace. Additionally, several copyright industries reported excellent cooperation with IMPI against hard goods piracy in inspection visits and *ex officio* raids in 2013. IMPI conducted 1059 software related *ex officio* raids, 450 inspection visits and administrative proceedings, and imposed eight closures of businesses in 2013. BSA reported that there were no criminal convictions in 2013 for software piracy (there were two convictions in 2011, and 20 criminal cases commenced). Lack of coordination between the government agencies (PGR, the specialized IP unit, and local police forces) has continued to stymie enforcement against the distributors of infringing entertainment software. On many occasions in 2013, the Specialized IP Unit obtained search warrants to raid premises known to harbor commercial-scale piratical operations but warrants were not executed (or were delayed) because police officers were not assigned to assist with raids. The entertainment software industry, along with the other copyright industries, recommends that prosecutors continue to focus their efforts on major sellers, rather than on street vendors (further recommending that street vendor raids be used to investigate supply chains to target large-scale distributors, with follow-up criminal prosecutions).

Structural reforms and jurisdictional issues: IIPA continues to recommend several "structural" reforms or agency actions to improve criminal enforcement. An overarching recommendation is to implement a national *ex officio* anti-piracy campaign. Such an effort would seek to coordinate the various police agencies (including the Federal Police (PF), the Ministry of the Interior (Gobernación), and the Mexican Tax Administration (SAT), as well as state and local police) that need to be involved in identifying and targeting individuals responsible for large-scale distribution and importation of pirated goods, including the major organized crime syndicates engaged in these operations. The campaign could also focus on: (1) well-known street markets, labs and distribution centers responsible for the sale of large quantities of pirated goods; and (2) enterprise end-users of unlicensed software and other materials. In 2013, a national IPR enforcement plan was publicly released but never implemented; it is a step in the right direction even if it does not have all of the recommended components for an effective plan. That said, joint implementation and monitoring of an IPR enforcement plan between PGR, SAT, IMPI, PROFECO and the Federal Police is required. In a related positive development, during 2013, SAT engaged with PGR to support enforcement actions related to audiovisual piracy, especially in cases where money laundering or tax evasion is suspected; these actions were focused in Mexico City and are a positive step that should continue and be expanded to other states.

A second and related recommendation is to coordinate municipal, state, and federal government criminal enforcement actions. In Mexico's 32 states there are 2,400 municipal governments, 190 of which have populations of over 100,000. Each one of these municipalities has regulations related to commercial establishments, markets and street vendors; but even so, few local anti-piracy actions have been taken. Only four of Mexico's 32 state governments currently cooperate on IPR enforcement – the State of Mexico, the Federal District, Jalisco and Puebla. Besides improving cooperation in these states, coordinating federal-local efforts in Nuevo Leon, Morelos, Baja California Norte, Veracruz and Michoacán should be priorities.

A third recommendation is to significantly improve the PGR's criminal enforcement actions, especially outside of the main cities. Since 2010, the PGR has had the authority to take *ex officio* actions against copyright infringement. In 2013, a change in administration also brought a change in the PGR's strategy that prioritized raids at laboratories and warehouses instead of street raids, resulting in a decrease in the overall number of actions. To improve its success rate, PGR often asks rights holders to file complaints, build their own cases, and take evidence to the authorities, concurrently with PGR's *ex officio* commencement of enforcement activities. The PGR anti-piracy coordinating committees have proven effective in several states, including Nuevo Leon, Morelos and Puebla.

Organized crime syndicates continue to predominate in hard goods piracy, and increasingly, digital piracy in Mexico. 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 (including in digital piracy cases). However, this unit is under-resourced to effectively dismantle 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. IIPA members recommend better coordination between PGR-SIEDO and PGR-SEIDF, as well as additional resources and training.

Fourth, the Mexican Tax Administration (SAT) should use its inspection power to investigate and audit enterprises for unlicensed software use, since such use can constitute a tax violation. Using this authority would serve as a powerful deterrent to unlicensed software use by business enterprises. SAT should also use its authority to require companies to audit and declare software assets. In 2012, IMPI referred 150 cases to SAT for investigation and auditing; during 2013 SAT analyzed this information and acted accordingly where it found possible tax evasion; IIPA recommends continuous action on these cases in 2014.

