

# MEXICO

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2016 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Mexico be retained on the Watch List in 2016.<sup>1</sup>

**Executive Summary:** Mexico faces significant impediments to the development of a vibrant and legal digital marketplace for Mexican consumers of music, films, video games and books online. First, Mexico is hampered by an antiquated legal regime in key spots pertaining to digital protection (Mexico, for example, has not even fully implemented the 1996 digital copyright and neighboring rights treaties). Second, although some Mexican federal authorities remain very cooperative with rights holders, and have begun to develop infrastructures for addressing Internet piracy, the government has largely focused its enforcement efforts on hard copy, not digital, piracy. These shortcomings have hurt effective digital enforcement, which is a necessary ingredient to allow a legal marketplace to grow and thrive.

Meaningful reform of the Copyright Law (especially digital enforcement reform) has been long-stalled, most recently, awaiting the conclusion of the Trans-Pacific Partnership Agreement (TPP). Now that the TPP has concluded, Mexico has a long list of reforms in order to comply with the Intellectual Property chapter in the TPP. It is hoped that the Government of Mexico will move forward quickly to both implement the TPP, as well to fully implement the WIPO Internet treaties. Proper implementation would include: adding protection for technological protection measures (an imperative for many copyright industries) and criminalizing the trafficking in circumvention devices; clarifying the making available right; criminalizing camcording; raising civil penalties to deterrent levels, since current Mexican law has neither statutory damages nor “additional damages”; amending the Criminal Code which currently requires a profit motive as a prerequisite, so that no proof of financial gain is needed for criminal infringement; and, creating an effective warning system (including notice and takedown) for online users and cooperation with Internet Service Providers (ISPs).

Expanding the legitimate digital marketplace continues to be a priority for the copyright industries, since Mexico, like other countries, has moved quickly into the digital age in recent years; at present, almost half of the Mexican population is online. One important bright spot in 2015, was the creation of an IP crime unit to focus on improving digital enforcement. This new sub-unit with five public prosecutors, was formed within the Specialized Unit on Investigation of Crimes Committed Against Industrial Property and Copyright (UEIDDAPI) in the Attorney General’s Office (PGR), and is a promising development. The unit needs to be properly trained and resourced (some of the copyright industries are already partnering with them on training programs).

Unfortunately, the Government of Mexico has been very slow to act on creating incentives to promote cooperation between rights holders and ISPs to combat online copyright infringement, which would allow the legal market to flourish. Draft amendments in the past (for example, those circulated in 2013) failed to address third party (ISP) liability at all, and failed to create incentives for the kind of active participation between the various actors in the Internet ecosystem necessary that would expand opportunities for a robust and legitimate online marketplace to develop. A much more effective approach is available. Over seven years ago, 37 civil organizations representing copyright industries, other rights holders and collecting societies, formally established the Coalition for the Legal Access to Culture (CLAC) to promote and defend copyrights and related rights threatened by physical and online piracy, working with different government entities and federal authorities. The CLAC 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 CLAC initiative provides a sound framework for needed improvements,

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<sup>1</sup>For 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/2016SPEC301HISTORICALCHART.pdf>.



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 (some of which is provided in the 2014 Telecommunications Law in Article 189).

As in years past, in 2015, there were some notable enforcement actions undertaken against hard goods piracy, which resulted in the seizure of large quantities of illegal goods. While hard copy piracy is an ongoing problem, digital piracy is significantly worsening. In addition, state and municipal government anti-piracy efforts continue to be weak overall, with few local entities working on combating piracy. Even with the large-scale enforcement actions in 2015, hard copy piracy persists, including CD-R and DVD-R burned discs (and usb drives) of music, audiovisual and video games (as well as circumvention devices), all widely available in numerous street markets. In addition, major problems persist including the unauthorized camcording of films in theaters — over 40 American feature films were sourced from illicit camcords in Mexico in 2015, as well as the unauthorized photocopying of books at universities.

## **PRIORITY ACTIONS REQUESTED IN 2016**

The copyright industries recommend that the Government of Mexico work with them to promote better cooperation in the fight against Internet piracy. This should include 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. There are needed legislative reforms as well as best practices that should be adopted in accordance with Memoranda of Understandings (MOUs) with relevant stakeholders. Here is a list of priority legal reform and enforcement 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., online sources of infringing content, suppliers, traffickers and distribution chains), emphasizing coordination of the police and prosecutorial resources, and a strategic approach, with a prominent role for the UEIDDAPI, within the PGR.
- Provide UEIDDAPI with adequate resources, including ongoing training and implementation of best practices against digital copyright infringement, and support from other enforcement agencies, to undertake investigations against alleged infringing websites.
- Provide UEIDDAPI with the proper resources to continue to conduct raids and seizures at major (physical piracy) markets and to create or expand “pirate free” areas around legal vendors at markets, in particular, in Mexico City, Guadalajara, Puebla and Monterrey. Criminal actions should be taken against the supply chains in order to dismantle the manufacturing of pirate material sold to market owners.
- Provide Customs with adequate resources and *ex officio* authority to independently conduct seizures of infringing goods and components.
- Ensure timely destruction of illegal 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. IMPI used its administrative authority to take down an infringing website (*ba-k.com*) for the first time in 2014; a criminal case is now being prepared for trial by prosecutors.
- Support the CLAC initiative to create an environment of active cooperation between Internet services and rights holders, including, but not limited to, an efficient notice and takedown system with ISPs.

