

# COLOMBIA

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2012 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Colombia remain on the Watch List in 2012.

**Executive Summary:**<sup>1</sup> The Colombian market is an important one for IIPA members, but suffers from physical and digital piracy that requires greater attention to copyright protection and enforcement on the part of Colombian authorities. The recording industry in Colombia has seen no improvement in the level of music piracy in recent years. More than 70% of the physical music market is pirate. Physical piracy continues to be a visible problem in Colombia's major cities, where burned CD-Rs and DVD-Rs are sold on streets and flea markets. Internet piracy of music is almost 100% of the total digital market, mainly because of the lack of action to identify and prosecute administrators and owners of websites, blogs and "hubs" involved in the distribution of illegal music files. A number of developments in 2011 represent a downward shift in the level of priority the Government of Colombia has dedicated to copyright enforcement, and are of particular concern for a country that is party to a free trade agreement with the United States. IIPA urges USTR to maintain needed engagement with Colombia in 2012 to redirect the current trends that could result in declining enforcement, poor free trade agreement implementation and, ultimately, greater difficulties in this important market for the copyright industries.

In May 2011, the Colombian Government attempted unsuccessfully to implement its free trade agreement obligations to establish Internet Service Provider (ISP) liability provisions, by filing the "Ley Lleras." The effort failed to gain the necessary political support from the government's own party, and was defeated by well-organized opposition from civil society organizations and ISPs. Meanwhile, the national anti-piracy campaign lost its steam during 2011. In a troubling sign that reveals the lack of attention to the growing piracy problem in the country, the President broke with tradition and decided against ratifying the national anti-piracy agreement ("convenio nacional antipiratería") that had been in place for some time. Simply put, President Santos has failed to address the protection of copyright and Intellectual property as a matter of priority, in stark contrast to his predecessors. Furthermore, after the government became mired in allegations of deficient supervision over the collective management of copyright by the local authors and composers society (SAYCO), Minister Lleras ordered dramatic measures over the performance rights collective management system. These included the suspension of the operational license of SAYCO for one month, creating uncertainty in the market and causing great damage to performance rights collections around the country. Finally, Juan Carlos Monroy, Director of the Copyright Office within the Ministry of Interior and a strong advocate for copyright protection, was fired, thereby losing one of the most thoughtful and passionate defenders of copyright in Colombia.

IIPA and its members applaud the United States Government for signing the U.S.-Colombia Trade Promotion Agreement (TPA) in October 2011. This agreement contains a comprehensive chapter on intellectual property rights that will raise the level of copyright law and enforcement obligations in Colombia to the benefit of both Colombian and U.S. creators. Colombia should be encouraged to take effective steps in 2012 to implement its TPA obligations and to increase the focus of law enforcement officials on needed anti-piracy actions on the streets of Colombia and online.

**Copyright Enforcement in Colombia:** The weakest part of the music anti-piracy campaign in Colombia involves the prosecution of cases. Piracy is still considered a minor offense by Colombian criminal judges and appellate courts. Official figures provided by the General Prosecutor's Office report that during 2011 a total of 1,580 criminal prosecutions were initiated on cases related to copyright violations, including but not limited to music piracy. As a result of these prosecutions, only 15 convictions were issued and 6 were dismissed, and there has been no information as to any time served by the convicted. Despite the good efforts of the National Police (DIJIN) in conducting investigations and raids, most of the resources are wasted by the lack of effectiveness of the prosecution and the judicial system.

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<sup>1</sup>For more details on Colombia's Special 301 history, see Additional Appendix to this filing at <http://www.iipa.com/pdf/2012SPEC301HISTORICALCHART.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA's 2012 global issues, see our cover letter at <http://www.iipa.com/pdf/2012SPEC301COVERLETTER.pdf>.