Fifth, enforcement agencies should adopt clear and consistent policies for the expeditious destruction of seized infringing goods. The copyright industries have successfully applied the "Ley Federal de Extinción de Dominio" (Federal Law for Property Forfeiture) in piracy cases; but materials seized in the PGR enforcement raids continue to find their way back into the black market. Some rights holders continue to report problems, although there were several instances where rights holders were notified, and did cooperate in the destruction of confiscated goods – including in December 2013 when over 6.4 million illegal products were destroyed at once, the largest such effort in this administration. Article 75 of the Federal Law for the Administration and Alienation of Public Sector Goods requires a final court order to destroy goods, unless they are abandoned, and prosecutors need to wait 90 days to declare goods "abandoned" in order to destroy them. IIPA recommends both clarity in the law, and more cooperation with rights holders to ensure that illegal materials are not returned into the stream of commerce.

Sixth, the Federal Bureau of Consumer Interests (PROFECO) should 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 ongoing training programs with different agencies undertaken by industry (BSA, in particular), but PROFECO still needs to be properly resourced to undertake action against street markets. Multiple changes in the leadership in PROFECO has complicated efforts to develop sustained and effective enforcement improvements.

A continuing weak spot in Mexican IPR enforcement is the judiciary – the need for training to improve IPR expertise by judges (especially training on technology, including circumvention devices, digital distribution, and online piracy); the lack of specialized IP judges and courts; the non-deterrent sentencing in many or most cases (criminal sentences are rare, given the number of raids and cases commenced); and persistent problems with civil litigation. 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 and the award of damages (*reparación del daño*). That court should also issue an advisory to criminal judges nationwide to act expeditiously on applications for search warrants. Judges should also be encouraged to treat copyright treaty obligations as self-executing (in accordance with 2010 constitutional

amendments and Supreme Court decisions). Finally, Mexico should provide sufficient resources for the IP magistrates within the Tax Court, and consider creating specialized IP administrative circuit courts.

Civil Enforcement

Mexico's three-tiered civil procedure system makes civil litigation too complicated, time consuming, and costly for rights holders. There have been some recent improvements: for example, the Copyright Law was amended in 2013 to allow rights holders to seek damages in civil courts even before an administrative infringement decision is issued or becomes final. Mexican law now grants full validity to electronic documents and discovery, although some judges are still not familiar with these rules. In 2011, Mexico amended the Civil Code to provide *ex parte* measures to avoid the destruction of evidence; however, those provisions have not yet been implemented. IMPI's business closures for those opposing inspection visits has had positive results. BSA reported that in 2013, provisional measures to preserve evidence (i.e., the seizure of computers with allegedly infringing software) were used effectively by IMPI in administrative cases. However, this can be an eight to ten year process of litigation in IMPI, the Tax Court and the circuit courts, with a parallel process of approximately two years seeking damages, in civil court.

Administrative Enforcement

IMPI: Statutory changes that took effect in 2012 increased the penalties IMPI could impose, and established a presumption of infringement in cases where enterprises refuse entry to IMPI inspectors (so-called "door closures"). These changes bore fruit in 2013, when IMPI undertook 1,509 actions against enterprises infringing software licenses (1,059 *ex officio* actions and 450 *ex parte* raids and proceedings, also known as "full raids") – an increase from 2012 – and imposed higher fines, including immediate fines in door closure cases, and closed 8 businesses who opposed to inspection visits. Other rights holder groups also continued to report significant cooperation and coordination with IMPI on enforcement actions, resulting in more and higher fines. Many of the copyright industries continue to recommend that investigations be conducted more rapidly (including faster issuance of decisions), and that evidence be 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). Several copyright industries reported that IMPI inspectors in 2013 did gather more detailed evidence than in prior years, and that this resulted in better outcomes for infringement cases (including higher fines). IMPI needs more resources to carry out its enforcement mission, including recording equipment, personnel and training. IMPI should also be encouraged to waive or lower rights holder's deposit fees in instances of "obvious" piracy. Last, it is recommended that IMPI empower its regional offices to conduct raids and seizures.