- Provide INDAUTOR (the author's rights institute) with more resources to conduct *ex officio* inspections related to copyright infringements, as well as the 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, so that prosecutors seek, and judges impose, deterrent criminal penalties.
- Implement *ex parte* remedies, additional damages and especially injunctive relief, for civil IPR infringement cases in order to fulfill Mexico's WTO TRIPS Agreement obligations.
- Encourage PGR to reverse its current refusal to investigate and prosecute IPR infringement cases absent proof of actual lost profits, rather than based on the harm to rights holders.

### **Legal Reforms**

- Fully implement the WIPO Internet treaties – in the Copyright Law, and the Industrial Property, Criminal and Criminal Procedure Codes, and the new TPP obligations (detailed throughout this report).
- Enact legislation to create incentives for ISPs to cooperate with right holders to combat infringement taking place over their networks or platforms (following the CLAC initiative).
- Enact legislation to impose criminal penalties – with a prison term (three to ten years) and fines – for the unauthorized camcording of films in theaters, eliminate any required proof of commercial intent.
- Amend the Criminal Code and the Copyright Law to authorize criminal sanctions for the importation and distribution of devices used for the unauthorized circumvention of technological protection measures (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 these devices are often made abroad and imported into Mexico).
- Amend the Copyright Law or Industrial Property Law to remove the proof-of-profit standards (and onerous authorization standards) for infringements of the making available right.
- Amend the Copyright Law or Industrial Property Law and Criminal Code to eliminate proof-of-a-profit motive as a prerequisite to criminal liability for large-scale copyright infringements.
- Amend the Industrial Property Law to give IMPI authority to initiate actions against foreign websites that infringe within Mexico.
- Amend the Forfeiture Law to cover copyright infringements undertaken by organized crime syndicates.
- Amend the Customs Code to grant customs inspectors *ex officio* powers to detain and seize infringing imports.
- Amend the Administrative Code, Tax Code and Criminal Code: (1) to provide tax crime prosecution of copyright infringement (when it implicates tax liability); and (2) increase 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.

## **COPYRIGHT PIRACY IN MEXICO**

**Internet piracy:** There are now an estimated 77.9 million Internet users in Mexico, representing about 46.8% of the population, up from 2.7% in 2000 (as of November 30, 2015 according to [www.internetworldstats.com](http://www.internetworldstats.com)). Internet piracy has grown rapidly because the legal regime and enforcement have lagged far behind the rate of Internet access by Mexican consumers. In addition, a study by the Mexican Institute of Competitiveness (IMCO) noted, that in the last 10 years, the copyright industries and distribution networks were responsible for close to 7% of

the Mexican GDP. At the same time, the copyright industries report an exponential growth in digital piracy, especially streaming (as downloading becomes somewhat less popular). The most prevalent digital platforms are stream-ripping file sharing services, and 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 only a few of them are administered in Mexico. Even though many sites and services are not hosted in Mexico, the Mexican authorities can use effective remedies and regulations against large-scale infringers, and can do so without unintended collateral consequences, in addition to adopting notice and takedown and other more effective measures for local sites.

The most widespread source of music piracy is stream-ripping (for example YouTube-MP3.org), as well as “linked” piracy on blogs and forum sites. Blogspot, a Google service, has been widely used to provide these links. The Motion Picture Association (MPA) reports almost 90 websites harming the Mexican market, including *Pelis24.com*, one of the largest sites, which is a popular streaming linking site that currently offers more than 80,000 links to more than 8,000 illegally reproduced titles including films and television series. The site has been active since February 2008. The independent sector of the film and television industry (IFTA) is 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. In 2015, Mexico ranked 18th overall in the world in terms of the number of connections by peers participating in unauthorized file-sharing of select video games on public P2P networks. Mexico ranked sixth in unauthorized file-sharing using consoles, 13th using mobile devices, and 20th using PCs.

**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. In December 2015, the U.S. Government named two Mexican physical markets to its “Notorious Markets” list. These same two markets have been on the U.S. Government list every year since 2012: (1) San Juan de Dios in Guadalajara, which the U.S. Government has described as an “indoor flea market” with over 300 vendors selling pirated first-run movies, music, video games, software and other items; and (2) Tepito in Mexico City, which the U.S. Government has called “the main warehousing and distribution center for pirated and counterfeit products” sold throughout Mexico. There were reports of some positive enforcement activity at Tepito in 2015 which resulted in the seizure of large quantities of pirated and counterfeit goods, including eight million units (CD-Rs, DVD-Rs and Blu-Ray discs). The copyright industries, in their 2015 filings to the U.S. Government on Notorious Markets, listed over two dozen additional physical markets throughout Mexico (for example, in Mexico City, Monterrey, Puebla, Guadalajara, Merida, Veracruz and Toluca). Many of these markets are well-organized and on public lands, highlighting the need for cooperation by municipal and state authorities.

The motion picture industry reports that roughly 90% of film or television DVDs sold in Mexico are pirated. Eight raids in 2015 against Tepito (and nine in San Juan de Dios) were coordinated between the motion picture industry and UEIDDAPI, and resulted in significant seizures; but piracy remains strong even at those markets. Many of the street markets have discrete distribution chains and often involve organized criminal syndicates. 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. In addition, labs and warehouses are located in many markets, and should remain a focus of enforcement activity.

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 cards loaded with hundreds of video games downloaded from the Internet) found in many of the major markets. Industry enforcement efforts have uncovered multiple burning labs capable of producing hundreds of thousands of pirated video 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 video games, or by modifying the video game platform’s operating system to facilitate the play of pirated video games (so-called “soft modding”). Circumvention devices are typically manufactured overseas and shipped in component pieces which are then assembled in Mexico. Vendors, and online marketplaces such as Mercado Libre, sell circumvention devices for approximately 350 to 500 Pesos (US\$19 to US\$28), often with memory cards containing up to 400 unauthorized copies of video 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.

**Camcord piracy:** Incidents of illegal recording of films in Mexican theaters increased significantly in 2015, with at least 40 stolen films being detected from Mexican theaters. In recent years there have been a few convictions in several highly-publicized cases, but only because 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. Mexico’s anti-camcording law must be strengthened, now a requirement of the TPP, 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.

## **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 insufficient resources, inadequate training of 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. A formal coordination process between the government agencies (PGR, the Mexican Tax Administration (SAT), IMPI, and local police forces) would improve the government’s ability to efficiently address the distribution of infringing content. One very positive note has been the increasing cooperation between rights holders and IMPI and PGR. On some occasions in 2015, 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. A complicating element in combatting video game piracy in Mexico is the cumbersome requirement that each copy of an infringing game must be accompanied in prosecution files by a copy of a legitimate original for comparative examination by experts (*perritos*). Under this system, when the comparison involves multiple copies of the same infringing game, rights holders must submit an equal number of legitimate game copies for the experts for comparison. IIPA members encourage Mexican IPR authorities to create a reference library of legitimate originals to be used by the experts. IIPA members also recommend that prosecutors continue to focus their efforts on major sellers and repeat offenders, rather than on the highest priority targets, and that they work to identify these targets in collaboration with rights holders. In 2015, the Association for the Protection of Film and Music (APCM) reported over 14.6 million items were seized in 776 raids.

**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 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 well-known street markets, labs and distribution centers responsible for the sale of large quantities of pirated goods. Three years ago, a national IPR enforcement plan was publicly released, and although meetings were held with stakeholders, the plan has never been fully implemented. It is now reported that PGR will re-energize an effort to implement a national plan with the various agencies. The plan released a few years ago was a step in the right direction, even if it did not have all of the recommended components to be more effective, and it now needs to be updated to reflect commitments from various authorities on digital enforcement. What is required is the joint implementation and monitoring of an IPR enforcement plan among PGR, SAT, IMPI, PROFECO and the Federal Police. SAT remains engaged with PGR in support of enforcement actions related to audiovisual and music piracy, especially in cases where money laundering or tax evasion was suspected. In 2015, PGR did organize the destruction of seized goods on several occasions.

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 five of Mexico’s 32 state governments currently cooperate on IPR enforcement — the State of Mexico, the Federal District, Jalisco, Queretaro and Puebla.

A third recommendation is to significantly improve the PGR’s criminal enforcement actions, especially outside of the main cities. The PGR has the authority to take *ex officio* actions against copyright infringement; for the past few years, PGR has prioritized raids at laboratories and warehouses. In actions aimed against digital piracy, there was one positive step in 2015: it was the creation of a specialized IP sub-unit within UEIDDAPI (in PGR) to undertake criminal investigations of digital piracy. This sub-unit has already had some training programs with the music, film and video game industry experts; these programs should continue, and the sub-unit should be properly resourced.