The long-standing agreement between AMPROFON (the association of phonogram and motion picture producers) and IMPI for 100 administrative procedures every month against illegal downloading in cyber cafés, mainly in the capital city area, remained in effect in 2013. BSA and IMPI signed collaboration agreements last year, further strengthening cooperation and leading to an increase in *ex officio* actions and raids.

INDAUTOR:

IIPA members continue to recommend additional training for INDAUTOR 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 should be allocated more resources and facilities to increase and strengthen its mediation capabilities, particularly by providing more mediators and mediation rooms, and requiring more expeditious notices to rights holders. 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.

Online Enforcement

Several legal deficiencies hamper effective online enforcement. First, there is no specific Mexican legislation establishing liability principles for ISPs in piracy cases. It is assumed that ISPs are subject only to the general liability principles contained in the Civil and Criminal Codes. Without clear legal standards, ISPs claim uncertainty 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 takedowns, but more broadly, there is little cooperation. Google Mexico has been blocking links in Blogspot in response to takedown notices sent by rights holders, but their takedown procedure has proven to be very time consuming, and thus not a very effective remedy.

Second, specific provisions in the Telecommunications Law prohibit ISPs from disclosing a customer's personal information to rights holders seeking civil recourse against 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 Mexican 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 (the film and music association) reports very few Internet piracy cases filed last year (and none pertaining to P2P piracy) mainly due to the lack of adequate criminal provisions. For 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, which is why legal reforms to address these issues are strongly recommended. IMPI has also been working with ISPs and rights holders to develop "cooperative models" for fast and efficient disabling of infringing websites, and at least one proposal to do that and to institute a (weak) notification system to infringers, was introduced in December 2013.

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, or detain it for more than a few hours, 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. IIPA recommends greater cooperation between these two agencies to improve border enforcement, and to expedite the procedures by which Customs may make independent seizures of clearly infringing products. Additionally, the Customs Code needs to be amended to grant customs officers *ex officio* powers.

In 2006, 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. Unfortunately, in 2011, PGR halted its seizure of in-transit containers, claiming a lack of authority, and it never implemented a new "protocol" between the PGR and Customs officials. Imported raw materials – blank CD-Rs, blank DVD-Rs, jewel boxes and burners – are still widely used to produce pirate material in Mexico. These importations are not considered a crime, but coordinated administrative actions by the PGR, SAT and APCM have resulted in the seizure of illegal imported raw material.

IIPA continues to recommend cooperative efforts between U.S. and Mexican customs authorities, not only to prevent Mexican exports of pirate movies to the U.S. and Latin markets, but also to control blank media exports from Southeast Asia that pass through the U.S. to Mexico (to avoid Mexican taxes). Mexico should also implement the recently enacted legislation to create a centralized customs registration database to assist with identification of infringing shipments. Other needed improvements include: adopting procedures to address changes in the size and frequency of shipments, and to deal with falsified documents; re-launching Customs' inspection program and its program for seizing goods arriving at local ports, destined for other countries; adopting a maximum quota on blank

media importations used for the pirate market; and developing a strategy to identify infringers who import their goods using falsified information.

The Customs authorities have continued their anti-piracy initiatives with the support of the local American Chamber of Commerce participating in regular training programs in conjunction with IMPI for Mexican officials at various ports on intellectual property enforcement issues and the identification of various types of pirated product, and with regular meetings with industry members. ESA continues to report positive results from ongoing training efforts with Mexican Customs officials (and it participated in five more training programs with customs officials in 2013 throughout Mexico), including detention notifications and seizures of pirated game product from diverse ports, in particular, Guadalajara and Monterrey. ESA notes that importers are now reducing the size of their shipments to avoid detection, making border enforcement even more critical, but more difficult. ESA did report an improvement in the level of support from Customs in dealing with shipments of circumvention devices.

COPYRIGHT AND RELATED LAWS IN MEXICO

Federal Law on Copyright (1996, as amended): The 1996 Copyright Law was last amended effective in 2003 (with implementing regulations in 2005). Mexico acceded to both the WIPO Internet Treaties (the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)) in 2002 (but never fully implemented the treaties, and did not publish the ratification of the treaties with the Agreed Statements). Draft laws to implement the digital treaties have circulated for years, but have never been enacted. The 2013 drafts that circulated publicly would fall far short of proper implementation on issues relating to technological protection measures, for example. One other component of digital treaty implementation that has been proposed in recent years, but never enacted, would enforce a rights holder's authorization for "making available" (i.e., for the distribution or commercialization of copyright material on websites). There are many remaining deficiencies in the Copyright Law (including long-standing NAFTA and WTO TRIPS obligations), as well as those relating to full digital treaty implementation. For details see <http://www.iipa.com/rbc/2010/2010SPEC301MEXICO.pdf>.

As noted above, the Mexican legal regime for dealing with online infringement remains deeply deficient. The draft amendments circulated in 2013 failed to address third party (ISP) liability at all, and provided very weak notice and notice (instead of notice and takedown) provisions. A much more effective approach is available. Over five years ago, 37 civil organizations representing copyright industries, other rights holders and collecting societies formally established the CALC to promote and defend copyrights and related rights threatened by physical and online piracy, working with different government entities and federal authorities. The CALC also focused on legislative reforms, including addressing private copy issues and promoting cooperation between rights holders and ISPs to address piracy in the online environment. The CALC initiative provides a sound framework for needed improvements, including *inter alia*: (1) effective notice and takedown procedures; (2) rules that clarify the illegality of providing services intended to promote the infringement of copyright and related rights; and (3) injunctive relief and a duty on ISPs to provide information to law enforcement agencies.

In August 2013, a new broadcasting and theatrical exhibition regulation was announced (but is not yet in force), that will be burdensome to implement for motion picture and television program producers. The regulation restricts the advertising of "junk food" and sugary beverages on television and in theaters, specifically during programming intended for children.

Legislative Recommendations: A few additional legislative reforms needed for effective enforcement (in addition to Copyright Law amendments) include:

- Amendments to the Criminal Code to punish – with a prison term (three to ten years) and fines – the unauthorized camcording of films in theaters. The legislation needs to eliminate any required proof of commercial intent.

- Amendments to the Criminal Code to eliminate proof of a profit motive as a prerequisite to criminal liability for large-scale copyright infringements.
- Amendments to the Copyright Law or Criminal Code to establish criminal sanctions for the distribution or trafficking of devices used for the circumvention of TPMs. This should include “acts” as well as devices, components and services. Mexico’s existing criminal law concerning TPM protection (Penal Code, Article 42) has proven ineffective because it only applies to the domestic manufacture of circumvention devices. Since such devices are made abroad and imported into Mexico, there is no criminal enforcement against retailers of these devices.
- Amendments to the Customs Code to grant customs inspectors *ex officio* powers to detain and seize infringing imports.
- Amendments to strengthen administrative enforcement by: (1) providing tax crime prosecution of copyright infringement (when it implicates tax liability); and (2) increasing administrative sanctions.
- Ensure that all relevant rights holders are entitled in law and practice to operate effectively through the collecting bodies of their choice in the licensing of broadcasting, public performance and other communications to the public.
- Enact and enforce decrees to ensure the procurement and use of legal computer software in governmental agencies at all levels (especially all state and municipal agencies).

Enhancement of copyright and enforcement standards, building upon those agreed to by current FTA partners, Australia, Singapore, Chile, and Peru, and found in the more recent in-force agreement with Korea, should be extended to other countries in the region through the Trans-Pacific Partnership (TPP) Agreement, including in Mexico. Such an outcome will contribute to U.S. job growth, increase exports, and facilitate continued economic stabilization in line with the U.S. Administration’s goals.