Organized crime syndicates continue to predominate in hard goods piracy, and increasingly, in digital piracy. 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, 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 have been instances where rights holders were notified, and did cooperate in the destruction of confiscated goods. 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.

Fifth, 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, but PROFECO still needs to be properly resourced to undertake action against street markets. Multiple changes in the leadership in PROFECO have 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 now (since 2013) allows rights holders to seek damages in civil courts even before an administrative infringement decision is issued or becomes final. Mexican law also grants full validity to electronic documents and discovery, although some judges are still not familiar with these rules. The Civil Code (since 2011) provides *ex parte* measures to avoid the destruction of evidence; however, those provisions have still not been fully implemented.

### **Administrative Enforcement**

**IMPI:** Since 2012, IMPI has been able to impose more severe penalties and has been able to apply a presumption of infringement in cases where enterprises refuse entry to IMPI inspectors (so-called “door closures”). These changes have borne fruit, with IMPI undertaking actions against businesses, imposing fines, including immediate fines in door closure cases or against businesses who opposed inspection visits. Rights holder groups report significant cooperation and coordination with IMPI on enforcement actions (for example, against commercial establishments using unauthorized music), resulting in more and higher fines. In 2015, the Mexican Association of Phonogram Producers (Amprofon) and the Mexican Society of Authors and Composers (SACM) brought a case against [www.mymusiic.com](http://www.mymusiic.com) seeking an IMPI order against the website; the case is on appeal. In the first half of 2015, the motion picture industry reported over 2,500 IMPI inspection visits were undertaken, including 1,877 *ex officio* visits, seizing 4.3 million pirated goods and resulting in 10 closures; the music industry reported that it made 1,440 inspection visits. The IMPI inspection figures were slightly higher than the activity reported in 2014. 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). 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 and should empower its regional offices to conduct raids and seizures.

**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, as well as to conduct *ex officio* inspections related to copyright

infringement. 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. In December 2015, the Mexican Congress approved the creation of a new Ministry of Culture to oversee cultural policy and funding; INDAUTOR will now be a part of that Ministry.

### **Online Enforcement**

One of the biggest obstacles to effective online enforcement is the absence of law that directly establishes liability principles for ISPs. Instead, 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 or no cooperation with many local ISPs. Some copyright industries report that Google Mexico does respond to takedown notices filed by rights holders to block access to links in *Blogspot*. In general, the takedown procedure has proven to be very time consuming for most of the copyright industries, and 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 (although Article 189 of the Telecommunications Law, as amended in 2014, does allow an ISP to cooperate with an order from any competent authority). 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 online 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 Internet file sharing cases are unavailable. After the *demonoid.me* case against a BitTorrent operator stalled, there have been no new Internet piracy criminal cases to report (there were none filed in 2015). For 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 consider "cooperative models" for fast and efficient disabling of infringing websites. The proposals offered in recent years for a "notice and notices" system would have instituted a weak notification system to infringers.

### **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 a few seizures 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). In addition, IIPA recommends coordinated meetings on this issue with the PGR Intellectual Property inter-agency committee and U.S. rights holders (and the U.S. Embassy). Mexico should also fully implement the legislation that created 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. The video game industry continues to report positive results from ongoing training efforts with Mexican Customs officials, including detention notifications and seizures of pirated video game product from diverse ports, in particular, Guadalajara and Monterrey. However, the industry has observed importers are now reducing the size of their shipments to avoid detection, making border enforcement even more critical, but more difficult. For several years, there were improvements in the level of support from Customs in dealing with shipments of circumvention devices, with thousands of video game components seized in 2014, but, there was a sharp decline in 2015. In 2013, 2,718 game copiers (circumvention devices) were seized by Mexican customs authorities; in 2014, 2,673 were seized; in 2015, only 100 of these circumvention devices were seized.

## **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. However, Mexico has never fully implemented the treaties, and did not publish its ratification of the treaties along with the Agreed Statements. Draft laws to implement the digital treaties have circulated for years, but have never been enacted, and those that did circulate (for example, in 2013) would have fallen 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), digital treaty obligations, and now also including Trans-Pacific Partnership obligations, that will need to be corrected. Mexico has a three-year transition period for TPP implementation, but only with regard to the ISP issues (Section J) according to the agreement. The legal reform deficiencies and failure to implement treaty obligations are long-standing, (see, e.g., <http://www.iipa.com/rbc/2010/2010SPEC301MEXICO.pdf>), so it is hoped the Government of Mexico will move quickly to implement them. Doing so will benefit Mexican and foreign rights holders.

In 2013, a new broadcasting and theatrical exhibition regulation went in to 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. In addition, some legislators have periodically proposed the adoption of screen quotas, which if adopted, would severely limit the exhibition of U.S. films in Mexico; these would violate NAFTA and should be opposed.